CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 89770 of 2014

(Arising out of Order-in-Original No. Belapur/07/Belapur I/R-IV/COMMR/KA/2014-15 dated 15.07.2014 passed by the Commissioner of Central Excise & Customs, Belapur Commissionerate, Navi Mumbai.)

Sushil Shinde **.... Appellant**
Former employee of CPEC Engineering Ltd.
B-603, Sheetal Dhara Co-op Society Ltd.
Sector-7, Plot No.34, Kamothe
Navi Mumbai- 400 705.

Versus

Commissioner of Central Excise & Customs **... Respondent**
Belapur Commissionerate, First Floor, CGO Complex,
CBD Belapur, Navi Mumbai - 400 614.

With

Excise Appeal No. 89800 of 2014

(Arising out of Order-in-Original No. Belapur/07/Belapur I/R-IV/COMMR/KA/2014-15 dated 15.07.2014 passed by the Commissioner of Central Excise & Customs, Belapur Commissionerate, Navi Mumbai.)

CPEC Engineering Limited **.... Appellant**
Plot No. D-207, TTC Industrial Area, MIDC
HP Road, Turbhe, Navi Mumbai- 400 705.

Versus

Commissioner of Central Excise & Customs **... Respondent**
Belapur Commissionerate, First Floor, CGO Complex,
CBD Belapur, Navi Mumbai - 400 614.

Appearance:

Shri Sushil Shinde, Former Employee for the Appellant

Shri L.B. D'costa,, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86269-86270/2025

Date of Hearing: 02.05.2025

Date of Decision: 14.08.2025

Per: M.M. PARTHIBAN

These appeals has been filed by M/s CPEC Engineering Limited, Navi Mumbai and Shri Sushil Shinde, former employee/Accountant of the CPEC

Engineering Limited (herein after referred together, for short, as "the appellants") assailing the Order-in-Original No. Belapur/07/Belapur I/R-IV/COMMR/KA/2014-15 dated 15.07.2014 (hereinafter referred to, for short, as "the impugned order") passed by the Commissioner of Central Excise & Customs, Belapur Commissionerate, Navi Mumbai.

2.1 The facts of the case, leading to these appeals, are summarised herein below:

2.2 The appellant CPEC Engineering Limited are having their factory at TTC industrial area of Turbhe, Navi Mumbai, and *inter alia*, are engaged in the manufacture of excisable goods viz. industrial gear boxes, falling under Central Excise Tariff Item (CETI) 8483 4000 of the Schedule to the Central Excise Tariff Act, 1985. As a manufacturer of excisable goods, the appellants are duly registered with jurisdictional Central Excise department vide Central Excise Registration No. AACFC8552HXM001 and also discharge appropriate duty liability on removal of the said final products out of their factory premises.

2.3 During the course of scrutiny of ER-1 returns of the appellant company, the jurisdictional Range Superintendent observed that the excise duty payments made in cash under GAR-7 challans by the appellant company were not reflected properly in the ACL Master data in Electronic Accounting System In Excise and Service Tax (EASIEST) and the details were not matching with the name of the assessee company for the period from October, 2010 to June, 2012. Accordingly, further investigation was carried out by search operations carried out at the factory premises on 28.09.2012 and statements were recorded from concerned persons including Shri Sushil Shinde, Accountant of the appellant company on 27.09.2012 and Shri Ram S Koli, Chairman of appellant company on 01.10.2012. The excise duty that was not-paid at the relevant time, was initially paid by the appellant company, partly on 04.10.2012 and subsequently at various intervals; and in the statement recorded from Shri Ram S Koli, Chairman on 29.07.2013, he had stated that the defaulted payment of Rs. 41,34,000/- had been paid by them. On completion of the investigation, Show Cause Notice dated 19.12.2013 was issued by the department for non-payment of excise duty during the period from October, 2010 to November, 2012, seeking for recovery of the Central Excise duty of Rs.51,28,774/- as arrears of duty and Rs. 8,47,527/- along with interest under Section 11A of the Central Excise Act, 1944 and also proposed for imposition of penalty under Section 11AC ibid on the appellant assessee, Chairman and its employee. The said SCN issued in this regard was adjudicated by the original authority vide order dated 15.07.2014, wherein all the proposals made in the SCN were confirmed. Being aggrieved with the above order, the appellants have filed these appeals before the Tribunal.

3. Heard both sides and perused the records of the case.

4.1 We find that the issue of demand of central excise duty on account of non-payment of duty at the time of clearances made from the factory, by forging the duty payment challans with Axis Bank seal, have been dealt in detail by the learned Commissioner in the impugned order. The relevant paragraphs of the said order is quoted here in below:

> *"36. From the contents of the statement recorded from Shri Sushil Shinde, Accountant and Shri Ram S Koli, Chairman, it is observed that Shri Sushil Shinde, confessed that fake and doctored GAR-7 challans were submitted by him under the advice of Shri Ram S Koli, Chairman. Shri Ram S Koli, admitted the submission of fake/doctored GAR-7 challans and agreed to pay the duty evaded. Accordingly, they have paid the duty liability on submission of fake and doctored GAR-7 challans amounting to Rs. 41.34 lakhs, subsequently on various dates. Thus, I find that the assessee has agreed the doctoring of the document and evasion of duty. The statement recorded from Shri Ram S Koli, Chairman, and Shri Sushil Shinde, confirms the doctoring and submission of fake documents to the Department. Hence, I confirm the demand of Rs. 41.34 lakhs (pertaining to submission of fake and doctored GAR-7 challans) and Rs. 2,60,127/- (without payment of duty after assessment and filing of ER-1) for the period from October, 2010 to July, 2012 as demanded in the Show Cause Notice.*
>
> *xxx xxx xxx*
>
> *39. From the contents of the statement recorded from the Chairman Shri Ram S Koli, and Accountant Shri Sushil Shinde, I find that Shri Ram S Koli, is the brain behind the entire offence committed. He has instructed the Accountant to File Fake/Doctored GAR-7 challans to evade payment of duty. The documents clearly proves that Shri Ram S Koli has intentionally committed the offence with a view to evade payment of duty. Shri Sushil Shinde has assisted him in the commission of offence. However, I find from the contents of Shri Sushil Shinde's submission dated 01.02.2014, that he was just an employee of the company and has prepared the forged documents on the directions of his Chairman Shri Ram S Koli. He has not gained any financial or personal benefit by this act, rather his salary was held-up by the management. I observe that the submission of Shri Sushil Shinde has some merit. As an employee he was found to act according to the dictate of the Chairman of the company. Even though he has carried out the act of forgery of the documents, it was done at the behest of Shri Ram S Koli, chairman of the company. Hence, he deserves a lenient treatment while considering*

penalty. I propose to take a lenient view in imposing the quantum of penalty to Shri Sushil Shinde. In view of the above, I hold that there penalty under Rule 26 of Central Excise Rules, 2002."

4.2 On perusal of the case records, it is found that in a number of GAR-7 challans, it has been showed as though central excise duty have been paid to the government exchequer; however, in reality no such payments were made and the seal of "Axis Bank, Vashi" has been used by forgery to indicate as though payment of duty was made in cash, to enable clearances of final products from the appellants factory. Further such a fact of forgery of records have been admitted by Shri Ram S Koli, the Chairman of the appellant Company in a statement given before the investigation authorities.

4.3 The legal provisions of Section 3 of the Central Excise Act, 1944 and Rule 4 of the Central Excise Rules, 2002 require that every person who produces or manufactures any excisable goods, shall pay the excise duty leviable on the excisable goods on its removal from the factory of manufacture. Thus, no clearance of goods could be made without payment of applicable central excise duty. In the present case before us, the excisable goods have been cleared by forging the documents/GAR-7 Challans, as though cash payment of duty has been made, whereas actually no such payment of duty in reality were made by the appellants. Further, such non-payment of duty by forgery, have also been admitted by the Chairman of the appellant company and the accountant/employee. Therefore, we do not find any reason, to interfere with the impugned order of the learned Commissioner in confirmation of the excise duty demand on the appellant company and the appropriation of duty paid by them, as well as penalty imposed on the appellant company under Section 11AC ibid read with Rule 25 ibid.

4.4 As regards, penalty imposed on the Chairman of the appellant company is concerned, even though his name is mentioned along with the appellant company in the appeal papers, there is no specific appeal has been filed by Shri Ram S Koli, the Chairman of the appellant Company. It has also been found by the learned Commissioner in the impugned order has found that Shri Ram S Koli, Chairman is the master mind or brain behind the act of forgery and these have also been admitted by him in his statement given before the investigation authorities. Therefore, we do not find any valid reasons to interfere with the penalty imposed on him under Rule 26 ibid.

4.5 As regards penalty imposed on the employee Accountant Shri Sushil Shinde is concerned, learned Commissioner has given specific findings that at the behest of Shri Ram S Koli, Chairman of the company, he had to carry out his instructions in forgery of documents; and thus he is taking a lenient view in imposing the quantum of penalty to Shri Sushil Shinde under Rule 26 ibid. However, the learned Commissioner had imposed a penalty of Rs.1,00,000/- on Shri Sushil Shinde, the Accountant. Considering the aforesaid specific findings of the learned Commissioner in the impugned order and that central excise duty was substantially paid by the appellant company during investigation stage and the same having been appropriated to government exchequer, and further the duty left to be paid remained at Rs. 10,05,516/- which was confirmed in the impugned order, we are of the considered opinion that the penalty imposed on Shri Sushil Shinde is not commensurate with the findings recorded by adjudicating authority. Accordingly, we are of the view that the penalty imposed on Shri Sushil Shinde could be reduced commensurate to the findings recorded in the impugned order and in context with the duty yet to be paid by the appellant company.

5. In view of the aforesaid discussion and on the basis of the factual details of the case, the impugned order passed by the learned adjudicating authority is upheld and the appeal filed by the appellant company is dismissed. Further, in respect of the appeal filed by Shri Sushil Shinde is concerned, the amount penalty imposed under Rule 26 ibid is reduced to Rs.10,000/- only.

6. Therefore, the impugned order dated 15.07.2014 is upheld to the above extent. In the result, the appeal filed by the appellants company is dismissed and the appeal filed Shri Sushil Shinde is partly allowed.

(Order pronounced in open court on 14.08.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha