CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 1

Excise Miscellaneous Application No. 85179 of 2026

in

Excise Appeal No. 85145 of 2026

[Arising out of Order-in-Original No. 02/AK/ADG/2023-24 dated 21.02.2024 passed by the Additional Director General, DGGI Mumbai Zonal Unit, Mumbai.]

Manoj Kumar Singh …. **Appellant**
S/o Shri Dhruv Nath Singh,
R/o E-504, Prateek Laurel
Sector-120, Noida,
Uttar Pradesh – 201 301.

Versus

Pr. Chief Commissioner of CGST & Central Excise …. **Respondent**
Mumbai CGST Zone
GST Bhawan, 115, Maharshi Karve Road
Opp. Church Gate Station
Mumbai – 400 020.

Appearance:

Shri. J.C. Patel, Advocate for the Appellant

Shri Ranjan Kumar, 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/86194/2026

Date of Hearing: 09.06.2026

Date of Decision: 24.09.2026

Per: M.M. PARTHIBAN

This appeal has been filed by Shri Manoj Kumar Singh, Noida (herein after, referred to as "the appellant", for short) assailing the Order-in-Original No.02/AK/ADG/2023-24 dated 21.02.2024 (herein after, referred to as "the impugned order") passed by the Additional Director General, DGGI Mumbai Zonal Unit, Mumbai.

2. The respondent department has filed a miscellaneous application for change of the name of the respondent consequent to re-organization of the

department post introduction of Goods and Service Tax. We find that Central Board of Indirect Taxes & Customs (CBIC), Ministry of Finance have issued Notification No. 02/2017-Central Tax dated 19.06.2017, as amended, for prescribing territorial jurisdiction of Principal Chief Commissioners/Chief Commissioners and their respective Principal Commissioners/ Commissioners of Central Goods and Service Tax & Central Excise for various Commissionerates across the country in exercise of the powers vested on them read with it under Sections 3 and 5 of the Central Goods and Services Tax Act, 2017 read with Section 139 *ibid*. As per the said notification dated 19.06.2017. Therefore, considering the aforesaid legal provision and that the respondent department has requested for the concerned jurisdiction of the Central Goods and Service Tax authorities, would hence forth handle the matters relating to this dispute, the revised name and address of the respondent department has been suitably incorporated. The Registry is also directed to incorporate the following changed name and address of the respondent department in the appeal records for the purpose of disposal of the appeal.

3.1 Brief facts of the case, leading to this appeal, are summarized herein below:

3.2 The appellant herein is *inter alia*, is one of the co-noticee in the show cause proceedings initiated against one manufacturer of pan masala i.e., M/s Maa Bhagwati Foods, Delhi and others for alleged contraventions under various rules of Pan Masala Packing Machine (Capacity Determination and Collection of Duty) Rules, 2008 and Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 for alleged manufacture of pan masala without calculating the duty payable thereon and its removal without payment of central excise duty in terms of such rules during the period April, 2016 to January, 2017. On this basis, the Department had issued Show Cause Notice (SCN) dated 12.01.2018 demanding central excise duty of Rs.46,69,90,000/- from M/s Maa Bhagwati Foods besides confiscation of seized goods, imposition of penalty; and for imposition of penalties on those persons involved in such illegal action, as co-noticees. The said SCN was adjudicated by the learned Commissioner of Central Excise in confirming all the proposals for demand of central excise duty along with interest under Section 11A ibid and also imposed penalty equal to the duty under Rule 25 of the Central Excise Rules, 2002, penalty of Rs.15,000/- under Rule 27 ibid, on the manufacturing unit M/s Maa Bhagwati Foods. Besides the above, in the impugned order the adjudicating authority had imposed penalty of Rs.25 crores on Shri Manoj Kumar Jha, supervisor of the said manufacturing unit; Rs.25 crores on Shri Manoj Kumar Singh; Rs.5 crores on Shri Lalit Nagar and Rs.5 crores on M/s Montage Enterprises Private Limited under Rule 26 of the Central Excise Rules, 2002. Feeling aggrieved with the impugned order imposing penalty on the appellant as co-noticee, he has preferred this appeal before the Tribunal.

4.1 Learned Counsel appearing for the appellant submitted that central excise duty demand is in respect of illegal manufacture and removal of Pan Masala and Scented Jarda Tobacco with the aid of Form Fill and Seal (FFS) machines by M/s Maa Bhagwati Foods, a proprietary concern of Shri Gaurav Kumar. He further submitted that the appellant Shri Manoj Kumar Singh has no role to play in such illegal activities. He has been mis-represented as in the various statements relied upon by the department viz., Statements of (i) Shri Raj Kumar, Packing worker; (ii) Shri Ashok Kumar, Transporter; (iii) four workers of manufacturing unit S/Shri Kartar Singh, Cutting machine operator; Om Prakash, worker; Sukhdev and Dharamveer Singh, Supari cutters; have not mentioned anything about the appellant and they had only stated that the supervision of such manufacture in the unregistered premises at Bawana, Delhi, instructions for transportation of manufactured goods etc., were carried under the directions of Shri Manoj Kumar Jha, Supervisor of the manufacturing unit M/s Maa Bhagwati Foods. Even, in the various statements given by the said Shri Manoj Kumar Jha, Supervisor, though he mentioned that Shri Gaurav Kumar as proprietor of the manufacturing unit on 19.01.2017, in the last statement through letter dated 31.01.2017 sent through Jailor, District Jail, he had claimed ultimately that he is the proprietor of M/s Maa Bhagwati Foods.

4.2 Learned counsel further submitted that the role of the appellant is limited to extending loan facility to Shri Manoj Kumar Jha and helping him in procurement of laminates and miscellaneous goods. As the appellant has no role to play with handling of impugned goods involved in illicit clearance, and has nothing to do with such goods, the learned Counsel prayed that invoking of Rule 26 of the Central Excise Rules, 2002 for imposing penalty is not legally sustainable. Therefore, he pleaded that the appeal filed by the appellant be allowed.

4.3 In support of their stand, learned Counsel relied upon the following judicial pronouncements:

(i) *J & K Cigarettes Limited Vs. Collector of Central Excise* – 2009 (242) E.L.T. 189 (Del.)

(ii) *Basudev Garg Vs. Commissioner of Customs* – 2013 (294) E.L.T. 353 (Del.)

(iii) *Junaid Kudia Vs. Commissioner of Customs, Mumbai Import-II* – (2024) 16 Centax 503 (Tri. -Bom.) upheld by Hon'ble Supreme Court in *Commissioner of Customs, Mumbai Import-II Vs. Junaid Kudia* – (2024) 16 Centax 504 (S.C.)

(iv) *Additional Director General (Adjudication) Vs. Its My Name Private Limited*– 2021 (375) E.L.T. 545 (Del.)

(v) *Surya Wires Private Limited and Shri Harsh Agrawal Vs. Principal Commissioner, CGST, Raipur* – 2025 (4) TMI 441 – CESTAT New Delhi

(vi) *Commissioner of Central Excise & CGST, Jodhpur Vs. M/s Paradise Steels Private Limited; and Commissioner of Central Excise & CGST, Jodhpur Vs. Shri Rakshit Bhansali Director M/s Paradise Steels Private Limited* - 2025 (6) TMI 1961 – CESTAT New Delhi

(vii) *Rakesh Kumar Garg Vs. Commissioner of Central Excise* – 2016 (331) E.L.T. 321 (Del.)

(viii) *Ramesh Steel Re-rolling Mills Vs. Commissioner of Central Excise, Hyderabad* – 2007 (219) E.L.T. 285 (Tri. - Bang.)

5. Learned Authorised Representative (AR) for Revenue reiterated the findings in the impugned order.

6. Heard both sides and perused the records of the case. We have also examined the submissions advanced by learned Counsel appearing for the appellant and the learned Authorized Representative of the Department.

7. The issue involved in this appeal is to examine whether the appellant is liable for imposition of penalty under Rule 26 of the Central Excise Rules, 2002 and whether such penalty imposed in the impugned order is legally sustainable. Such penalty has been imposed in the impugned order in relation to demand of Central Excise duty on illegal manufacture and removal of Pan Masala and Scented Jarda Tobacco with the aid of Form Fill and Seal (FFS) machines by M/s Maa Bhagwati Foods, for alleged contraventions under various rules of Pan Masala Packing Machine (Capacity Determination and Collection of Duty) Rules, 2008 and Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010, during the period April, 2016 to January, 2017.

8. In the impugned order, learned Commissioner has *inter alia* dealt with various statements and in respect of the role of the appellant had recorded as follows:

> *"11.2.1 Investigations reveal that Shri Manoj Kumar (Singh), placed orders for raw materials with Shri Shashank Soni, proprietor of M/s. Naina Devi Enterprises, Ashok Vihar, New Delhi and the said raw materials viz. kattha, supari, dry fruits, etc., were supplied against invoices for which payment was made through cheque no. 071091 by M/s. MBF. Investigations have also revealed that order for packaging material viz. printed laminates supplied to M/s. MBF by M/s. Montage Enterprises Pvt. Ltd., Noida, was placed by Shri Manoj Kumar (Singh). During search of M/s. Montage Enterprises Pvt. Ltd., the address of the manufacturer imprinted on one Rotgraphic cylinder, used for printing 'Dangal' Brand and 'DG-2 Tobacco' brand on the packing material was of M/s. MBF holding Central Excise Registration No.BTSPK7946PEM002. During examination, Shri Parminder Singh Bakshi, GM (Sales & Marketing) of M/s. Montage Enterprises Pvt. Ltd., revealed that Shri Manoj Kumar (Singh) had approached him for manufacture of Rotographic Cylinders for M/s. MBF, the design for which was supplied by Shri Manoj Kumar (Singh); that he did not remember if Shri Manoj Kumar (Singh) had claimed to be owner of M/s. MBF but recollected that Shri Manoj Kumar (Singh) had informed that he (Shri Manoj Kumar (Singh) was assisting a friend in setting up of a unit.*
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> *11.2.2 Vide letter dated 07.08.2017 and in his written reply dated 16.04.2022 to the show cause notice, Shir Manoj Kumar (Singh) has claimed that except helping Shri Manoj Kumar Jha in procuring laminates, other misc. goods for M/s. MBF and extending a loan to Shri Manoj Kumar Jha, he was in no other manner related with the instant case. He has passionately argued that S/Shri Bakshi of M/s. Montage Enterprises Pvt. Ltd., supplier of laminated packing material. Shri Shashank Soni of M/s. Naina Devi Enterprises and Shri Raj Kumar Agarwal of M/s. The Indian Wood Products Co Ltd., both suppliers of raw material of M/s. MBF, had all supplied the same on proper invoices which evidenced that he (Shri Manoj Kumar (Singh) had only assisted in procurement of goods for M/s. MBF. However, his replies are silent regarding the disclosures made by Shri Manoj Kumar tha, who Shri Manoj Kumar (Singh) in his replies have repeated claimed to be his friend, whom he has extended loan for setting up M/s MBF Shri Manoj Kumar tha in his statement dated 20.01.2017 has explicitly implicated by Shri Manoj Kumar (Singh) stating that Shri Manoj Kumar (Singh) was the owner of M/s. MHF and used to west M/ MBF in a Fortuner car bearing no UP87/F-0011 and gave instructions to him and Shri Lalit Nagar (Noticee No. 5) about the duties to be performed. Shri Manoj Kumar Iha has also claimed Shri Manoj Kumar (Singh), was the key person of M/s. MBF and was earlier Director of M/s Goa Gutkha: that Shri Manoj Kumar (Singh) was aware that goods of M/s. MHF were being delivered without any documents. Also during the search proceedings on 19.01.2017, workers S/Shri Kartar Singh. Om Prakash. Sukhdev and Dharamveer Singh all recognized the photograph of Shri Manoj Kumar (Singh) stating that he was the key person and owner of M/s. MBF who*

frequently visited the factory premises. In the notebook of Shri Shiv Charan, security guard of premises of M/s. MBF located at G-219, basement, Sector-63, Noida and from his disposition it is evident that Shri. Manoj Kumar (Singh) used to visit the said premises. Telephone no. and vehicle no. of Shri Manoj Kumar (Singh) was also found mentioned in the said notebook. All these facts brought out in the show cause notice have not been disputed by Shri Manoj Kumar (Singh). His only counter to the allegations are found to be very flimsy i.e. he has highlighted that no signature is put against his photograph and therefore he has not be identified by the concerned. Shri Shiv Charan has not mentioned his name but has named some person named "Panditji/poojariji". However, he is silent with regard to his Fortuner vehicle no. and mobile no. being mentioned in the notebook retrieved from of Shri Shiv Charan. He is numb about the claim of Shri Manoj Kumar Jha that he (Shri Manoj Kumar Singh) was the actual owner of M/s MBF on whose instructions Shri Manoj Kumar Jha and Shri Lalit Nagar performed conducted the day to day affairs of M/s. MBF, etc..

11.2.3 In light of the foregoing, all claims made by Shri Manoj Kumar (Singh) vide his letters dated 07.08.2017 and 16.04.2022, that except helping Shri Manoj Kumar Jha in procuring laminates, misc. goods for M/s. MBF and extending a loan to Shri Manoj Kumar Jha, he was in no other manner related with the instant case needs to be taken with a pinch of salt. It has also to be considered that numerous summons/personal hearing intimation letters issued to him during investigation and the instant adjudication proceedings & search of his residence could not induce him to join the legal process and prove his innocence. All these goes to prove that there is absolutely no truth in the claims made by Shri Manoj Kumar (Singh) in his letters dated 07.08.2017 and 16.04.2022.

12.1 As brought out in the preceding paragraphs 10.1 to 11.3 supra of the Discussions and Findings part, S/Shri Gaurav Kumar, Manoj Kumar Jha, Manoj Kumar (Singh) and Lalit Nagar all have collectively and in their individual capacity concerned themselves in transporting removing, depositing, keeping, concealing, selling, purchasing and have dealt with the said notified goods manufactured and cleared by M/s. MBF in a clandestine manner and thereby as stated above have rendered themselves liable to penalty in terms of provisions of Rule 26 of the Central Excise Rules, 2002, which reads as under: -
"Penalty for certain offences. RULE 26. - ((1)] Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or two thousand rupees), whichever is greater"

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15. In view of the above and discussions and findings I pass the following order

ORDER

a) I confirm invocation of extended period as envisaged under sub-section (4) of Section 11A of the Central Excise Act, 1944.

b) I confirm the demand of Central Excise duty of Rs.46,69,90,000/- (Rupees Forty Six Crore Sixty Nine Lakh Ninety Thousand only inclusive of Swachh Bharat Cess & Krishi Kalyan Cess) on M/s. Maa Bhagwati Foods under the provisions of sub-section 4 of Section 11A of the Central Excise Act, 1944;

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h) I impose a penalty of Rs.25,00,00,000/- (Rupees Twenty Five Crores Only) on Shri Manoj Kumar (Singh) S/o Sh. Dhruv Nath Singh under Rule 26 of the Central Excise Rules, 2002."

In the impugned Order and in the SCN, besides the manufacturing unit M/s Maa Bhagvati Foods, the following persons viz., Shri Gaurav Kumar, Proprietor of M/s Maa Bhagwati Foods; Shri Manoj Kumar Jha, Supervisor of the said manufacturing unit; Shri Lalit Nagar, in-charge of godown having cutting machine, roasting machine, katha-lime machines and who use to look after the manufacturing unit in the absence of Manoj Kumar Jha; M/s Montage Enterprises Private Limited, manufacturer of cylinders, printed packing material to the said manufacturing unit; and Shri Manoj Kumar Singh, the appellant herein have been mentioned as co-noticees.

9.1 We further note that as on date, besides the appellant Shri Manoj Kumar Singh, M/s Montage Enterprises Limited vide E/86191/2024 have also filed an appeal before the Tribunal; Shri Gaurav Kumar, though had filed an appeal vide Diary No.872892024, since he had not made requisite pre-deposit as per Central Excise statue, the same has not been registered with the Tribunal.

9.2 In order to examine the disputed issue, we would like to refer to the relevant legal provisions as contained in the Central Excise Act, 1944 and the Central Excise Rules, 2002. The relevant extracts are given below:

Central Excise Rules, 2002

"Rule 26. Penalty for certain offences.

(1) Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or two thousand rupees, whichever is greater:

Provided that where any proceeding for the person liable to pay duty have been concluded under clause (a) or clause (d) of sub-section (1) of section 11AC of the Act in respect of duty, interest and penalty, all proceedings in respect of penalty against other persons, if any, in the said proceedings shall also be deemed to be concluded.

(2) Any person, who issues—
(i) an excise duty invoice without delivery of the goods specified therein or abets in making such invoice; or
(ii) any other document or abets in making such document, on the basis of which the user of said invoice or document is likely to take or has taken any ineligible benefit under the Act or the rules made thereunder like claiming of CENVAT credit under the CENVAT Credit Rules, 2004 or refund, shall be liable to a penalty not exceeding the amount of such benefit or five thousand rupees, whichever is greater."

Central Excise Act, 1944

"Section 11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.
(1) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason, other than the reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,—

(a) the Central Excise Officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show-cause why he should not pay the amount specified in the notice;
xxx xxx xxx xxx
(4) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by the reason of—
(a) fraud; or
(b) collusion; or
(c) any wilful mis-statement; or
(d) contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,

by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 11AA and a penalty equivalent to the duty specified in the notice…"

9.3 On perusal of the case records, particularly the SCN and the impugned order, it transpires that Shri Gaurav Kumar, is the Proprietor of M/s Maa Bhagwati Foods, manufacturing unit involved in the alleged clandestine manufacture and clearances. Further, the role of various persons who have been named as co-noticees are that Shri Manoj Kumar Jha, is the Supervisor of the said manufacturing unit; Shri Lalit Nagar, is in-charge of godown having cutting machine, roasting machine, katha-lime machines and who use to look after the manufacturing unit in the absence of Manoj Kumar Jha; M/s Montage Enterprises Private Limited, is a manufacturer of cylinders, printed packing material which have been supplied to the said manufacturing unit. As regards the role of Shri Manoj Kumar Singh, though he had claimed that extended loan facility to Shri Manoj Kumar Jha and helped him in procurement of laminates and miscellaneous goods, the same has not been accepted by the learned Commissioner in the impugned order by stating that the investigation reveals that Shri Manoj Kumar (Singh) placed orders for raw materials with Shri Shashank Soni, proprietor of M/s Naina Devi Enterprises, Ashok Vihar, New Delhi and the said raw materials viz. katha, supari, dry fruits etc., and other materials like printed laminates, cylinders were supplied to M/s Maa Bhagwati Foods. In such references at paragraph 11.2.1 of the impugned order the name of the appellant is mentioned as Shri Manoj Kumar and within bracket as Singh and not in full name as Shri Manoj Kumar Singh. On the other hand the name of Shri Manoj Kumar Jha, who is the supervisor and later claimed himself as proprietor of M/s Maa Bhagwati Foods, has been mentioned in full. The apparent similarity of the name Shri Manoj Kumar (Jha) and Shri Manoj Kumar (Singh) has given lack of clarity, when the role of Shri Manoj Kumar Singh is mentioned as the person involved in supply of materials to the manufacturing unit M/s Maa Bhagwati Foods. Even in the SCN, the role of Shri Manoj Kumar Singh, has been stated as having provided laminates and other miscellaneous goods to M/s Maa Bhagwati Foods and have extended loan facility to Shri Manoj Kumar Jha. Therefore, it is apparent that the impugned order has not clearly brought out the role of Shri Manoj Kumar Singh, for levy of penalty under the provision of Rule 26 of the Central Excise Rules, 2002.

9.4 Further, on plain reading of Rule 26 of the Central Excise Rules, 2002, it transpires that a person should acquire possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, any excisable goods or in any other manner have dealt with such excisable, which he should be in the knowledge that such goods are liable for confiscation under the Central Excise Act or the rules thereunder. On perusal of the case records and the discussions as above, it could be seen that the undisputed fact on record is that Shri Manoj Kumar Singh, has provided laminates and other miscellaneous goods to M/s Maa Bhagwati Foods and have extended loan facility to Shri Manoj Kumar Jha. No where in the SCN or in any relied upon documents, it is shown as Shri

Manoj Kumar Singh is involved in any of the activity specified in Rule 26 ibid. On the other hand, in the statements given by Shri Raj Kumar, Packing worker; Shri Ashok Kumar, Transporter; they have stated that under the supervision of Shri Manoj Kumar Jha, Supervisor of the manufacturing unit M/s Maa Bhagwati Foods, the impugned goods were manufactured at the other Unit situated in the unregistered premises at Bawana, New Delhi and on his directions the goods have been transported from there for further delivery to the persons concerned. Therefore, in the absence of any evidence forthcoming in the investigation and having been established in the impugned order, imposition of penalty under Rule 26 ibid is not legally sustainable. Further, as discussed above, it is also contrary to the facts as evidenced in the statements of persons working in the manufacturing unit M/s Maa Bhagwati Foods. Therefore, we are of the *prima facie* view that there is no case made out in the impugned order for imposition of penalty under Rule 26 of the Central Excise Rules, 2002.

10.1 We find that the Hon'ble High Court of Delhi upon examination of facts in the case of *Rakesh Kumar Garg* (supra), has held that in the absence of proper evidence brought out by the department, the imposition of penalty under Rule 26 ibid is not sustainable. The relevant paragraphs of the said judgement are extracted below:

> *"63. Significantly the case made out by the Department was also that M/s. ST was also a front unit of the Garg family. However, no penalty was levied on M/s. ST on the ground that there is no evidence on record that they were concerned with the clandestine clearance of pan masala.*
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> *64. The CCE proceeded to hold that "duty and penalty" can be "realised only from Gargs and neither from M/s. AJP nor Mr. Gautam." It is perhaps for this reason that the CCE proceeded to impose a high penalty on the Gargs. This contradicted the final operative portion of the said order where a penalty of Rs. 33,20,02,329/- was, in fact, levied on AJP under Section 11AC of the CE Act apart from levying penalty of Rs. 21 crores on Mr. Devi Das Garg under Rules 209 and 209A of the CE Rules, 1944 as well as Rules 25 and 26 of the CE Rules, 2002.*
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> *xxx xxx xxx xxx*
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> *66. As already noticed there is no question of application of Rule 25 since that applies only to the actual manufacturer of the excisable commodity whereas that is not even the case of the Department vis-a-vis the three appellants.*
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> *67. Another important point that was overlooked by the CCE and the CESTAT is that the entire duty was raised on the basis of the capacity of the packing machines for the period 1st April, 2000 to 31st August, 2002, whereas the Department after having conducted the search on 20th October,*

2000 did not, in fact, apprehend a single consignment clandestinely removed after 20th October, 2000 up to 31st August, 2002.

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The case qua each appellant

70. As regards Mr. Rakesh Kumar Garg, his connection with SFP or AJP was not established. It was only Mr. Gautam who alleged that Mr. Rakesh Kumar Garg got some papers signed from him. However, the fact that there was a rent agreement executed on 22nd March, 2000 itself and an application was filed for Central Excise registration and a General Bond Form B-1 itself shows that Mr. Gautam was fully conscious and aware of what he was doing while acting on behalf of AJP.

71. As far as Mr. Santosh Kumar Garg is concerned, the link between SFP of which he was a partner and AJP as far as manufacturing and sale of gutka and clandestine removal is concerned has not been established. All that was brought on record was that SFP received royalty payments regularly from AJP. Three statements were recorded of Mr. Santosh Kumar Garg and in none of them he was confronted with the clandestine removal of consignments by the AJP.

72. As far as Mr. Devi Das Garg is concerned, the Department does not deny that he is a permanent resident of Mathura and there is no evidence on record specifically connecting him with the activities of AJP.

Conclusion

73. For all the aforementioned reasons, the Court holds that the requisite evidence necessary for levy of penalty on each of the appellants under Rule 26 of the CE Rules, 2002 was not brought on record by the Department and, therefore, the levy of penalty was in the first place is unsustainable."

10.2 We further find that Shri Manoj Kumar Jha had given three statements and in the last statement sent through Jailor, District Jail vide letter dated 31.01.2017 have stated that the statement given by him was under pressure and the names mentioned by him were dictated to him. Further, he claimed in that letter that he is the proprietor of manufacturing unit M/s Maa Bhagwati Foods. In this context, this Bench of the Tribunal in the case of *Junaid Kudia* (supra), has held that the adjudicating authority relying upon retracted statements for confirmation of demand and imposition of penalty cannot be considered as proper and legally sustainable. The relevant paragraphs of the said judgement are extracted below:

"13. We also noticed that the Adjudicating authority in order to justify the under valuation, has relied upon the statements of partners of the appellant's company. However, the Appellant has objected to such reliance, as the statements were retracted. The Appellant has pleaded that retracted statements cannot be accepted as evidence for confirmation of demand. The adjudicating authority in the impugned order has chosen not to consider the retraction. We are of the view that the said approach of the adjudicating authority is incorrect. Be that as it may, we note that statements cannot be

> *the sole reason to confirm the charge of undervaluation. We also note that in the present matter there are no evidences produced by the department that the excess amount over and above the invoice price was paid to suppliers. There is no evidence as to how the Appellant came into possession of cash alleged to be differential amount towards goods imported, nor there is any evidence of any cash being handed over to any person, representing suppliers in India. Department had failed to produce corroborative evidences regarding the undervaluation of imported goods. Hence, in our view, the charge of undervaluation of imported goods in the present matter is not sustainable.*
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> *xxx xxx xxx xxx*
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> *15. In view of our above observations and findings, we are of the opinion that the duty demand confirmed against the appellant M/s. Plastic Cottage Trading Co. and penalties imposed upon it is not sustainable. For the same reason, the penalty imposed on the co-appellants namely, Shri Junaid Kudia and Shri Zaid Kudia is also not sustainable. Therefore, the impugned order confirming the adjudged demands on the appellants is set aside and the appeals are allowed with consequential relief to the Appellants, as per law."*

11. In view of the foregoing discussions and analysis, and the settled legal position as aforesaid in the cases of *Rakesh Kumar Garg* (supra), *Junaid Kudia* (supra), we do not find any merits in the impugned order passed by the learned Commissioner, to the extent it had imposed penalty on the appellant under Rule 26 ibid. As a matter of abundant precaution, it is clarified that we are not interfering with the other portions of the impugned order, as those are not the subject matter of the present appeal.

12. In the result, the impugned order 21.02.2024 passed by the learned Commissioner is partly set aside to the extent it had imposed penalty on the appellant herein and the appeal filed by the appellant is allowed in his favour.

(Order pronounced in open court on 24.09.2026)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha