

2014 (4) ECS (110) (Tri -Ahd.)

In the Customs, Excise & Service Tax Appellate Tribunal

West Zonal Bench, Ahmedabad

M/s. DEEP TWISTERS PVT. LTD.,

V/s.

C.C.E. & S.T., - SURAT-II

Date of Hearing/ Decision: 01.08.2014

Appeal No. E/1445,1446/2011-SM

[Arising out of OIA No.BC/220-224/SURAT-II/2011, dt. 30.08.2011. Passed by Commissioner, Central Excise, Customs & Service Tax, Surat-II.]

Appearance:

Shri S. Suriyanarayanan (Advocate)

For the Appellant

Shri Alok Srivastava (A.R.)

For the Respondent

CORAM:

Mr. H.K. Thakur, Hon'ble Member (Technical)

(Order No. A/11480 - 11481/2014, dt. 01.08.2014)

“For imposition of penalty upon the Director of the main appellant, Rule 26 of the Central Excise Rules, 2002 does not require that the goods should be held liable for confiscation. For imposition of penalty under Rule 26 the person committing an offence should be aware of the fact that the goods are liable to confiscation. That since the appellant was dealing in purchase of goods in cash when he was aware that no central excise duty has been paid on the goods purchased by them.” (para 3)

“Director of the main appellant is representing the unit registered with the central excise department and was aware that the goods (POY) purchased by them were without any invoice and without payment of central excise duty. Being representative of a registered unit, he has to be aware of the central excise procedures and law. It cannot be said that he was not aware that the goods purchased by them were not liable to confiscation under the Central Excise Act, 1944 and the Central Excise Rules, 2002.” (para 7)

Per: Mr. H.K. Thakur:

These appeals have been filed by the main appellant M/s. Deep Twisters Pvt. Ltd., Surat and Shri Pankesh S. Patel who is the Director of the main appellant. Under this OIA dt. 30.08.2011, first appellate authority has upheld imposition of penalties of Rs.1,12,506/- upon each of the present appellants. Facts of the case are that a case was booked against M/s. Rajvi

Petrochem Pvt. Ltd., Surat for clandestine manufacturing and clearance of Partially Oriented Yarn (POY). Some of the clandestinely cleared POY was sold to M/s. Deep Twisters Pvt. Ltd. (main appellant) without payment of duty and without containing any documents. Shri Pankesh S. Patel, Director of the main appellant in his statement dt. 27.01.2004 admitted that main appellant have received 6051.990 Kgs. of POY valued at Rs.3,93,379/- from M/s. Rajvi Petrochem Pvt. Ltd. for purchasing POY without any documents and without any payment of duty. Penalties were imposed by the adjudicating authority under OIO No.159/DC-MAM/OA/2009, dt. 25.01.2010 upon the main appellant under Rule 25 of the Central Excise Rules, 2002 and upon Shri Pankesh S. Patel, Director of the main appellant under Rule 26 of the Central Excise Rules, 2002.

2. Shri S. Suriyanarayanan (Advocate) appearing on behalf of the appellants argued that no penalty under Rule 26 of the Central Excise Rules, 2002 can be imposed upon the main appellant as he has not cleared any goods in contravention of any of the provisions of the Central Excise Rules, 2002. He relied upon the following case laws in support of his argument that no penalty under Rule 25 of the Central Excise Rules, 2002 can be imposed upon the main appellant.

- (i) C.C.E. & Customs Vs. Sanhay B. Gohil [2010 (253) ELT 760 (Guj.)],
- (ii) CCE & ST, Daman Vs. J.J. Polyplast Ltd. [2010 (252) ELT 511 (Guj.)],
- (iii) NGA Steels Pvt. Ltd. Vs. CCE, Salem [2010 (252) ELT 395 (Tri. -Chennai)],
- (iv) Ravi Enterprises Vs. CCE, Nasik [2004 (170) ELT 443 (Tri. - Mumbai)],
- (v) Mahindra & Mahindra Ltd. Vs. CCE, Hyderabad-IV [2009 (242) ELT 251 (Tri. -Bang.)],
- (vi) Solid Containers Ltd. Vs. CCE, Thane-I [2010 (262) ELT 269 (Tri. - Mumbai)],
- (vii) CCE, Surat-II Vs. R.G. Agarwal [2009 (234) ELT 215 (Guj.)],
- (viii) Kamlesh Kumar Goel Vs. CCE, Thane-II [2008 (223) ELT 65 (Tri. - Mumbai)],
- (ix) CCE & ST, Daman Vs. J.J. Polyplast Ltd. [2010 (252) ELT 511 (Guj.)].

2.1 Regarding imposition of penalty upon the Director of the main appellant it was argued by the Ld. Advocate that in the OIO dt. 25.01.2010, it is nowhere mentioned that the goods

handled by the appellants were liable to confiscation. In the absence of such an allegation either in the show cause notice or in the OIO no penalty can be imposed upon the Director of the main appellant in view of the following case laws:

- (i) Indo Green Textile Pvt. Ltd. Vs. CCE, Thane, Mumbai [2007 (212) ELT 343 (Tri. - Mumbai)],
 - (ii) Vishal Shah Vs. CCE, Thane-II [2007 (210) ELT 135 (Tri. - Mumbai)].
3. Ld. A.R. Shri Alok Srivastava appearing on behalf of the revenue argued that for imposition of penalty upon the Director of the main appellant, Rule 26 of the Central Excise Rules, 2002 does not require that the goods should be held liable for confiscation. It was his case that for imposition of penalty under Rule 26 the person committing an offence should be aware of the fact that the goods are liable to confiscation. That since the appellant was dealing in purchase of goods in cash when he was aware that no central excise duty has been paid on the goods purchased by them. So far as imposition of penalty upon the main appellant is concerned, Ld. A.R. argued that appellant being a registered unit is liable to penalty under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944.
4. Heard both sides and perused the case records.
5. In the present proceedings, the fact that M/s. Rajvi Petrochem Pvt. Ltd., Surat clandestinely cleared and sold the goods to the main appellant without any documentation, is not doubted. This fact has not been denied by the main appellant. In this regard, it is relevant to glance through the provisions contained in Rule 25 of the Central Excise Rules, 2002 which are reproduced as follows:

“RULE 25. CONFISCATION AND PENALTY:

- (1) Subject to the provisions of section 11AC of the Act, if any producer, manufacturer, registered person of a warehouse or a registered dealer, -
 - (a) removes any excisable goods in contravention of any of the provisions of these rules or the notifications issued under these rules; or
 - (b) does not account for any excisable goods produced or manufactured or stored by him; or
 - (c) engages in the manufacture, production or storage of any excisable goods without having applied for the registration certificate required under section 6 of the Act; or

- (d) contravenes any of the provisions of these rules or the notifications issued under these rules with intent to evade payment of duty,

then, all such goods shall be liable to confiscation and the producer or manufacturer or registered person of the warehouse or a registered dealer, as the case may be, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention of the nature referred to in clause (a) or clause (b) or clause (c) or clause (d) has been committed, or [rupees two thousand], whichever is greater.

2. An order under sub-rule (1) shall be issued by the Central Excise Officer, following the principles of natural justice.”
6. From the language of the above Rule 25(1) of the Central Excise Rules, 2002, it is apparent that the same is applicable to a producer, manufacturer, registered person of a warehouse or a registered dealer who contravenes any of the provisions of these rules when intent to evade payment of duty. In the present case, the main appellant has not contravened any provisions of the Central Excise Rules, 2002 with intent to evade payment of duty. POY purchased by the main appellant were not the goods manufactured by the main appellant much less with any intent to evade payment of central excise duty. As the main appellant is not the manufacturer of the goods, therefore, it is held that penalty under Rule 25 of the Central Excise Rules, 2002 cannot be imposed upon the main appellant for goods not manufactured by him and penalty imposed under Section 25 of the Central Excise Rules, 2002 is accordingly set aside.
7. So far as imposition of penalty upon Shri Pankesh S. Patel, Director is concerned, it is seen from the statement dt. 27.01.2004 of Shri Pankesh S. Patel, Director of the main appellant that he was aware of the fact that the goods purchased by the appellants were without the cover of a central excise invoice and without payment of central excise duty on cash payment basis. It was also stated by him that appellant is a unit registered with the central excise department in Olpad Division, Surat-II and engaged in manufacture of polyester crimp yarn / twisted yarn for which POY is the main raw material. Shri Pankesh S. Patel, Director of the main appellant is representing the unit registered with the central excise department and was aware that the goods (POY) purchased by them were without any invoice and without payment of central excise duty. Being representative of a registered unit, he has to be aware of the central excise procedures and law. It cannot be said that he was not aware that the goods purchased by them were not liable to confiscation under the Central

Excise Act, 1944 and the Central Excise Rules, 2002. The case laws relied upon by the appellant pertain to situations where a person has not dealt with any excisable goods which he was not aware to be liable to confiscation. In the present proceedings, Shri Pankesh S. Patel, was very well aware of the non duty paid character of the goods purchased by them and being a person representing a central excise registered unit must have the knowledge that such goods are liable to confiscation. He has been rightly visited with penalty under the Rule 26 of the Central Excise Rules, 2002. However, looking to the facts and circumstances of this case imposition of a penalty of Rs.50,000/- upon Shri Pankesh S. Patel, Director will meet the ends of justice. Appeal filed by Shri Pankesh S. Patel, Director is allowed to the extent that penalty imposed upon him is reduced to Rs.50,000/-.

8. Appeals filed by the appellants are disposed off to the extent indicated hereinabove.

(Operative part of the order pronounced in the Court)