

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT No. I

Excise Appeal No.70005 of 2021

(Arising out of Order-in-Original No.12/Pr. COMM.R./EX/NOIDA/2020-21 dated 03/07/2020 passed by Commissioner of Central Goods & Service Tax, Noida)

M/s YP Audiovisual Pvt. Ltd.,

.....Appellant

(222, Old Lajpat Rai Market, Delhi-110006)

VERSUS

Commissioner of Central Excise &

CGST, Noida

....Respondent

(C-56/42, Sector-62, Noida)

WITH

- I. Excise Appeal No.70006 of 2021 (Shri Sudhir Gulati, Director);**
- II. Excise Appeal No.70032 of 2021 (M/s Hi Rel Component Centre);**
- III. Excise Appeal No.70033 of 2021 (Shri Harinder Jit Singh, Partner);**
- IV. Excise Appeal No.70056 of 2021 (M/s Elektrovision);**
- V. Excise Appeal No.70057 of 2021 (Shri Avinash Gupta);**
- VI. Excise Appeal No.70130 of 2021 (M/s Sunbeam Electronics Pvt. Ltd.);**
- VII. Excise Appeal No.70131 of 2021 (Shri Pramod Ahuja);**

(Arising out of Order-in-Original No.12/Pr. COMM.R./EX/NOIDA/2020-21 dated 03/07/2020 passed by Commissioner of Central Goods & Service Tax, Noida)

APPEARANCE:

Shri Prabhat Kumar, Advocate for the Appellants

Shri Manish Raj, Authorised Representative for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NOS.70026-70033/2025

DATE OF HEARING : 07 January, 2025
DATE OF DECISION : 07 January, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Original No.12/Pr. COMM.R./EX/NOIDA/2020-21 dated 03/07/2020 passed by Commissioner of Central Goods & Service Tax, Noida. By the impugned order following has been held:-

"ORDER

(i) *I hereby disallow the CENVAT credit amounting to Rs.1,09,23,365/- (Rs. Ope Crore Nine Lakhs Twenty Three Thousand Three Hundred Sixty Five only) and order for recovery under rule 12 of the CENVAT Credit Rules, 2001/2002 read with Section 11A of the Central Excise Act, 1944 as discussed supra.*

I appropriate the amount of Rs. 20,00,000/- (Rupees Twenty Lakhs) only. already deposited vide PLA Entry No. 14 and 18 dated 04.02.04 and 29.03.04 respectively, towards the said confirmed amount;

ii. *I confirm the demand of Central Excise Duty amounting to Rs. 1,018/- (Rupees One Thousand and eighteen only) & Rs. 7,162/- (Rs. Seven Thousand one hundred sixty-two only), involved on the finished goods and raw materials found short and order for recovery under Section 11A of the Central Excise Act. 1944 as discussed supra. As these amounts have already been deposited, I appropriate these towards the said confirmed demand.*

iii. *I order for recovery of interest at the applicable rates on the amount of the inadmissible CENVAT credit taken by the party and Central Excise duty demands, as confirmed at the para (1) and (ii) above, under rule 12 of the said CENVAT Credit Rules, 2001/2002 read with Section 11AB of the Central Excise Act, 1944 as discussed supra;*

iiii. *I impose Penalty of Rs.1,09,31,545/- (Rs. One Crore Nine Lakhs Thirty One Thousand Five Hundred Forty*

Five only) and order to recover under Rule 13 of the CENVAT Credit Rules, 2001/2002 read with Section 11AC of the Central Excise Act, 1944 as discussed supra;

- (v) I impose penalty of Rs.10,00,000/- (Rupees Ten Lakhs only) each on Sh. C.L. Sharma, CMD of M/s AML, Sh. Satish Goswami, Director (Commercial) of the AML and Rs 2,00,000/- (Rupees Two lacs only) on Sh. Subhash Gupta, Ex Excise Assistant of Mis AML, and order to recover under Rule 13 of the CENVAT Credit Rules, 2001/2002 as discussed supra;*
- (vi) I impose penalty of Rs 5,00,000/- (Rupees five lakhs only) each on Mis Electrovision, 341 Lajpat Rai Market, Delhi, M/s Sunbeam Electronics Pvt Ltd, 78 East Avenue Road, Punjabi Bagh, New Delhi, M/s Hi-Rel Component Center, 4346/4C, Madan Mohan Street Ansari Road, Daryaganj, Delhi, M/s Y.P.Audiovisual Pvt. Ltd., No. 8, D-1 Shopping Center, Janakpuri, New Delhi and M/s Master Distributors, 3rd floor, Duke Hotel Building, 7, Netaji Subhash Marg, New Delhi, and order to recover under Rule 25 of the Central Excise Rules, 2001/2002 read with Section 11 AC of the Central Excise Act. 1944 as discussed supra;*
- (vii) I impose penalty of Rs 2,00,000/- (Rupees Two lacs only) each on Sh. Avinash Gupta, Partner in M/s Electrovision, 341 Lajpat Rai Market, Delhi, Sh. Pramod Ahuja, Director of M/s Sunbeam Electronics Pvt.Ltd.. 78. East Avenue Road, Punjabi Bagh, New Delhi, Sh. Harjinder Jit Singh, Partner in 4346/4C, Madan Mohan Street. Ansari Road, Daryaganj, Delhi, Sh. Sudhir Gulati, Director of M/s Y.P. Audiovisual Pvt. Ltd., No. 8, D-1 Shopping Center, Janakpuri, New Delhi, and order to recover under rule 26 of Central Excise Rules, 2001/2002 read with Section*

11AC of the Central Excise Act, 1944 as discussed supra."

1.2 It has been pointed out that the main noticee i.e. M/s Accurate Meters Ltd. against whom the impugned order has been passed, has not filed any appeal in the matter against the impugned order. Hence, we are not concern with the order passed against them.

2.1 The impugned order has been passed in the remand proceedings, in view of the Final Order No. A/71252-71464/2018-EX[DB] dated 04.07.2018 passed by the Tribunal wherein following has been held:-

"3. Learned Advocate Shri S.S. Dabas appearing for the co-noticees submits that the challenge in the proceeding is only to imposition of penalties upon them in terms of Rule 26 (2) as also under Rule 25. The said Rules were not into existence during the relevant period and as such the penalties would not be imposable upon them in terms of the law declared by the Hon'ble Punjab & Haryana High Court in the case of M/s Vee Kay Enterprises Vs Commissioner of Central Excise reported at 2011 (266) ELT 436 (P & H) as also in the case of Commissioner of Central Excise, Chadigarh-I Vs M/s Mini Steel Traders reported at 2014 (309) ELT 404 (P & H).

4. Learned A.R. appearing for revenue agrees with the preposition of the learned Advocate to remand the matters.

5. On going through the impugned order, we note that the though the Commissioner fixed various dates of personal hearing, under intimation to the appellants but as the review petition was pending before the Hon'ble High Court the appellants made a request to keep the proceedings in abeyance. The said request

was not accepted by the adjudicating authority on the ground that there is no stay order staying the operation of earlier order of the Hon'ble Allahabad High Court and as such proceeded to decide the matter, without further providing opportunity to the appellants. As such the fact remains that the impugned order stands passed in the absence of any defence by the advocate. Accordingly, the impugned order needs to be set aside. We order accordingly and remand the matter to the adjudicating authority to decide the matter afresh after affording a proper opportunity to the appellant to put forth their defence.

As regards the imposition of penalties on co-noticees, we remand their appeals also, inasmuch as the appeal of main appellants is being remanded and the learned advocate is allowed to raise all the above issues before the Adjudicating Authority."

2.2 Proceedings were initiated against M/s Accurate Meters (Main Noticee) for denial of certain Cenvat credit on the ground that the said credit was taken against the material which were never received by them or used by them for production of the finished goods.

2.3 Appellants before us in the matter are four companies and four individuals (Directors/Partners) in the said companies, alleging that they have only supplied the documents against which credit was taken.

2.4 Penalties, as indicated in para-1 have been imposed upon the appellants in the remand proceedings.

2.5 Aggrieved appellant have filed this appeal.

3.1 We have heard Shri Prabhat Kumar learned Counsel appearing for the appellants and Shri Manish Raj learned Authorized Representative appearing for the revenue.

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 Interestingly, the show cause notice in the present case was issued on 28.01.2005 and the period for the demand was 2001-02 to 2003-04 (upto October, 2003). From the order of the Tribunal remanding the matter it is evident that the issue for consideration before the Commissioner in the case of the present appellants of applicability of Rule 25 and Rule 26 (2) of the Central Excise Rules. For imposition of penalties on the appellants, no specific findings with regard to applicability of the said Rules. Impugned order records as follows:-

"3.26 As regards the imposition off penalty the relevant provisions of Rule 25 and Rule 26 of the Central Excise Rules 2002 and Section 11AC of the Central Excise Act, 1944 are quoted here as under:

RULE 25. Confiscation and penalty. (1) Subject to the provisions of section 11AC of the Act, if any producer, manufacturer, registered person of a or a registered dealer, warehouse or a registered dealer,-

(a) removes any excisable goods in contravention of any of the provisions of these rules or the notification 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."

Rule 26- 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 – [(1)]

(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 abels 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]" "Section 11AC-Penalty for short-levy or non-levy of duty in certain cases Where any duty of excise has not been levied or paid or has been short-levied or short paid or erroneously refunded by reasons of fraud. collusion or any wilful misstatement 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, the person who is liable to pay duty as determined under sub-section (2) of Section 11A, shall also be liable to pay a penalty equal to the duty so determined:"

3.27. I also observe here that the party is found to have admitted their lapse and moved for settlement. Here reliance is placed on the order of the Hon'ble Tribunal in the case of CCE, Rajkot Vs DECO Ceramics Industries - 2003 (156) ELT 611 (Tri. Mumbai), where in, it was held that the mandatory penalty is imposable on proof or admission of guilt. I thus find that M/s AML had admittedly misused the legal provisions to unlawfully avail the CENVAT credit, as revealed from the investigations conducted by the department, a part of which was initially admitted and paid by them in the present matter. This clearly shows their clear intent to evade due payment of duty in this regard, as discussed in the foregoing paras. And for this willful and deliberate act to defraud the exchequer, with intent to evade payment of duly, I hold the AML liable to penal action under rule 25 of Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944.

Imposition of personal penalty-

3.28. Further, on the issue of the personal penalty, it may be seen that the showcause notice proposes imposition of penalty upon the co-noticees, under Rule 26 on the ground that they had knowingly abetted in availing ineligible input credit to the AML without supplying inputs physically. It has been found that these co-noticee abetted in availing the inadmissible CENVAT Credit by the AML. I thus hold these co- noticees were liable for personal penalty under Rule 26 of the Central Excise Rules. I find that specific roles of the key persons involved in the case have been separately discussed in the notice and I accept the same.

Accordingly I am inclined to impose penalty under Rule 26 of the Central Excise Rules 2002, as proposed in the notice, as follows. It is also pertinent to mention here the fact that the provisions of erstwhile Central Excise Rules as made applicable for the present proceeding have been validated vide section 38 A of the Central Excise Act, 1944.”

4.3 Rule 26(2) was introduced by Notification No.8/2007-CE(NT) dated 01.03.2007. From the plain reading of the said notification it appears that Rule 26 as is existed prior to the said amendment was reframed at 26(1) and 26 (2) provided for imposition of penalties under the said Rule the provisions specified therein. The said rule being a separate new rule inserted could not have been said to be in respect of the persons covered by Rule 26 (1) which apparently was rule 26 prior to the existence, prior to the date of insertion. The provisions of said rule 26 (2) could not have been invoked for the imposition of penalties on the persons whose offences were specified in terms of Rule 26.

4.4 Hon’ble Bombay High Court has in the case of Ramesh Kumar Rajendra Kumar & Co. [2015 (325) E.L.T. 506 (Bom.)] observed as follows:

10. *Perusal of the aforesaid rule, which is brought on the Statute book with effect from 1st March, 2007, specifically, brings within its fold a person issuing an excise duty invoice without delivery of the goods specified therein or abets in making such invoice or 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 or refund is made to be liable to penalty not exceeding the amount of such benefit or five thousand rupees, whichever is greater. It is, thus, clear that in order to bring within its fold, the case of a present nature. Rule 26 is enacted in March, 2007 whereas in the year 1995 when the show cause notice in question*

was issued, the said rule was not in the statute book. Consequently, the present case needs to be considered on the basis of text of Rule 209A of the Rules and not on the basis of Rule 26 of the Rules referred hereinabove.

4.5 Even otherwise it is settled proportion in law that penal provisions would not have retrospective effect only specifically provided for. Accordingly, we do not find any merits in the penalties imposed under Rule 26 (agreed in the earlier order) to be Rule 26(2) for which the matter was remanded.

4.6 Coming to invocation of provisions of Rule 25, we find that Rule 25 is specific and provides for imposition of penalties in respect of the persons concern with the goods held liable for confiscation for the reasons specified. The text of Rule 25 is reproduced in the impugned order at para 3.26, reproduced by us at para 4.2.

4.7 There is not even iota of allegation or evidence to show that appellants were concern with handling, removing of any goods which were liable for confiscation. On the contrary, the case against the appellants is that there were paying duties, credit of which was being taken by M/s Accurate Meters Ltd.

4.8 In the case of M/s Surya Ispat Udyog 2017 (358) ELT 476 (Tri.-Chan.) has held as follows:-

"4. During the intervening period, there was no provision to impose the penalty on the respondent under Rule 25/26 of the Central Excise Rules, 2002. As it is an admitted position that respondent has never dealt with the goods. In that circumstances, the Id. Commissioner (A) has rightly observed as under :-

"I find that since no manufacturing activity has taken place in the instant case and no excisable goods, liable for confiscation, have been manufactured or produced, provisions of Rule 13(2) of the Cenvat Credit Rules, 2002 and Rule 25(1)(b) of the Central Excise Rules, 2002 are not attracted.

Further, I agree with the appellants' submission that

penalty provision for facilitating others in taking credit or issuance of invoice without actual supply of material has been inserted w.e.f. 1-3-2007 by inserting sub-rule (2) of Rule 26 of Central Excise Rules with the issue of Notification No. 8/2007-C.E. (N.T.), dt. 1-3-2007 and during the relevant period there was no provision under law for imposition of penalty for issuance of invoices without actual supply of material.

In view of the above discussion, I find that penalty is not imposable under Rule 13(2) of the Cenvat Credit Rules, 2002 and Rule 25(1)(b) of the Central Excise Rules, 2002 on the appellants. Therefore, I set aside the order appealed against. Accordingly, the stay petition is also disposed of.”

4.6 Accordingly, we find that duty paid goods could not have been held liable for confiscation as we find that basic ingredient for invoking Rule 25 are missing in the cases against the appellant. The penalties imposed under Rule 25 also set aside.

5.1 Appeals are allowed.

(Dictated and pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)