

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL, KOLKATA  
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

**Service Tax Appeal No.204 of 2012**

(Arising out of Order-in-Original No.03/ADJ/CE/COMMR/DIB dated 24.02.2012  
passed by Commissioner of Central Excise & Service Tax, Dibrugarh.)

**Shri Monohar Lal Agarwala, Chartered Accountant**

(Sunder Complex, Gandhi Park Road, Tinsukia, Assam.)

**...Appellant**

*VERSUS*

**Commissioner of Central Excise & Service Tax, Dibrugarh**

**.....Respondent**

(Milan Nagar, Lane 'F', P.O. C.R. Building, Dibrugarh-786003.)

**APPEARANCE**

Shri Mayur Agarwal, F.C.A. for the Appellant (s)

Shri J. Chattopadhyay, AR for the Revenue

**CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)**

**HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)**

**FINAL ORDER NO 77205/2023**

DATE OF HEARING : 04.10.2023

DATE OF DECISION : 04.10.2023

**Per : K. ANPAZHAKAN :**

The present appeal has been filed by the Appellant, Shri. Manohar Lal Agarwal, Chartered Accountant, against the impugned order dated 24.02.2012 passed by Commissioner of Central Excise & Service Tax, Dibrugarh, wherein a penalty of Rs.50,000/- was imposed on him under Rule 26 of the Central Excise Rules, 2002. Aggrieved against the penalty imposed on him, the Appellant filed this appeal.

2. The Appellant is a registered Chartered accountant having its Firm under the name of M/s. M.L.Agarwala & CO, Tinsukia, Assam. The Appellant was asked by M/s. Kitply Industries to verify their books of Accounts and value the plant and machinery of the company as on 31.03.2005. After examining the relevant records, the Appellant issued a certificate dated 31.03.2005, certifying the value as on 31.03.2005 as Rs.2,89,68,573.34, as per their Balance Sheet.

3. On the basis of investigation done by the department, a Show Cause notice dated 04.07.2011 was issued to M/s.Kitply Industries Ltd, Assam, wherein the Appellant was also included as Noticee No.5. It was alleged in the Notice that the Appellant has issued Certificate relating to the value of plant and machinery of M/s. Kitply Industries without examining their books of accounts, on the basis of which the said assessee has taken ineligible exemption under Notification 20/2007-CE dated 20.04,2007. Accordingly, penalty under Rule 26 was proposed on the Appellant in the Notice. The Notice was adjudicated vided impugned order dated 24.02.2012, wherein the adjudicating authority imposed penalty of Rs.50,000/- on the Appellant.

4. Shri. Mayur Agarwal, son of the Appellant appeared for the hearing and stated that the notice was issued to M/s. Kitply Industries on the basis of the allegation that the company have wrongly claimed the increase in value of plant and machinery and claimed the exemption provided under Notification 20/2007-CE dated 20.04.2007, on the

basis of the certificate issued by the Appellant. He stated that the certificate issued by the Appellant has not been relied upon in the impugned order. The Notice as well as the impugned order refers only the Chartered Accountant Certificate dated 30.06.2007, giving the details of addition in value of plant and machinery. That certificate was not issued by the Appellant. Further, when they issued the certificate dated 31.03.2005, they have not mentioned the purpose for which it was issued. They have not given the certificate to M/s. Kitply Industries for the purpose of claiming the benefit of exemption Notification No. 20/2007-CE dated 20.04.2007. There no evidence on record to substantiate the allegation that the company has claimed the benefit of exemption notification on the basis of the certificate issued by them. Hence, the penalty imposed on the Appellant under Rule 26 of the Central Excise Rules is not justified and prayed for setting aside the same.

5. The Ld. A.R. reiterated the findings in the impugned order.

6. Heard both sides and perused the appeal records.

7. We observe that the present appeal has been filed by the Appellant against imposition of penalty of Rs.50,000/-on him under Rule 26 of the Central Excise Rules, 2002, in the impugned order. The allegation of the Revenue in the impugned order is that M/s. Kitply Industries have wrongly claimed the exemption provided under Notification 20/2007-CE dated 20.04.2007, on the basis of the certificate issued by the Appellant.

8. We observe that the Appellant has not specified the purpose for which the certificate was issued by him. He stated that the M/s. Kitply Industries have asked them to verify their books of Accounts and value the plant and machinery of the company as on 31.03.2005. After examining the relevant records, the Appellant issued a certificate dated 31.03.2005. We find that this certificate was not relied upon in the impugned order. Para 14 of the impugned order refers a Chartered Accountant Certificate dated 30.06.2007 certifying the additions in plant and machinery, which was not issued by the Appellant. Thus, we find that the Appellant has not abetted the offence, if any, committed by the company in claiming the benefit of exemption provided under Notification 20/2007-CE dated 20.04.2007. Accordingly, we hold that the penalty imposed on the Appellant is not sustainable and hence set aside the same.

8. In view of the above discussions, we set aside the penalty imposed on the Appellant under Rule 26 of the Central Excise Rules, 2002 and allow the appeal filed by the Appellant.

(Operative part of the order was pronounced in the open Court.)

Sd/-

**(R. MURALIDHAR)**  
**MEMBER (JUDICIAL)**

Sd/-

**(K. ANPAZHAKAN)**  
**MEMBER (TECHNICAL)**

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