

2014 (3) ECS (133) (Tri -Ahd.)

In The Customs, Excise & Service Tax Appellate Tribunal

West Zonal Bench, Ahmedabad

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

Vs.

SHRI ANAND MAHENDRA KAPADIA

Date of Hearing/ Decision: 18.07.2014

Appeal No. E/279/2006

(Arising out of OIA No. RS/116/SRT-I/2006 dated 28.09.2006 Passed by
Commr. (Appeals) C. Excise & Customs, Surat)

Appearance:

Shri G.P. Thomas

None

For the Appellant

For the Respondent

CORAM:

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

Order No. A/11396 / 2014 Dated 18.07.2014

" Revenue has filed this appeal on the ground that CESTAT in many cases has held that a separate penalty upon the partner can be imposed in addition to penalty imposed upon the partnership concern if clear-cut role is played by the partner in the clandestine activities.....Partner was a party to the whole fraud committed by the partnership concern and is liable to penalty."(Para 4)

Per: Mr. H.K. Thakur:

This appeal has been filed by the Revenue against OIA No. RS/116/SRT-I/2006 dated 28.09.2006. Under this OIA dated 28.09.2006, the first appellate authority has upheld the OIO dated 31.08.2004 passed by the adjudicating authority. The adjudicating authority under OIO dated 31.08.2004 has not imposed any penalty upon Shri Anand Mahendra Kapadia, partner of M/s. D.K. Polyn Industries (100% EOU) on the ground that no separate penalty can be imposed on the partner when a penalty has already been imposed upon the partnership firm. Revenue has filed this appeal on the ground that CESTAT in many cases has held that a separate penalty upon the partner can be imposed in addition to penalty imposed upon the partnership concern if clear-cut role is played by the partner in the clandestine activities.

2. None appeared on behalf of the respondent. Shri G.P. Thomas (AR)

appearing on behalf of the Revenue made the bench go through the statements of Shri Anand Mahendra Kapadia, partner and emphasized that respondent was actively involved in the clandestine activities and penalty is required to be imposed upon him even if partnership firm has been penalized. He relied upon the following case laws:-

- (i) CCE Surat vs. Mohammed Farookh Mohammed Ghani - [2010 (259) EKT 179 (Guj.)]
- (ii) CCE vs. Jai Prakash Motwani - [2010 (258) ELT 204 (Guj.)]
- (iii) Textoplast Industries vs. Additional Commissioner of Customs - [2011 (272) ELT 513 (Bom.)]
- (iv) Standard Chartered Bank vs. Director of Enforcement - [2006 (197) ELT 18 (SC)]
- (v) Dhanlaxmi Texturises vs. UOI - [2005 (179) ELT 23 (Guj.)]
- (vi) rakash Metal Works vs. CCE, Ahmd. - [2007 (216) ELT 660 (SC)]
- (vii) Dr. Reddy's Laboratories vs. CCE, Hyderabad - [2013-TIOL-934-CESTAT-Bang.]
- (viii) Sopariwala Exports (P) Limited vs. CCE, Vadodara - [2013 (291) ELT 70 (Tei. Ahmd.)]
- (ix) Order No. A/10477-10478/2014 in the case of M/s. Labdhi Prints & Ors vs. CCE & ST, Surat.

3. Heard the learned A.R. and perused the case record. It is observed from the case law of M/s. Labdhi Prints vs. CCE & ST, Surat that the present issue is no more res-integra and has already been decided by this Bench. The view taken by the bench in Para-6 of the decision in Labdhi Prints (supra) is relevant and is reproduced below:-

"6. So far as imposition of penalty upon the Partner of the main appellant is concerned, Hon'ble Bombay High Court, after relying upon the Apex Court's judgment in the case of Textoplast Industries vs. Additional Commissioner of Customs (supra), has held in Para 17 as follows:-

"17. While concluding, it would be necessary to advert to a judgment of a Division Bench of this Court in Commissioner of Customs v. Jupiter Exports - 2007 (213) E.L.T. 641 (Bom.). In that case, a notice to show cause was issued by the Commissioner of Customs on an allegation of the misuse of the DEEC Scheme by adopting fraudulent means to obtain a higher entitlement in respect of duty free import. The Commissioner of Customs confirmed the duty demanded and imposed penalties on the main partners, who had actively

participated in the business of the firm. In appeal, the Tribunal held that the firm was liable to pay duty only to the extent of goods actually imported by it quantified in the amount of Rs. 1.38 lakhs. As the bulk of the imports were made by bona fide transferees of the licenses obtained and sold by the Petitioner, the Tribunal held that the Petitioner could not be considered to be the importer for the recovery of the duty. An appeal was filed by the Revenue while a Petition was filed by the firm seeking enforcement of the order of the Tribunal. This Court, in the course of its judgment held that "no fault can be found with the view taken by the Tribunal" since "it is now well settled that when partnership is penalized, separate penalties cannot be imposed on the partners". Evidently, the judgment of the Supreme Court in *Standard Chartered Bank v. Directorate of Enforcement*, 2006 (197) E.L.T. 18 (S.C.) was not drawn to the attention of the Court. The observation in regard to the "well settled position" is with respect contrary to the law laid down by the Supreme Court in the *Standard Chartered Bank* case. The judgment of the Supreme Court binds us and we hence have followed the position enunciated therein. Similarly, in the case of *Collector of Excise and Customs, Surat-II v. Mohammed Farookh Mohammed Ghani*, 2010 (259) E.L.T. 179 (Guj.) the Division Bench of the Gujarat High Court relied upon the general principle in the law of partnership that a firm has no legal existence apart from its partners and held that once a penalty was levied on the firm, it amounted to a levy on the partners and hence, there would be no question of penalizing the partners separately. The Gujarat High Court held that the explanation in Section 140 was for the purposes of liability in respect of commission of offences under the Act whereas there was no such corresponding provision in relation to the imposition of a penalty under the Act. The Gujarat High Court has also not considered the principle enunciated by the Supreme Court in the *Standard Chartered Bank* case. As a matter of fact, in a judgment of the Supreme Court in *Prakash Metal Works v. Collector of Central Excise*, 2007 (216) E.L.T. 660 (S.C.) Hon'ble Mr. Justice S.H. Kapadia (as the Learned Chief Justice then was) speaking for the Supreme Court upheld an order of the Tribunal imposing a penalty on partners of a firm as well as on the partnership firm."

In the present case there was clear-cut knowledge of the Partner Shri Biren H. Vekharia that credit is being taken fraudulently. Therefore, penalty imposed upon him has been correctly upheld by the first appellate authority.

4. From the facts available on record, it is observed that respondent partner was a party to the whole fraud committed by the partnership concern and is liable to penalty. Accordingly, orders passed by

the lower authorities are set-aside and a penalty of Rs. 1,00,000/- is imposed on the respondent under Rule 209A of the erstwhile Central Excise Rules, 1944 read with Rule 26 of the Central Excise Rules, 2002.

5. In view of the above observations, appeal filed by the Revenue is allowed.

(Operative part of the order pronounced in the Court)