

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.1

Excise Appeal No. 10253 of 2022

(Arising out of DMN-EXCUS-000-COM-003-21-22 dated 28.02.2022 passed by
Commissioner, CGST & Central Excise-Daman)

Shri Venkat R. Chari

General Manager, M/s Shree Krishna Impex &
Authorised Signatory, M/s Balaji Enterprise
B-18, Anant Anand Apartments, Malabar Hill Road
Mulund Colony, Mumbai-400082

...Appellant

VERSUS

C.C.E. & S.T. – Daman

3rd Floor Adarsh Dham Building, Vapi-Daman Roan
Gujarat-396191

...Respondent

APPEARANCE:

Shri Paresh M Dave with Sudhanshu Bissa, Advocate appeared for the appellant
Shri P. Ganesan, Authorised Representative appeared for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

FINAL ORDER NO. 11046 /2025

DATE OF HEARING: 11.11.2025

DATE OF DECISION: 17.11.2025

SOMESH ARORA:

In the instant case, the appellant had been subjected to a personal penalty of 45 Lakhs under Rule 26 of the Central Excise Rules, 2004, the appellant was an employee of Shri Krishna Impex (a Merchant Exporter Firm) Shri Om Prakash Punjabi. M/s MSN Enterprises (a manufacture under Udaipur Central Excise Commissionerate) as also various suppliers of Rajkot & Morbi issued Central Excise invoices for components and parts of Wrist Watches and Clocks to one M/s Balaji (a manufacturer under Daman Central Excise Commissionerate), and purchaser of parts and components of watches/clocks availed Cenvat Credit on basis of Central Excise invoices of M/s MSN Enterprises and Others.

1.1 M/s. Balaji Enterprises of Daman used such parts and components for wrist watches/clocks manufactured by them and exported such final products under claim of rebate through a merchant exporter, namely. M/s. Shri Krishna Impex of Ahmedabad. During November, 2003 to September, 2004, in all 221 rebate claims were lodged by M/s. Balaji Enterprises, and all rebate claims were sanctioned and paid by Daman Central Excise authorities by passing regular orders.

1.2 It is the Revenue's case that the Udaipur based manufacturer M/s. MSN Enterprises had issued only Central Excise invoices showing sale of duty paid parts and components of wrist watches/clocks, but no goods were actually supplied by them; and therefore Cenvat credit was wrongly taken by M/s. Balaji Enterprises for such paper transactions. Since no inputs were actually received by M/s. Balaji Enterprises, the manufacture and export of wrist watches and clocks shown by M/s. Balaji Enterprises was also on papers, and no goods were actually exported. Therefore, rebate by M/s, Balaji Enterprises was illegally received. The appellant being an employee of M/s. Shri Krishna Impex (i.e, the merchant exporter of Ahmedabad), was liable for penalty under Rule 26 of Central Excise Rules, 2002.

1.3 The period of dispute involved is November 2003 to September 2004. The show cause notice was issued on 15.02.2007, the original adjudication order was passed on 30.03.2011 however a subsequent order-in-original dated 28.02.2022 was again issued after remand of this Tribunal. The findings against the present appeal which contained in para 53.4-53.5 is reproduced below:

“53.4. In his defence submission, Shri Venkat R. Chari has also submitted that during the instant adjudication proceedings, some of the persons whose statements were recorded by the DGCEI officers were examined and it comes out from clarifications and depositions by such persons that he was not involved in the business affairs of M/s. Shree Krishna Impex or M/s. Balaji. In this regard, I observe that all the four noticees had sought cross-examination of each and every witness whose statement was recorded in this case. The noticees were requested again and again to submit (1) a detailed questionnaire for each of the entities sought to be cross-examined so that the said entities may be put to notice; (ii) the specific grounds for which cross-examination is sought for each of the entity sought to be cross-examined; and (iii) the evidences sought to be relied upon for the purpose of examining the entities during the course of cross-examination, for the principles of natural justice to be followed in respect of the witnesses but the noticees failed to comply with the same. However, in the interest of natural justice, cross-examinations were allowed to be conducted in virtual mode without submission of questionnaires in advance. Moreover, as held by me in earlier, the cross-examination of co-noticees having common interest by the same Advocate cannot be accorded any significance as there is no adverse party. In such a situation, the co-noticees, being advised by a common Advocate, are bound to depose in a manner which will protect themselves as well as each other. In regard to the depositions of the other witnesses, I find that all such witnesses testified that they stood by their statements given to the DGCEI and hence, even though some of them have mentioned in their depositions that they did not know Shri Venkat R. Chari, the same could be on account of such a

long time gap between the actual case events (2003-04) and the cross-examination (2021) and not being supplied with a questionnaire in advance. Hence, in the face of overwhelming evidence pointing towards the active role played by Shri Venkat R. Chari in the entire rebate scam, I reject the defence submissions put forth by him and hold that he is liable for penal action under Rule 26 of the Central Excise Rules, 2002.

53.5. Shri Venkat R. Chari has also submitted in his defence that he was working as an employee of Shri Om Prakash Punjabi, Proprietor of M/s. Shree Krishna Impex and therefore, no personal penalty could be imposed on him when he has worked under the employer, only in his official capacity without any personal gain or benefit. He has also cited some case laws in support of his contention. In this regard, I find that the case investigations have brought out that Shri Venkat R. Chari was a key person in the entire rebate scam and he was instrumental in managing the bank & cash transactions of M/s. Balaji. He was a trusted confidant of the mastermind of the scam Shri Om Prakash Punjabi and even spent a couple of months in jail during their earlier fraudulent business venture in M/s. Robinson Impex India Lid. He was the one who convinced Shri Vijay Ajmera to establish M/s. Balaji and provided all the help with legal formalities for the same. He also met the jurisdictional Excise officers along with Shri Vijay Ajmera who introduced Shri Venkat R. Chari as his consultant. Hence, the contention of Shri Venkat R. Chari being just an employee of Shri Om Prakash Punjabi is not acceptable and the case laws cited by him are also not applicable.”

1.4 Aggrieved by the aforesaid findings and imposition of penalty, the appellants are before this court.

2. The Learned Advocate for the appellants has raised following legal and factual propositions. The penalties under Rule 26 of the Central Excise Rules, is unjustified, unauthorized as there was no proposal for confiscation of common goods in the show cause notice dated 15.02.2007, nor any confiscation has been ordered by the Commissioner of any goods while passing his order therefore, the penalty under Rule 26 cannot be imposed. The availability of goods and their confiscation are sine qua non for penalty. On this proposition, Advocate has relied upon the following authorities. Shri Vijay Kumar Sharma Vs CCE-Kutch 2025 (7) TMI 1707 – CESTAT Ahmedabad and In Nicholas D’Souza Garage Vs CCE, Thane reported in 2015 (320) ELT 579 (Tri. Mum).

2.1 In cases where the Revenue alleged that there were no goods but the manufacturer availed benefits like Cenvat credit or refund or rebate on export by resorting to paper transactions, then Rule 26 was not attracted and no penalty thereunder can be imposed on any person. This is because Rule 26 was not applicable in absence or non-existence of any goods, which were liable to confiscation. Non-existent goods cannot be

liable for confiscation and hence Rule 26 (and also erstwhile Rule 209A being a pari- materia) was not applicable for penalty in such cases.

- AIA Engineering Pvt.Ltd. V/s. CCE 2005 (196) ELT 154 (Tri.-Mumbai). (Para 9).
- Ruby Impex V/s. CCE 2004 (173) ELT 161 (Tri.-Del). (Para 6).
- Kamdeep Marketing Pvt. Ltd. V/s CCE, Indore - 2004 (165) ELT 2006 (Tri.-Del) (Para 3.2).

An employee of a manufacturer working under the instructions of the firm/owner and who was not personally benefited by any activity of the manufacturer should not be penalized on the ground that he was the authorized signatory or that he was looking after the business affairs. An employee not having any personal gain or personal benefit in the business of the employer, was not liable for personal penalty for any unlawful business activities of the employer.

- Hitesh Kumar Patel V/s. Commissioner, Mumbai - 2009 (245) ELT 858 (Tri.-Ahmd.) (Para 2).
- R.K. Ispat Udyog V/s. CCE, Raipur - 2007 (211) ELT 460 (Tri.-Del) (Para 7).

(1) Penalty on any person under Rule 26 can be imposed only when the following three conditions were satisfied and findings about such conditions having been satisfied were recorded by the Adjudicating Authority:-

(i) that the person should have dealt with any excisable goods in acquiring possession of or in transporting, removing etc. of such excisable goods; (ii) that such goods should be liable to confiscation under the Central Excise Act or Central Excise Rules; (iii) and that the person should have dealt with such goods with knowledge or reason to believe that the goods were liable to confiscation under the Act or the Rules.

For imposing personal penalty under this provision, the Revenue must allege and establish that the person concerned had dealt with the goods in what manner (because various activities like acquiring possession of, transporting, removing, depositing etc. are referred to in the provision); and also that such person dealt with the goods though he knew or he had reason to believe that the goods were liable to confiscation under the Act or the Rules.

But no findings are recorded in the impugned order about the about referred 3 ingredients of Rule 26 in respect of the appellant.

(2) Penalty on any person can be justifiably imposed only by recording specific reasons, and by giving specific findings how and why the submissions and explanation tendered by such person were

unacceptable and incorrect. But the only finding by the which were supported by documentary evidence about movement Commissioner about the appellant's weighty and vital submissions. of goods from various suppliers and also the export of such goods as well Central Excise officers, is as under in par 53.3 of the impugned order.-

"I find that the case investigations have clearly brought out the key role played by Shri Venkat R. Chari in operationalizing the entire rebate scam. Moreover, being the General Manager of M/s. Shree Krishna Impex, he was directly concerned in dealing with the inferior quality non-duty paid goods exported by M/s. Shree Krishna Impex on which rebate was claimed by M/s. Balaji by showing fictitious manufacture".

The so called case brought out by the investigation was only allegations in the show cause notice. The appellant has submitted detailed reply and relied on documentary evidence as well as deposition of various persons, and therefore the appellant's defence and explanation had to be considered by the Commissioner, and reasons had to be given for rejecting such defence and explanation. Rejection of the appellant's defence only on the basis that the appellant's role was brought out by the investigation is a clear error, and also a violation of principles of natural justice.

(3) After show cause notice dated 15.2.2007 was issued and the first adjudication order No.5/MP/Daman/2011 dated 30.3.2011 was passed, the appellant's case was remanded back for a fresh adjudication for allowing the appellant to file defence reply and submit documentary evidence that was received through the RTI route after the OIO dated 30.3.2011 was passed. In the de-novo adjudication, the appellant has relied upon documents evidencing actual supply of goods by M/s. MSN Enterprises to M/s. Balaji Enterprises and also documentary evidence evidencing export of the goods manufactured by M/s. Balaji. The appellant also relied upon the factual clarifications made by Shri Hitesh Mehta (Inspector of Central Excise) and Shri L.R. Meena (Superintendent of Central Excise); but the factual position emerging from such submissions and evidence is just bypassed and ignored by the respondent Commissioner.

(4) The gist of the appellant's submission and documents etc. relied upon in support of such submissions is as under:-

a) Shri Hitesh Mehta has filed a detailed defense reply dated 29.9.2010 which is elaborately referred to in para 2.3 spanning from page 122 to page 125 of the previous OIO. It is clear from this defense reply of the jurisdictional Inspector of Central Excise that duty paid inputs were supplied by M/s. MSN, Udaipur to M/s. Balaji and such duty paid inputs were actually received in their factory, and also that M/s. Balaji has actually used such inputs and components for manufacture of final products and such final products were exported under supervision of the Range officers. The Revenue's case that the transactions between M/s. MSN and M/s. Balaji and also export transactions of M/s. Balaji were only on paper was prima facie wrong in view of the detailed submissions and explanation tendered by the Range Inspector of Central Excise.

b) The Divisional Superintendent Shri L.R. Meena has also filed his defense reply dated 11.4.2008, which is referred to in para 2.4 of the above referred adjudication order, i.e. the previous OIO. Shri Meena has stated in this reply that he personally verified and examined the export consignment presented before him, along with his Inspector. Shri Meena has also confirmed that manufacturing and assembly of watches and wall clocks was undertaken by M/s. Balaji in their factory, and also by getting such final products made on job work basis; while also explaining the process of manufacture as well as job work and verification thereof.

The table under para 2.6 of the previous OIO referring to various evidence and documents brought on record by both these Central Excise officers is prepared on the basis of the replies and submissions tendered by these officers. From Col.5 of this table in para 2.6 of the said OIO, it transpires that the date and purpose of visit by the Excise officers are recorded therein with the report of such visit; and specific documents, like ARE-1, Central Excise invoices, proforma invoices, packing list, shipping bill, bill of lading, mate receipt, bank certificate of realization of sale proceeds etc. confirming export of goods by M/s. Balaji are also brought on record by these officers.

c) A report dated 29.11.2020 rendered by the CBI, EOW-I, New Delhi submitted before the Court of the Chief Judicial Magistrate, Daman, is also brought on record by these Central Excise officers; and this final report shows that no concrete and cogent evidence to implicate the Central Excise officers in any offence case could be gathered, and therefore there was no collusion between the said officers and the assessee in of this case.

d) In view of the evidence of the Departmental Inspector and the Superintendent and also the verification reports received from Central Excise officers in charge of Udaipur Division in the State of Rajasthan and also the rebate sanctioning orders made by the jurisdictional Assistant Commissioner of Daman, it is clear that the documents alleged to have been created in fictitious manner were actually scrutinized and verified by the Central Excise Officers in-charge of the units of M/s. Balaji and M/s. MSN. There is no evidence brought on record for establishing that the assessments made by these Excise officers as regards the transactions of MSN Enterprise

and M/s. Balaji were incorrect or fabricated; and therefore, the transactions of MSN Eriferprise and M/s Balaji Enterprise could not have been alleged to be fictitious straightaway by the Revenue. In this view, personal penalty on the appellant for these transaction is impermissible and unauthorised.

e) Both M/s. MSN Enterprise and M/s. Balaji were manufacturers registered with Central Excise authorities, and therefore, the transactions of MSN Enterprise and Balaji as regards receiving inputs and components, manufacturing goods therefrom and clearance of such goods on payment of duties were verified, scrutinized and assessed by the jurisdictional Central Excise Officers. There is nothing on record to show that any investigation was undertaken with Udaipur or Daman Central Excise authorities for genuineness or otherwise of the transactions of MSN Enterprise or M/s. Balaji; and there is nothing on record showing that the Central Excise Officers in-charge of the factory of MSN Enterprise and M/s. Balaji had even indicated that no manufacturing activities were undertaken them, or that the payment of duties made by MSN Enterprise and M/s. Balaji was actually only on papers. Assessment of duties and transactions of MSN Enterprise and M/s. Balaji are valid even now, and therefore, there is no justification in the finding that the appellant had created fictitious documents regarding clearance and delivery of such goods for exaggerating price.

f) Another aspect which arises in view of the evidence of these two officers of Central Excise and Customs is whether exports of duty paid goods were made by M/s. Balaji: and whether 221 rebate claims sanctioned by the jurisdictional Assistant Commissioner by passing regular orders and consequent payment of rebate claims could be considered to be fake and only paper transaction? If the transactions were only on paper, then the evidence of the Inspector and Superintendent of Central Excise & Customs and also the rebate sanctioning orders made by the jurisdictional Assistant Commissioner could not have been accepted by the department. But the evidence of Shri Hitesh Mehta and Shri L.R. Meena is believed and passing OIO by the while Commissioner accepted No.5/MP/Daman/2011 dated 30.03.2011, and accordingly proposal for imposing penalty on these two officers has been dropped. This order has also been accepted by the department, and therefore it also stands accepted that the evidence, explanation and submissions of these two officers were truthful and genuine. In this view, penalty on the appellant for these transactions and these documents is impermissible and unauthorised.

g) When the main allegation about the rebate claims of M/s, Balaji being wrongful and was prima facie not sustainable or justified in view of the evidence of the Range and Divisional officers of Central Excise and Customs, the order of penalty on the appellant in the same case is also not justified nor authorised.

(5) Evidence of Witnesses:

A further jurisdictional error that the Commissioner has committed is in not considering the facts emerging on record by virtue of the deposition of the witnesses examined before him. It clearly emerged

on record from examination of the relevant witnesses that the appellant was not involved in the business affairs of M/s. Shree Krishna Impex or M/s. Balaji. On the basis of the truthful clarifications made by the witnesses in this adjudication proceedings, it becomes clear that the appellant was not assisting Shri Om Prakash and that the business affairs of M/s. Balaji and M/s. Shree Krishna Impex were managed by Shri Punjabi and his family members. Relevant clarifications by the witnesses are as under:-

a) Shri Jignesh R. Shah was examined on 22.10.2021.

- In reply to question-3, Shri Jignesh Shah has clarified that M/s. Fenny Impex was exclusively managed by its sole proprietor Mr. Vijay Punjabi, and he was the sole signatory in the bank accounts.

- In reply to question-4, Shri Shah has explained the business activities of M/s. Shree Krishna Impex; and in answer to question-5, he has explained the business activities of M/s. MSN. (The appellants involvement is not shown in any of these two firms by Shri Jignesh Shah, because the appellant was actually not involved in the business affairs of M/s. Shree Krishna Impex nor in other firms like M/s. Fenny Impex and M/s. MSN Enterprises.)

- In reply to question-6, Shri Shah has explained the business activities etc. of M/s. Balaji Enterprises, and here also the appellant's involvement is not shown because the appellant was not at all involved in the affairs of M/s. Balaji.

- In answer to question-10, Shri Shah has clarified that he knew the appellant as General Manager of M/s. Shree Krishna Impex at the relevant time, and that the appellant had no role to play in M/s. Fenny or for Mr. Vijay Punjabi. He has also confirmed that the appellant visited the factory of M/s. Fenny Impex two times as General Manager of M/s. Shree Krishna Impex and Mr. Om Prakash Punjabi accompanied the appellant on both the occasions.
- In answer to question-12, he has clarified that the appellant was not involved in assembling of analogue and digital watches; and that instructions or orders or directions were never taken from me for such manufacturing and assembling activities. He has also explained that the appellant had never taken away any files of M/s. Fenny Impex, and all the job work challan files and all the invoice files were in the custody of Vijay Punjabi. He has also explained that business affairs of M/s. Fenny Impex were looked after by Shri Vijay Punjabi only. He has confirmed that he never came across any comment by anyone about the appellants involvement in procurement of raw materials nor about the appellants involvement in the business affairs of M/s. Fenny Impex.

2.2 As regards preparing invoices and other documents for M/s. Shree Krishna Impex, he has clarified that all invoices were prepared by Shri Vijay Punjabi and also by him on behalf of M/s. Fenny Impex.

- A perusal of deposition of Shri Jignesh Shah on 22.10.2021 shows that statement of Shri Vijay Punjabi recorded by the DGCEI officers

way back on 2.12.2004 is explained in details by Shri Shah. All the false claims of Shri Vijay Punjabi in the said statement about involvement of any other persons, including the appellant, are explained to be incorrect and untrue by Shri Shah; and conduct of business affairs by Shri Vijay Punjabi are explained in detail during his examination.

- Another statement of Shri Vijay Punjabi recorded on 24.11.2004 was also shown to Shri Jignesh Shah during his examination on 22.10.2021, and in answer to question-13, Shri Shah has again explained that business affairs of M/s.Fenny Impex were looked after and conducted by Shri Punjabi, and not by the appellant. He has again explained that only two meetings were attended by the appellant when other responsible persons of Fenny Impex and other firms were also present, and that he had not come across any instructions etc. from the appellant nor about the appellants involvement in the activities which were actually conducted by Shri Vijay Punjabi. Shri Shah has confirmed that finances and materials as well as manufacturing were tightly controlled by Shri Vijay Punjabi.

b) Shri Ved Prakash Wadhvani of M/s. MSN, Udaipur, was examined on 22.10.2021 when he explained business activities of M/s. MSN in answer to question-3, and he has also explained and confirmed about business activities of M/s. Shree Krishna Impex being a proprietary firm of Shri Om Prakash Punjabi, and also his younger brother Mr. Vijay Punjabi.

- In answer to questions 9 and 11, Shri Wadhvani has clarified that business transactions were done under the plan of Shri Om Prakash Punjabi, and the appellants name (i.e. name of Venkat R. Chari) was introduced during his statement proceedings on 9.11.2004 orily because Shri Wadhvani was threatened of arresting his female family members. He has clarified that the appellant was not involved in the transactions of firms of Shri Punjabi.
- In answer to question-13, Shri Wadhvani has clarified that the appellant as General Manager of M/s. Shree Krishna Impex, visited his factory at Udaipur only once, and that the appellant had no involvement in the business affairs of M/s. MSN at any time. He has also clarified that he had never heard about the appellants involvement in the business of Shri Om Prakash Punjabi, or Mr. Vijay Punjabi; and no such comments etc. about the appellants involvement were ever made by any of the persons concerned with the business affairs of Shri Om Prakash Punjab and Shri Vijay Punjabi.

c) On 25.10.2021, one Shri Deepak Kumar H. Sorathia, Proprietor of M/s. Aditya Metals, Rajkot, was examined when he has clarified that he had no business transactions with M/s. MSN Enterprises, and that he was not aware about any such firm.

d) One Shri Rajubhai (Rajeshbhai) Vajariya of M/s. Vinayak Time, Morbi, has clarified on 25.10.2021 that his firm supplied wall clocks

to M/s. Fenny Impex and M/s. Shree Krishna Impex, and one Mr. Gaganbhai used to come and meet him for giving instructions for purchasing wall clocks, and he did not know any Mr. Venkat R. Chari and had never met him.

e) During examination on 26.10.2021, one Shri Vinod Vasantlal Agrawal, Proprietor of M/s. Time Product, Mumbai, has clarified that one Mr. Punjabi used to come to take the goods from their firm, and he had never met any Mr. Wadhvani or Mr. Venkat Chari.

f) On 16.10.2021, during his examination, one Shri Rajeev Kumar Mittal of Ahmedabad has clarified that he only used to communicate with Shri Subhash Arora for the transactions of M/s. Shre Krishna Impex.

g) One Shri Nalin A. Patel, partner of M/s. Patel Somabhai Ramdas has deposed on 26.10.2021 that he had never met Mr. Venkat Chari, and that Mr. Om Prakash Punjabi introduced someone on phone as Mr. Venkat Chari, but he had never met him face to face. He has also confirmed that the services were provided by him because he knew Mr. Om Punjabi.

h) One Shri Anil Shyamlal Agarwal, Director of M/s, Sanskrit Vitta Pvt. Ltd. of Ahmedabad, was examined on 26.10.2021 when he has deposed that he did not know or met any Mr. Venkat Chari.

i) On 15.11.2021, one Shri Mavjibhai K. Patel was examined, when he clarified that he was an employee in M/s. Jay Star Watch. Rajkot. He has confirmed that his firm sold their goods to Shri Vijay Punjabi of M/s. Fenny Impex, and that he had never met Mr. Venkat Chari nor done any business with him.

j) One Shri Ghanshyam B. Thoriya was examined on 15.11.2021 when he has confirmed that he had never met Mr. Venkat Chari nor done any business with him.

k) On 15.11.2021. Shri Shailesh B. Patel was also examined when he confirmed that he had not supplied any goods or parts to Mr. Punjabi or Mr. Venkat Chari, and that he did not know any persons named Mr. Venkat Chari or Mr. Jignesh Shah; nor had he met any of them.

The above referred depositions show that the appellant was not involved in business transactions nor in commercial affairs of M/s. Fenny Impex or M/s. Balaji or even M/s. MSN Enterprises. The allegations levelled in the show cause notice that the appellant had planned everything and Shri Om Prakash Punjabi had obtained rebate under the appellant's planning was thus wrong, and explained away in the denovo adjudication. All the persons who have done business with M/s. Fenny Impex and M/s. Balaji have stated that they were getting instructions and orders and payments from members of Punjabi family; and they have also clarified that many of them did not even know the appellant and that the appellant had never given any instructions, orders etc. for or on behalf of M/s. Fenny Impex or M/s. Balaji.

6) True Factual Position:

From the above referred clarifications of the witnesses, the clarifications made by the range and divisional officers during adjudication and the documentary evidence about movement and export of various goods, the following factual position has emerged on record of this case:-

(i) that Shri Om Prakash Punjabi was himself conducting his business and looking after his business affairs, (ii) that the appellant was only an employee of a firm M/s. Shree Krishna Impex, but the appellant was not a key person nor was the appellant a person who executed any plans for Shri Punjabi or assisted Shri Punjabi for obtaining wrong and unlawful rebate, (iii) that the appellant has not acted as authorized signatory for operating the account of M/s. Balaji, nor has the appellant in any manner created documents like ARE-1 for M/s. Balaji for fake exports, (iv) that the appellant has not been involved in any decision making process in respect of M/s. Shree Krishna, nor in giving any instructions and directions to any persons for supplying materials or procuring goods for M/s. Balaji, (v) that the appellant has not made any arrangements for procurement of invoices (without any corresponding goods) from any Firms like M/s. MSN or others, (vi) that the appellant was not aware that rebate claims were made by M/s. Balaji without actually exporting duty paid goods, (vii) that the appellant always held a genuine and bonafide belief that transactions of all parties involved in this case (i.e. M/s. Balaji, M/s. Shree Krishna Impex, M/s. MSN etc.) were genuine and lawful because the competent Central Excise and Customs officers have supervised and verified all such transactions from time to time, (viii) that the appellant always held a genuine and bonafide belief that the exports made by the firm of Shri Om Prakash Punjabi were genuine and lawful because the jurisdictional Range and Divisional officers have verified such exports and reported their genuineness based on which regular orders sanctioning rebate were made by the jurisdictional Assistant Commissioner; (ix) that the appellant has not dealt with any excisable goods with knowledge or reason to believe that such goods were liable to confiscation, and (x) that the appellant has acted only as an employee for the appellants employer Shri Punjabi and the appellant never had any personal interest or gain in the business affairs of the appellants employer, except the remuneration paid to the appellant as salary. The adjudicating authority has however just discarded these valuable points and the factual position which emerged during the denovo adjudication; and therefore penalty imposed on the appellant is wholly erroneous and unauthorised.

7) The above factual errors would call for the penalty imposed on the appellant being quashed and set aside because it is clear from the above position that the appellant has not dealt with any goods which were liable for confiscation; no goods were involved in the present case which were liable for confiscation under the CE Act or CE Rules; it is not shown by the Commissioner how (i.e. in what manner) the appellant dealt with any goods liable for confiscation; and it is also not established in this case that the appellant knew or had reason to believe that any goods were liable for confiscation and still he dealt with such goods.

In absence of any specific findings on these requirements of Rule 26 and in view of the above referred evidence, the imposition of penalty on the appellant is wholly illegal and liable to be set aside.

3. The Authorised Representative of the department in rebuttal has stated as follows and justified the order of the adjudicating authority passed on the following terms.

- Shri Venkat R. Chari was General Manager of Ms. Shree Krishna Impex, a merchant exporter firm owned by Shri Om Prakash Punjabi.
- The DGCEI investigation revealed a complex fraud scheme involving fraudulent availment of CENVAT credit and claiming illegal rebate of central excise duty.
- Ms. MSN Enterprises (Udaipur) allegedly issued fake invoices showing duty payment for goods not actually manufactured or supplied.
- These fake credits were passed on to Ms. Balaji Enterprises (Daman), which used them to claim rebates after exporting goods via Ms. Shree Krishna Impex.
- The goods exported were of inferior quality assembled locally from non-duty-paid inputs.

3.1 The scheme involved creating a paper trail of manufacture, clearance, and export to avail huge illicit rebates totaling crores of rupees. Officials and employees of involved firms, including Shri Venkat R. Chari, were penalized for their roles. The adjudicating authority rejected the claim of mere employment, noting his control over accounts, role as a mandated signatory, and prior association with fraudulent entities, thus making him liable under Rule 26 penalty. The weight of cross-examination was discounted due to common legal representation and procedural issues, considered insufficient to negate overwhelming documentary and testimonial evidence.

3.2 The adjudicating authority's findings firmly establish Shri Venkat R. Chari's active involvement in the fraudulent rebate scheme, rejecting his claim of being a mere employee without personal involvement. Evidence such as management of bank accounts, signing fake invoices, and orchestrating cross-bearer cheque transactions demonstrates his pivotal role. His defense citing lack of knowledge about goods liable for confiscation and immunity as an employee was legally considered but factually refuted. The penalty under Rule 26 is sustainable given his managerial control and complicity. Cross-examinations favoring him were discounted due to procedural issues and overwhelming documentary evidence. Overall, the penalty and findings are justified and should be upheld as they reflect his substantial participation in defrauding government revenue.

4. This court has gone through relevant contentions raised by either side and would like to deal with the legal issue as to whether Rule 26 which is reproduced below, allowed the penalty to be liable on a person under Rule 26 with no Show Cause Notice was proposed for confiscation of goods nor any confiscation was done nor penalty imposed.

“RULE 26. Penalty for certain offences. 1(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.

2[(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.]”

4.1 This court finds that the matter is no more res-integra and has been decided by the Division Bench of this court as reported 2025 (7) TMI 1707 wherein para 5.3-5.4 reproduced below, deals with the scope of Ruling 26 in similar situations.

“5.3 Coming to the role of the present appellants vis-à-vis legal position, we find that the adjudicating authority has imposed penalty on both the appellants under Rule 26 of the Central Excise Rules, 2002 which is reproduced 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.

[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.]”

5.4 During arguments, the learned Advocate pleaded that the department has not proposed confiscation of the impugned goods and therefore, the appellants cannot be penalised under Rule 26(1) of the Central Excise Rules, 2002. Also, Rule 26(2) of the Central Excise Rules is not applicable as the said rule covers individuals and not the director of the company. We agree with the argument of the learned Advocate that the show cause notice does not propose confiscation of the impugned goods and therefore, Rule 26(1) is not attracted in this case for imposing penalty on the appellants. For imposing penalty under Rule 26(2), essential ingredients are that the person should have issued excise duty invoice without delivery of goods specified therein or abets in making such invoice; or any other documents 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 Cenvat credit or refund etc. We find that the Learned Adjudicating Authority has not elaborated as to how the present appellants fall under the criteria of Rule 26(2) for imposing penalty. Even, the statements of Shri Vijay Kumar Sharma and Shri Vinod Kashyap do not bring out their role in issuance of invoices or abetting in issuance of invoices/documents to facilitate the user of such invoices/documents to get ineligible benefits. Therefore, agreeing with the contention, we allow both the appeals and set aside penalty imposed on the appellants. The impugned order is modified to the above extent.”

4.2 The Rule 26 prior to amendment in 2007 was worded as below:

“RULE 26. Penalty for certain offences. 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 rupees ten thousand, whichever is greater.”

Therefore the analysis in the aforesaid decision of Vijay Kumar Sharma (cited supra) will equally apply to the old and the amended Rule 26. Further this court also finds that the proposition analysis in the Vijay K. Sharma is also fortified by the decision of Nicholas D’Souza Garage Vs CCE Thane as reported in 2015 (32) ELT 579 (Tri. Mumbai) in which relevant para 15 also lays down same proposition. Similar findings have been recorded in Para 9 of decision as reported in 2006 (195) ELT 154 (Tri. Mum.) in AIA Engineering Private Limited vs Commissioner of Central Excise, Ahmedabad-II, same is reproduced below:

“9. As regards the penalties imposed upon the other appellants under the provisions of Rule 26, we find that the appellants reliance on the Tribunal decision in the case of Ruby Impex v. Commissioner of Central Excise (2004 (173) ELT. 161 (Tri. Del.) as appropriate. In terms of the said decision, provisions of Rule 209A cannot be invoked for imposition of penalty, when the dealers have not physically dealt with the goods and there are no goods involved which are liable to confiscation. Ld. Advocate contends that the provisions of Rule 26 of Central Excise Rules, 2002 are pari materia to Rule 209A of the erstwhile Central Excise Rules Admittedly, there are no goods involved, which are liable to confiscation inasmuch as the Revenue's own case is that the no inputs were supplied under the cover of the invoices. In the said scenario, the above decision of the Tribunal is fully applicable. We, accordingly set aside the penalties imposed upon the other appellants under the provisions of Rule 26 of Central Excise Rules.”

4.3 Also to uphold malicious intent on the part of an employee, some pecuniary benefit is required to be exhibited beyond his salary or salary

should be shown beyond his work qualifications. Further testimonial evidence cannot be relied upon if relied during cross examination. In support para 38 of 2016 (332) ELT 793 in case of CCE Delhi vs Vishnu & Co. (P) Ltd. is being relied upon as reproduced below:

“38. In the present case it needs to be first observed that there was no ‘confession’ as such by any of the noticees as to their involvement in the activities alleged against them in both the SCNs. The Department relied on the statements made by third parties including transporters, agents, and their employees. Where such statements are subsequently retracted or resiled from, it becomes necessary for the Department to produce other evidence which is of an independent nature which corroborates the retracted statements.”

4.4 The corroboration vindicating the employee-appellants involvement with knowledge of malfeasance was specifically required in this case.

5. In view of the foregoing, this court following the aforesaid decisions is inclined to provide relief in the instant case as there is no confiscation of goods has taken place and therefore, Rule 26 would not have been applied. Without going into other aspects of the case as has been argued by the appellants, this court is of the view that the appellant is entitled to relief on this count only. Same is granted. Appeal allowed. Penalty on the present appellant is set aside.

(Order pronounced in the open court on 17.11.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)