CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

Excise Appeal No. 338 of 2011

[Arising out of OIO-09/MP/VAPI/2010 passed by Commissioner of Central Excise, Customs and Service Tax-VAPI]

M/s Sanjay Agarwal **.....Appellant**
Survey No. 139/2, Umarkui Road, Athol,
Silvassa, Dadra & Nagar Haveli

VERSUS

C.C.E. & S.T.-Vapi **.....Respondent**
4th Floor Adharsh Dham Building,
Opp. Town Police Station, Vapi-Daman Road,
Vapi, Gujarat

APPEARANCE:

Sh. Hardik Modh, Advocate for the Appellant
Sh. T.G. Rathod, Authorized Representative for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO.A/ 11013 /2019

DATE OF HEARING: 17.06.2019
DATE OF DECISION: 17.06.2019

RAMESH NAIR

The appellant is an employee of the company namely; M/s Chandra Pretecto Ltd. The penalty of Rs. 10 Lacs under Rule 26 of the Central Excise Rules, 2002 was imposed upon appellant in connection with duty demand confirmed against M/s Chandra Pretecto Ltd. The demand against company was confirmed on the ground that the company had cleared the goods at concessional rate in DTA before obtaining permission from Development Commissioner and also required NFE was not achieved, therefore, demand was confirmed and penalty on others including the present appellant was imposed, therefore, the present appeal.

2. Sh. Hardik Modh Ld. Counsel appearing for the appellant submits that this is not case of clandestine removal of the goods whereas the goods cleared on payment of duty at concessional rate. As regard

permission, the company had applied for the permission of Development Commissioner in January 2008, however, against the said application, the permission was granted on 08.05.2008. As regard appellant, he had joined employment with company only on 01.10.2008, whereas the transactions by the company were made in DTA for the period 01.01.2008 to 07.05.2008, since the appellant was not employee during the relevant period, no offence can be attributed against the appellant. He placed reliance on the decision of this Tribunal in the case of Liladhar T. Khusiliani Vs. C.C.-Kandla 2015 (330) ELT 705 (Tri.- Ahmd.)

3. Sh. T.G. Rathod Ld. Joint Commissioner (AR) appearing for the Revenue reiterates the findings of the impugned order.

4. We have heard both the sides and considered the submissions made by them. We find that the consequential penalty to the demand of duty in respect of consignment cleared during the period 01.01.2008 to 07.05.2008 during which period, the appellant was not employee in the company, therefore, whatever clearances were made, the appellant had no role. He was imposed penalty only on the basis of statement given by him. Since the appellant has no dealt with the good for which the demand was confirmed and even he was not involved in making any documents related to such consignments, he cannot be implicated in the case of short payment of duty committed by the company, accordingly, we do not see any reason for imposition of any penalty upon the appellant under Rule 26. Accordingly, the penalty is set aside. Appeal is allowed. Other two appeals bearing No. E/336-337/2011 stand adjourned to 23.12.2019.

(Dictated & pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Seema