

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

REGIONAL BENCH-COURT NO. 3

**Excise Appeal No. 11242 of 2014 - SM**

(Arising out of OIO-AHM-CEX-003-COMMR-042-13 dated 05/12/2013 passed by  
Commissioner of Central Excise-AHMEDABAD-III)

**Goodluck Empire**

103, Shiv Ranjani Apartment,  
Near Kumar Shala, Devbag,  
Bhavnagar, Gujarat

.....Appellant

*VERSUS*

**C.C.E. & S.T.-Ahmedabad-iii**

CUSTOM HOUSE... 2ND FLOOR,  
OPP. OLD GUJARAT HIGH COURT, NAVRANGPURA,  
AHMEDABAD, GUJARAT- 380009

.....Respondent

**WITH**

**Excise Appeal No. 11243 of 2014 - SM**

(Arising out of OIO-AHM-CEX-003-COMMR-042-13 dated 05/12/2013 passed Commissioner  
of Central Excise-AHMEDABAD-III)

**Jenil Empire**

182/A, Suvidha Township,  
Subhashnagar,  
Bhavnagar, Gujarat

.....Appellant

*VERSUS*

**C.C.E. & S.T.-Ahmedabad-iii**

Custom House... 2nd Floor,  
Opp. Old Gujarat High Court, Navrangpura,  
Ahmedabad, Gujarat- 380009

.....Respondent

**APPEARANCE:**

Shri Sarju Mehta, Chartered Accountant for the Appellant  
Shri R.K.Agarwal, Superintendent (AR) for the Respondent

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

**Final Order No. 11445-11446/2023**

DATE OF HEARING: 19.06.2023  
DATE OF DECISION: 05.07.2023

**RAMESH NAIR**

In this appeals penalty under Rule 26 of Central Excise Rules, 2002  
was imposed for a charged of issuing Cenvat Credit invoices in favour of M\s

Nakoda Alloy Pvt. Ltd. Without supplying the goods for fraudulent passing of Cenvat credit.

2. Shri, Sarju Mehta, Learned Chartered Accountant, appearing for the appellant submits that no proper cross examination was conducted by the Adjudicating Authority, therefore, the statements given by the appellants cannot be taken as evidence and in these cases for imposition of penalty only statements were relied upon. As regard main case of M\s Nakoda Alloys Pvt. Ltd. the said company got their case settled under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and this Tribunal vide order No. A/12309/2021 dated 01.02.2021 disposed of the appeal as withdrawn in terms of Section 127(6) of Chapter V of Finance (No. 2) Act, 2019.

2.1 He further submits that the penalty was imposed under Rule 26(2) of Central Excise Rules, 2002 whereas this Rule came into force only from 01-04-2007. Therefore, for the transaction pertains to the period prior to 01.04.2007 no penalty can be imposed. He placed reliance on the following judgments:

- Commissioner of C. Ex. Chandigarh Vs. Anshul Steel Scrap Corpn. 2011(264) E.L.T. 535 (Tri.- Del.)
- Dhakad Metal Corporation Vs. Commissioner of C. Ex.& S.T. Daman 2015(330) E.L.T. 561 (Tri.- Ahmd.)
- Duggar fiber Pvt. Ltd. Vs. Commissioner of C. Ex. & S.T., Delhi 2015(322) E. L.T. 763 (Tri. – Del.)
- Commissioner of Central Excise, Chandigarh-I Vs. Mini Steel Traders 2014 (309) E.L.T. 404 (P & H)
- Final Order No. A/10256-10266/2022 dated 17.03.2022 in Appeal No. E/10693/2017 (Rajputana Steel Ltd & Ors. C.C.E. & S.T.- Vadodara-ii) passed by Hon'ble CESTAT Ahmedabad

3. Shri R.K. Agarwal, Learned Superintendent (AR), appearing on behalf of the revenue and reiterates the findings of the impugned order.

4. I have carefully considered the submission made by both the sides and perusal the records.

4.1 I find that the main appellant and the main party is M/s Nakoda Alloys Pvt. Ltd. to whom these present appellants have allegedly issued the invoices for passing of fraudulent Cenvat credit without supplying the goods. M/s Nakoda Alloys Pvt. Ltd. accepting their demand got their case settled under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and the same has been affirmed by this Tribunal vide order dated 01.02.2007. As regard the present appellants, they have issued invoices as per the case of the department and they have not supplied the goods and only on proper transaction the fraudulent Cenvat credit was passed on to Nakoda Alloys Pvt. Ltd.

4.2 I find that both the appellant have given inculpatory statements. The Adjudicating authority has conducted the cross-examination though some discrepancy was raised by the Learned Chartered Accountant during the hearing before the Adjudication authority but the fact that the cross examination has been conducted and nothing contrary to the statement given under Section 14 of the Central Excise Act, 1994 by the present appellants have come on record. Therefore, I am of the view that both the present appellants have direct involvement in passing of fraudulent Cenvat credit to M/s Nakoda Alloys Pvt. Ltd.

4.3 Having observed as above I also found that penalty was imposed under Rule 26(2) of Central Excise Rules, 2002 which has come into force with effect from 01.04.2007. Therefore, in my considered view for all the transactions made prior to 01.04.2007 the Penal Provision Rule 26(2) cannot

be applied retrospectively. Therefore, in respect of the transactions only made after 01.04.2007 the penalty under Rule 26(2) of Central Excise Rules, 2002 shall be applicable. This issue has been considered in the judgments cited by Learned Chartered Accountant.

4.4 Accordingly, in the appeals of M/s Jenil Empire entire transactions were prior to 01.04.2007. Therefore in this case no penalty can be imposed under Rule 26(2) of Central Excise Rules, 2002. As regard the appeal of M/s Goodluck Empire some of the transactions were made after 01.04.2007, in respect of these transactions the appellants are liable to penalty under Rule 26(2) of Central Excise Rules, 2002.

5. Accordingly the penalty of M/s. Goodluck Empire is reduced from Rs. 8,20,000/- to Rs. 2,00,000/-. As a result the appeal of M/s Jenil Empire is allowed and appeal of M/s Goodluck Empire is partly allowed, in the above terms.

(Pronounced in the open court on 05.07.2023)

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**