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

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 00018 of 2012-SM

[Arising out of Order-in-Original/Appeal No BC-245-247-SURAT-II-2011 dated 12.09.2011 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II]

Avdhoot Pigments Pvt Limited .... **Appellant**
Plot No. 6213, GIDC,
ANKLESHWAR, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Surat-ii .... **Respondent**
New C.Ex Building, Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

WITH

EXCISE Appeal No. 00019 of 2012-SM

[Arising out of Order-in-Original/Appeal No BC-245-247-SURAT-II-2011 dated 12.09.2011 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II]

Bharatbhai D Patel .... **Appellant**
Director, Avdhoot Pigments Pvt Limited
Plot No. 6213, GIDC, ANKLESHWAR, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Surat-ii .... **Respondent**
New C.Ex Building, Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

APPEARANCE :

Shri Sudhanshu Bissa, Advocate for the Appellant
Shri Himanshu P Shrimali, Superintendent (AR) for the Revenue.

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

DATE OF HEARING/ DECISION: 29.11.2023

FINAL ORDER NO. 12663-12664/2023

SOMESH ARORA :

Heard both sides. The issue involved in this matter is usage of fake invoices for availing Cenvat credit. Learned advocate submits that collateral evidence which are duly supported by the supplier of the goods as well as testimonial evidences collateral transaction was correctly done are available on record. He also prayed that mandatory penalty imposed on the Director with equivalent amount of duty involved be set-aside as he had no knowledge of the invoices and as stated by the Director he was only broadly looking after the day-to-day affairs of the appellant Company.

2. Learned Authorised Representative on the other hand relied upon the decision of this bench in the case of *Akik Dyechem Pvt. Limited & Others vs. CCE, Ahmedabad* vide order No. M/238-263/WZB/Ahd/2009 to press the point that similar matter had come up earlier also and investigations were carried out on pan Gujarat basis involving cases of various parties. He also bring to notice the final decision of the Larger Bench referred to 3rd Member, in the case *Akik Dyechem Pvt. Limited* reported at 2013 (290) ELT 273 (Tri. Ahmd.) to indicate that issue is covered in favour of the Revenue.

3. On this factual backdrop, in the above referred matter, case cited by learned Authorised Representative, in the decision of the Larger Bench in the case of *Akik Dyechem Pvt. Limited (supra)* fully applies in the facts of the present case. So far as the penalty imposed under Rule 15(2) of Cenvat Credit Rules, 2004 with Rule 26 of Central Excise Rules, 2002 is concerned, the Court has discretion to consider the quantum of penalty. Accordingly court finds that the penalty equivalent to duty involved only on Shri Bharatbhai D. Patel, Director of the Appellant Company, is reducible while maintaining other penalties. Accordingly, the same is reduced from Rs. 4,42,360.00 to Rs. 50,000/- (Rupees fifty thousand only) under Rule 15 to Cenvat Credit Rules, 2004 read with Rule 26 of Central Excise Rules, 2002. Except for the above modification in reduction of penalty on the Director, the remaining part of the order is sustained.

Appeal disposed of in the above terms

(Dictated and pronounced in the open court)

(Somesh Arora)
Member (Judicial)

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