

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

REGIONAL BENCH – COURT NO. 03

Excise Appeal No. 12167 of 2018-SM

[Arising out of OIA-CCESA-SRT-APPEALS-PS-890-893-2017-18 dated 28.03.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

M/s Ronak Chaudhari

PRAMUKH COPPER PVT LTD., PLOT NO. 184/2,
KUMBHARWADA, VILLAGE-NAROLI,
SILVASSA, DADRA & NAGAR HAVELI

.....Appellant

VERSUS

C.C.E. & S.T. Surat-I

NEW C.Ex BUILDING...OPP. GANDHI BAUG,
CHOWK BAZAR, SURAT, GUJARAT-395001

.....Respondent

APPEARANCE:

None appeared for Appellant

Shri. R.P. Parekh, Superintendent (Authorized Representative) for Respondent

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

FINAL ORDER NO. A/ 12576 /2021

DATE OF HEARING:02.12.2021
DATE OF DECISION:02.12.2021

PER: RAMESH NAIR

The appeal filed by the appellant against the imposition of penalty of Rs. 2 Lakh in terms of Rule 26 of Central Excise Rules, 2002, the penalty was imposed consequent to the fraudulent availment of cenvat credit without receipt of the inputs by M/s Pramukh Copper (P) Ltd. Against the confirmation of demand, in respect of M/s Pramukh Copper (P) Ltd., the appellant company has availed the SVLDR Scheme 2019.

2. None appeared on behalf of the appellant despite notice.

3. Shri R. Parekh, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that as regard the demand case against the main company M/s Pramukh Copper (P) Ltd. attained finality. Against the confirmation of demand though the appellant was before this Tribunal under Excise Appeal No. 12166 of 2018

however the company got their case settled under SVLDRS-2019 and the appeal was dismissed by this Tribunal vide Final order No. 11017 of 2021. Therefore, the penalty imposed on the Director who was the overall incharge of the Company and under whose supervision entire fraud has taken place is correct. Therefore, the penalty should be maintained and appeal should be dismissed.

4. I have carefully considered the submission made by Learned Authorized Representative and perused the records. I find that as regard the offence against the company M/s Pramukh Copper (P) Ltd. it attained finality as the company has admittedly got the demand case settled before the SVLDRS-2019. Now in the present appeal, the only issue is that whether the appellant being a Director of the Company was rightly imposed penalty under Rule 26. The Learned Commissioner (Appeals) given the following finding for upholding the penalty.

- Being the director of the company, he had full knowledge about what was going on in the factory. He was aware of the frauds and it was at his behest that the frauds were being committed.
- Further, he knew about the non-receipt of the 8mm copper rods in his factory and knew that only invoices were reaching the factory while the goods were being diverted somewhere else. He knew that the company was availing the CENVAT Credit on these goods even when they were not reaching the factory.
- He was fully aware of the fact that there un-accounted goods present in the factory. He knew that these goods were offending in nature and were to be cleared in a clandestine manner. While keeping the unaccounted goods in the factory, he knew that they were contravening the provisions of rules and statutes of the central excise.
- It was at his behest that the goods were removed in clandestine manner under the invoices prepared by Praveen Tiwari.
- He knew that a parallel set of invoices were being maintained where one set was "official", the other set was totally off the record (the hand written invoices seized during the search proceedings) and that such method was being adopted with the intent of evading payment of duty.

5. In view of the above findings, it is clear that since the appellant company has fraudulently availed the credit without receipt of the goods, it is not possible without the knowledge of the Director, therefore, the Director

Shri Ronak Chaudhari is directly involved in the fraudulent availment of credit by his company. Therefore, he is correctly liable for penalty under Rule 26. However, looking to the quantum of evasion and overall facts and circumstances of the case, I am of the view that the appellant deserves some leniency. Accordingly, I reduce the penalty from Rupees Two Lakh to Rupees One Lakh. The impugned order stand modified to this extent. The appeal is partly allowed in the above terms.

(Dictated and pronounced in open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

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