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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.10657 of 2019

(Arising out of OIA-VAD-EXCUS-001-APP-501-2018-19 dated 30/11/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Laxmiraj Distributors Pvt Ltd ……..**Appellant**
Narsinh Esate Wadi Yamuna Mill Road Pratab Nagar
Vadodara, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-I …….**Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat-390007

APPEARANCE:
Shri Mrugesh Pandya, Advocate for the Appellant
Shri J A Patel, Superintendent (AR) for the Respondent

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

Final Order No. A/ 12623 /2021

DATE OF HEARING: 16.12.2021
DATE OF DECISION: 16.12.2021

RAJU

This appeal has been filed by M/s. Laxmiraj Distributors Pvt Ltd against the order imposing penalty under Rule 26 (2) of the Central Excise Rules, 2002.

2. A Case was booked against M/s Kusters Calico Machinery Pvt Ltd for availing Cenvat Credit without receipt of goods. The appellant namely M/s. Laxmiraj Distributors Pvt Ltd was one of the suppliers against whom the allegation was made for issue of said Cenvatable invoices without actual delivery of goods. The Order-On-Original imposed the penalty of Rs. 5 Lakhs observing as follows:-

> “(e) **Cenvat Credit availed on the invoices of M/s Laxmiraj Distributors Pvt Ltd:** Inrespect of the Cenvat credit availed on the basis of invoices issued by M/s Laxmiraj Distribut0rs. I find that on detailed

examination of the invoices issued M/s. Laxmiraj Distributors Pvt Ltd with the gate register of M/s Kusters, in many of the cases no entry has been found and it was found the invoices that were registered at the gate register were having a different description of material then the detail of material as registered at the inward gate registers. Also description of the goods were found invoices different in both the documents i.e. gate register and invoices. Shri Parasmal Jain of M/s Precise Automation has categorically stated that they had sold the goods in open market whereas the cenvatable invoices were issued to M/s. Kusters Calico Machinery. No goods have been supplied under the cover of invoices issued to M/s. Kusters Calico. The said facts has also revealed by Shri. D R Nanawati Senior Manager (Purchase), Shri Brijesh Patwa, Deputy Manager (Finance & Accounts) of M/s. Kusters. The facts to the effect that M/s. Kusters has availed Cervat credit on the basis of invoices only and no goods were received by M/s. Kusters from M/s. Laxmiraj Distributors, were categorically stated by Shri. Mayur Pathak in his statements. It has also been revealed that the goods which had not been received physically by the company was shown as if it was received and the goods were entered in inward register maintained at the factory gate, goods Receipt Note was generated, RG-23A Part-I was updated and relevant entries were made in books of accounts. Similarly, the consumption of the said goods was also adjusted in all relevant records as if it was used in the production of the finished goods. Further, the company has made the payment of such goods by cheque which had never been received by M/s Kusters Calico physically and it was received back in cash as instructed by the Managing Director of the company.

e(i) Also the description of goods mentioned in invoices and inward gate register are not tallied for example in respect of invoice no. 427 dated 22.06-2012, issued by M/s Laxmiraj Distributors Pvt Ltd. invoice contained description of material as "SS HR Plates" whereas at in the inward register at Serial No. 593 dated 25.06.2012 the same has been mentioned as " SS CR Sheets". Which seems to be a fake entry. This proves beyond reasonable doubts that M/s Laxmiraj Distributors Pvt Ltd. sent only Cenvatable invoice without material. "

The Commissioner (Appeals) after examining the facts held that reduce the penalty from Rs. 5 Lakhs to Rs. 2 Lakh.

3. Learned Counsel for the appellant pointed out that no penalty can be imposed against a firmed under Rule 26 (2) of the Central Excise Rules, 2002. He further pointed out that the penalty has been imposed relying on the admission of a statement of employees of the appellant's company. He pointed out that the no cross-examination was granted. He further pointed out that except for one delivery challan in which there was some mis-match in description found vis-à-vis the inward register, no other evidence has been produced for non delivery of goods.

4. Learned AR relies on the impugned order.

5. I have considered the rival submissions. I find that the Order-In-Original relies on the statement of the employees involving admission to the fact that they have not supplied the goods but only Cenvatable invoices. The Order-In-Original accepts that the payment of all these invoices was made by cheque. They have also failed to find that any paper evidence as well as non receipt of goods. The only evidence they have found and relied upon is a mis match in one invoice No. 427 dated 22.06.2012. In the said invoice description was “SS HR Plates” whereas at in the inward register at Serial No. 593 dated 25.06.2012 the same has been recorded as “ SS CR Sheets”. In the aforesaid circumstances, I do not find that Revenue has been able to substantiated this case in respect of all but one of the Cenvatable invoices issued by the appellant. The duty involved in this invoice is around Rs. 22000/- only. Considering this fact the penalty is reversed to Rs. 10,000/- only. The appeal is partly allowed in above terms.

(Dictated & Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

Prachi