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

REGIONAL BENCH- COURT NO.3

**Excise Appeal No.10500 of 2019**

(Arising out of OIA-CCESA-SRT-APPEAL-PS-894-895-2017-18 dated 28/03/2018 passed by Commissioner ( Appeals ) Commissioner of Central Excise, Customs and Service Tax-SURAT-I( Appeal))

**Avdhesh Mishra** **........Appellant**
Room No. 202, 2nd Floor, Building No. 13, Rahul Estate, 'B' Cabin Road, Near Green City, Ambernath,
Rahul Estate, 'B' Cabin Road, Near Green City, Ambernath,
THANE, MUMBAI, MAHARASTRA

*VERSUS*

**C.C.E. & S.T.-Daman** **.......Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

**With**

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**Mr Avdesh Mishra** **........Appellant**
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Vapi, Gujarat-396191

**APPEARANCE:**
None appeared for the Appellant
Shri G. Kirupanandan, Superintendent (AR) for the Respondent

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

**Final Order No. A/ 10057-10058 /2022**

DATE OF HEARING: 27.01.2022
DATE OF DECISION:27.01.2022

**RAMESH NAIR**

These are two appeals against the common impugned Order-In-Appeal whereby, the learned Commissioner (Appeals) upheld the penalty of Rs.20,000 /- & Rs.8,000/- respectively. The penalty were imposed under Rule 26 with reference to a case of duty evasion made against the employer company of the appellant.

02. When the matter was called out, none appeared on behalf of the appellant.

03. Shri G.Kirupanandan, Learned Superintendent (Authorised Representative) appearing on behalf of the revenue reiterates the finding of the impugned order. He has taken me to the statement of the appellant recorded at the time of investigation and submits that the appellant has admitted the offence committed by the company. He was directly involved in activities of manipulation of costing and the clandestine removal of the goods from the Job Worker's Factory premises therefore, the penalties were rightly imposed on the appellant. He further submits that the learned Commissioner (Appeals) has taken a lenient view and reduced the penalties therefore, now there is no scope of either to reduce the penalty or to wave the penalty.

04. I have carefully considered the submission made by learned Authorized Representative and perused the records. From the statement of the appellant with reference to the case against the company, there is a clear admission that the appellant have manipulated the cost of the product and the goods were clandestinely removed from the premises of the Job Worker. In these appeals, the appellant's plea is that he was working as Import/Export Manager and not dealt with the transaction made with the Job Worker. From the entire records, I find that he is the sole Authorised Signatory for the company and he has given statements with reference to the offence committed by the company. Therefore, his submission that he was not involved in the activity of Job Work has no support.

4.1 I find that the learned Commissioner (Appeals) has already taken a lenient view, the relevant paragraphs of the impugned order are reproduced below:

> *6. As regards the penalty of Rs.50,000/- and Rs.20,000/- respectively, imposed on the appellant i.e. Shri Avdhesh Mishra, Manager cum Authorised Signatory of the company. From the impugned orders, I note that the appellant appears to have involved in evasion of Central Excise Duty by manipulating the actual cost of conversion of Lead Ingots*

*into Litharge. They were knowingly concerned in all the activities of the Company and therefore they were concerned in transporting, removing, depositing, keeping, concealing, selling and purchasing the excisable goods/Cenvetable goods which they knew or had reason to believe were liable to confiscation under Central Excise Act, 1944.*

*7. The appellant has contended that he had joined his duty on July'2011 in the said Company and resigned in the month of February, 2015, so the appellant was not present at the material time as per produced document in their appeal memorandum. Further, the appellant had contended that the company assigned the appellant as representative of the company before investigating officer and provided information from the company before the officers and gave statements as instructed by the company. In this regard, I find that the appellant joined in July 2011 & left in Feb 15 shows his minimum role as the duty evasion period is Dec, 2009 to March, 2013. Therefore, the penalty of Rs.50,000/- and Rs.20,000/- respectively imposed on the appellant by the adjudicating authority does not appears to be reasonable and justified. I therefore, reduced the penalty Rs.20,000/- and Rs.8,000/- respectively.*

From the above finding of the learned Commissioner (Appeals), I do not find any infirmity. The learned Commissioner (Appeals) has already taken a lenient view and substantially reduced the penalty from Rs.50000/- and Rs.20,000/- to Rs.20,000/- and Rs.8,000/- respectively. The role of the appellant is clearly established therefore, no further relief can be extended to the appellant.

05. Accordingly, I uphold the impugned orders and dismiss the appeals.

(Dictated & Pronounced in the open court)

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

Mehul