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

REGIONAL BENCH – COURT NO. 03

Excise Appeal No. 85 of 2010

[Arising out of OIA-AKP/149-150/DENOVO/DMN/SDMN/2009-2010 dated 25/11/2009 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN]

Vivek C Vaidya **.....Appellant**
M.D., Ushma Jewellery & Packaging Export Pvt Ltd.,
Plot No. A/2-16, Gddidc,
Somnath Road,
Nani Daman,
DAMAN (U.T.)

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

APPEARANCE:
None appeared for the Appellant
Shri Dharmendra Kanjani, Superintendent, Authorized Representative for the Respondent

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

FINAL ORDER NO.A / 10540 /2022

DATE OF HEARING: 18.05.2022
DATE OF DECISION: 18.05.2022

RAMESH NAIR

The issue involved is that whether the appellant is liable for penalty under Rule 26 of Central Excise Rules 2002. The brief facts of the case are that the appellant is Director Of Company namely M/s. Ushma Jewellers & Packaging Exports Pvt. Ltd. Demand of Cenvat Credit of Rs.95,000/- was confirmed against the company on the ground that the appellant have availed the cenvat credit on the invoices issued by non-existent party. In connection with this case the present appellant to the Director of the company has been penalised with Rs. 25,000/- under Rule 26 of Cenvat

Credit Rules, 2002. The company has gone into liquidation as per the order High Court. Therefore, the demand of Rs. 95,520/- stand upheld the appeal of the company has been disposed of as abated. Accordingly, the demand of Rs. 95,520/- stand maintained as per the order in appeal.

2. The matter was called and none appeared on behalf of the appellant.

3. Shri Dharmendra Kanjani, Superintendent (Authorized Representative) submits that on the investigation it was found that the supplier of the input who issued the invoices are non-existent. He refers to Sub-Rule 3 of Rule 9 of Cenvat Credit Rules, 2004. The assessee is required to take all reasonable steps about the identity of supplier and to ensure that the duty has been paid. He also refers to Rule 15 (1) of Cenvat Credit Rules. Accordingly, the assessee takes the Cenvat Credit wrongly without taking reasonable steps the goods are liable for confiscation. Therefore, the appellant being Director of the company was correctly imposed penalty of under Rule 26.

4. I have carefully considered the submissions made by Learned Authorized Representative and perused the records. On going through the statement of the Director in the case of M/s. Ushma Jewellers & Packaging Exports Pvt. Ltd. I find that the director did not deny about the non-existence of the supplier. He stated in the statement that goods were received through broker. Since the appellant have not complied with Sub-Rule (3) of Rule 9 of the Cenvat Credit Rules, 2004 in terms of rule 15(1) the invoices received from the non-existent unit there is a wrong availment of credit. Accordingly the goods are liable for confiscation. The Director is involved in over all activity of the company as evident from the statement given by him. Therefore, the appellant Director of the company is liable for penalty under Rule 26. However, considering the amount of cenvat credit involved, the penalty of Rs. 25,000/- is excessive and the same deserves to be reduced.

5. Accordingly, I reduce the penalty from Rs.25,000/- to Rs.10,000/- The impugned order stand modified to the above extent. Appeal is partly allowed in the above terms.

(Dictated & Pronounced in the open Court)

RAMESH NAIR
MEMBER (JUDICIAL)

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