Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad
REGIONAL BENCH- COURT NO.3

Excise Appeal No.1337 of 2011

(Arising out of OIO-09/MP/DAMAN/2011 dated 20/04/2011 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN)

Perfect Transport Company **........Appellant**
Vapi-Silvassa Road, Opposite Patel Scooter, Lavacha,
Valsad
Gujarat

VERSUS

C.C.E. & S.T.-Daman **.......Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat - x396191

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/ 10775 /2022

DATE OF HEARING/DECISION: 30.06.2022

RAMESH NAIR

The brief facts of the case are that appellant being a transporter transported the goods in respect of which the company M/s. Taha wires has availed the alleged fraudulent credit without receipt of goods and against M/s Taha Wires demand of Cenvat Credit was confirmed. Though M/s. Taha wires has filed appeal before this Tribunal under Excise Appeal No. 1274 of 2011-DB but the same has been dismissed as withdrawn vide Tribunal's Final Order No. A/10267-10268/2020 dated 24.01.2020 as the appellant in that case had opted for SVLDR Scheme. In the OIO dated 20.04.2011 penalty of Rs. 3 Lakh was imposed upon the present appellant therefore, the present appeal filed by him.

2. When the matter was called out none appeared on behalf of the appellant despite notice. Therefore, the appeal is taken up for disposal.

3. Shri. G. Kirupanandan, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He

submits that the appellant have prepared LR wherein the destination was shown as Daman/Silvassa whereas the goods were admittedly delivered at Bhiwandi therefore, the penalty was rightly imposed on the appellant, being a transporter to transport the goods in respect of which fraudulent credit was passed on.

4. I have carefully considered the submission made by Learned AR and perused the records. I find that the penalty under Rule 26 was imposed upon the appellant for an amount of Rs. 3 Lakh on the alleged charge that the appellant being transporter has issued an incorrect LR knowingly showing the destination Daman/Silvassa but the goods were delivered at Bhiwandi. I find that the adjudicating authority imposed the penalty on the ground that the appellant dealt with the goods which were liable for confiscation. In this regard, the relevant Rule 26 prevailing at the relevant time i.e. 2004-2005, 2005-2006, 2006-2007 (upto December, 2006) reads as under:-

> ***Rule 26. Penalty for certain offences. -***
> *Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or two thousand rupees, whichever is greater.*

From the plain reading of the above Rule it is clear that only those goods which are liable for confiscation the transporter dealing with such goods are liable for penalty under Rule 26. In the present case the goods were duty paid therefore even though the transporter has made wrong LR the case does not fall under Rule 26 at the relevant time. The duty paid goods are not liable for confiscation. I find that it is pertinent to read amended Rule 26 effective from 01.04.2007 which is reproduced below:-

> ***Rule 26. Penalty for certain offences. -***
> (1) *Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation*

> *under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or two thousand rupees, whichever is greater.*
>
> *(2) Any person, who issues -*
>
> *(i) an excise duty invoice without delivery of the goods specified therein or abets in making such invoice; or*
>
> *(ii) any other document or abets in making such document, on the basis of which the user of said invoice or document is likely to take or has taken any ineligible benefit under the Act or the rules made there under like claiming of CENVAT credit under the CENVAT Credit Rules, 2004 or refund, shall be liable to a penalty not exceeding the amount of such benefit or five thousand rupees, whichever is greater.*

From the plain reading of the above amended rule 26 it is clear that the appellant's offence falls under Rule 26 (2)(ii) of Central Excise Rules, 2002 as the appellant had issued incorrect LR in respect of goods on which the fraudulent credit was availed by M/s. Taha wires. The aforesaid amended Rule 26 came into effect from 01.04.2007 whereas in the present case period involved is 2004-2005, 2005-2006, 2006-2007 (upto December, 2006). In this position I am of the clear view that since the appellant's case falls under Rule 26 (2) (ii) but the same is not existing at the relevant time the appellant cannot be penalized when the goods dealt with by him was not liable for confiscation on the ground that the same was admittedly duty paid.

5. Accordingly, the penalty is not sustainable hence, the same is set aside. The appeal is allowed.

(Dictated & Pronounced in the open court)

RAMESH NAIR
MEMBER (JUDICIAL)