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

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 1172 of 2011

[Arising out of Order-in-Original/Appeal No 09-MP-DAMAN-2011 dated 20.04.2011 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN]

Bhagwat Wire Inds **.... Appellant**

246/3/1/2, Demni Road, Behind High School,
DADRA, DADRA & NAGAR HAVELI -396191

VERSUS

Commissioner of Central Excise & ST, Daman **.... Respondent**

3rd Floor, Adarsh Dham Building, Vapi-Daman Road,
Vapi, Opp.Vapi Town Police Station, Gujarat-396191

APPEARANCE :

Shri Dhaval K. Shah, Advocate for the Appellant
Shri Vinod Lukose, Superintendent (AR) for the Respondent

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

DATE OF HEARING/ DECISION : 25.03.2022

FINAL ORDER NO. A/10314 / 2022

RAJU :

This appeal has been filed by M/s. Bhagwat Wire Industries against imposition of penalty under Rule 26 of Central Excise Rules, 2002.

2. We have heard both the sides and perused the records.

3. Learned Counsel for the appellant pointed out that the case was booked against M/s. Taha Wires Pvt. Limited. In the notice to M/s. Taha Wires Pvt. Limited it was alleged that they obtained invoices from various buyers without actual receiving of goods. It was also alleged that M/s. Taha Wires took credit on the invoices without actual receipt of goods. One of the suppliers to M/s. Taha Wires was M/s. Bhagwat Wires Industries i.e. the Appellant. It was alleged that appellant had supplied three invoices to M/s.

Taha Wires. It was alleged that the goods were never supplied to M/s. Taha Wires and the same were diverted to other distributors at the instructions of the appellant. The impugned order in Para 4.12.1 observes as under:-

> **"4.12.1.** I find that M/s Bhagwat Wire Industries, Dadra had supplied three invoices to the noticee no. 1. During the course of instant case investigations, statement of Shri Karnisingh Rathod, Executive (Excise) of the said manufacturer was recorded. In his statement, he deposed that the 'goods' were delivered at M/s Perfect Transport Co., Vapi through vehicle nos. GJ-7-X-6749 & GJ-9-V2613. In this matter, it is pertinent to mention here that Shri Pappu Yadav, Manager of the said transporter, in his statement, had admitted that the LRs were prepared showing the destination as the factory premises of the noticee no.1, but the said three consignments were delivered at their Bhiwandi office as directed by the consignor. The said Shri Karnisingh Rathod agreed with the facts mentioned in the statement of the said Shri Pappu Yadav which established that the goods were not delivered to the factory premises of the noticee no.1, but diverted and delivered at Bhiwandi."

It is seen that the entire case is made out on the basis of statement of Shri Pappu Yadav, Manager of the Transporter and Shri Karnisingh Rathod, Executive (Excise). It is seen that there is no evidence other than these statements. No cross examination of Shri Pappu Yadav, Manager of the Transporter has been undertaken. In the cross-examination of Shri Karnisingh Rathod, in reply to question No. 6 he stated as follows:-

> ***"Q.6.*** *Have you ever instructed M/s. Perfect Transport to divert M/s. Taha's consignment to Bhiwandi instead of taken to Daman?*
>
> ***Ans.*** *No, we have never given any such instruction."*

4. From the above it is apparent that Shri Karnisingh Rathod, Executive (Excise) has denied that he had instructed for any diversion of goods. In the absence of any cross-examination of Shri Pappu Yadav, Manager of the Transporter no reliance can be placed on the statement of Shri Pappu

Yadav. In these circumstances, no diversion can be said to be happened at the instruction of the appellant Company.

5. In these circumstances, penalties under Rule 26 of the Central Excise Rules, 2002 cannot be imposed on the appellant. Consequently, the appeal is allowed.

(Operating part of the order pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(Raju)
Member (Technical)

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