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

REGIONAL BENCH- COURT NO. 2

Excise Appeal No. 10309 of 2016
(Arising out of OIO-SIL-EXCUS-000-COM-003-15-16 Dated-19/10/2015 passed by Commissioner of Central Excise, Customs and Service Tax-SILVASA)

Mahesh R Sharma **.....Appellant**
Auth. Sign. Raj Rayon Ltd., Plot No. 17,
Survey No. 177/1/3 & 177/14, Village-Surangi,
Silvassa, Dadra & Nagar Haveli

VERSUS

C.C.E & S.T.-Silvasa **.....Respondent**
Commissioner Central Excise, Customs & Service Tax,
Silvassa, 4th floor, Adarsh Dham Building,
Vapi Daman Road Vapi, Opp. Old Town Police Station
VAPI, Gujarat

APPEARANCE:
Shri. Amber Kumrawat, Advocate for the Appellant
Shri. N.P. Makwana, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. C.L. MAHAR

Final Order No 12477 /2024

DATE OF HEARING:17.10.2024
DATE OF DECISION:23.10.2024

C.L. MAHAR

The appellant is before me against imposition of penalty of Rs. 8 Lakhs under Rules 15 (1) of the Cenvat Credit Rules, 2004.

2. The brief facts of the matter are that the show cause notice dated 07.04.2014 came to be issued to M/S. RAJ REYON INDUSTRIES LTD. for wrong availment of the Cenvat Credit Rs. 1,74,56,749/- under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A (1) of the Central Excise Act, 1944. Penal provisions were also invoked against the main noticee M/S. RAJ REYON INDUSTRIES LTD. The appellant was also asked to show cause as to why penalty should not be imposed on him as per the provisions of the Rule 15 (1) of the Cenvat Credit Rules, 2004. The matter got adjudicated vide impugned Order-In-Original dated 13.11.2015 where under the demand of Service Tax was confirmed against the main party namely M/S. RAJ

REYON INDUSTRIES LTD. and penalty of equal amount has also been imposed as per the Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944. The appellant was also penalized by imposition of a penalty of Rs. 8 Lakhs under Rule 15 (1) of the Cenvat Credit Rules, 2004 and he is before this Tribunal against the impugned order is original.

3. The learned Advocate appearing for the appellant submitted that the main noticees namely M/S. RAJ REYON INDUSTRIES LTD. has already went for liquidation and NCLT has cheer passed the Insolvency Resolution Plan in favour of some other company namely M/s SVG Fashions Pvt. Ltd. And therefore, this Tribunal vide its Final Order No. A/10367/2022 and Final Order No. A/11056/2022 dated 11.04.2022 and 29.08.2022, respectively have passed and order abating the appeal proceedings in the matter in view of the NCLT's order.

4. The learned advocate has also submitted that penalty under Rule, 15 (1) cannot be imposed on a person who has not availed Cenvat Credit himself. it has been submitted that the appellant was only on employee of the company and provisions of the Rule 15 (1) of the Cenvat Credit Rules, 2004 provides that a person shall be liable to penalty who takes or utilises Cenvat Credit in respect of input or capital goods or input services taken in contravention of any of the provision of these rules. It was the contention of the learned advocate that the appellant was only an employee, he has neither availed nor utilized the Cenvat Credit and therefore he cannot be put for a penal action under Rule 15 (1) of the Cenvat Credit Rules, 2004. The Learned advocate has relied upon this Tribunal's decision in case of SHRI PRANATHARIHIHARAN SRIDHARAN VERSUS COMMISSIONER OF CENTRAL EXCISE & ST, VADODARA-I reported under 2023 (3) TMI 1123 –CESTAT-Ahmedabad dated 24 March, 2023.

5. I have heard both the sides, I feel that it will be proper of have glance at the provision of the Cenvat Credit Rules, 2004. It provides as follows:

> *"[RULE 15. Confiscation and penalty. - (1) If any person, takes or utilises CENVAT credit in respect of input or capital goods or input services, wrongly or in contravention of any of the provisions of these rules, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty [in term of clause (a) or clause (b) of sub-section (1) of section 11AC of the Excise Act or sub-section (1) of section 76 of the Finance Act (32 of 1994), as the case may be]".*

The penal provision provided under Rules, 15 of the Cenvat Credit Rules, 2004 clearly mentioned that penalty imposable of the person who takes of utilises Cenvat Credit in respect of input or capital goods or input service. I find that the appellant has been working only as a employee of the main noticees, he has neither taken Cenvat Credit himself or utilize the same for its own purposes for payment of the duty and therefore, I am of the view that penal provisions has provided under Rules, 15(1) of the Cenvat Credit Rules, 2004 are not invokable in this case. While holding the above view I am also relying upon this Tribunal decision in case of SHRI PRANATHARIHIHARAN SRIDHARAN VERSUS COMMISSIONER OF CENTRAL EXCISE & ST, VADODARA-I reported under 2023 (3) TMI 1123 –CESTAT-Ahmedabad dated 24 March, 2023, the relevant extract of the above decision is reproduced here below:

> *"4. We carefully considered the submissions made by both the sides and perused the record. The appellant is an employee Director in the Company M/s. Diamond Power Transformers Limited who was alleged to be indulged in fraudulent availment of Cenvat credit. Penalty in the present case was imposed under Section 15(1) of Cenvat Credit Rules, 2004 on the appellant on the ground that he was overall in-charge and involved in the fraudulent avaiment of Cenvat credit. For the sake of ease, we reproduce below the Rule 15 of Cenvat Credit Rules, 2004:-*
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> > *"[RULE 15. Confiscation and penalty. - (1) If any person, takes or utilises CENVAT credit in respect of input or capital goods or input services, wrongly or in contravention of any of the provisions of these rules, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty [in term of clause (a) or clause (b) of sub-section (1) of section 11AC of the Excise Act or sub-section (1) of section 76 of the Finance Act (32 of 1994), as the case may be]".*

From the plain reading of Rule 15(1), we find that a person shall be liable to penalty who takes or utilize Cenvat credit in respect of input or capital goods or input services wrongly or in contravention of any of the provisions of these Rules. In the facts of the present case, it is M/s. Diamond Power Transformers Limited who has availed fraudulent Cenvat credit, the appellant being employee Director has not availed Cenvat credit for himself therefore, Rule 15(1) is not applicable on the person who has neither availed Cenvat credit nor is the beneficiary of Cerivat credit. Accordingly, penalty under Rule 15(1) was wrongly imposed on the appellant. This issue has been considered by this Tribunal in the case of Mukesh Dani vs. CCE, Surat (supra) wherein the following order was passed:-

> *"5. Heard both sides and perused the records. The short point needs to be considered is: whether personal penalty on the appellants who were at the relevant time employees of company, is sustainable under Rule 15 of CCR, 2004. Before proceeding to consider the arguments advanced by both sides, it is necessary to refer to Rule 15 of CCR, 2004, which reads as under:-*
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> > *"15. Confiscation and penalty. (1) If any person, takes CENVAT credit in respect of input or capital goods, wrongly or without taking reasonable steps to ensure that appropriate duty on the said input or capital goods has been paid as indicated in the document accompanying the input or capital goods specified in rule 9, or contravenes any of the provisions of these rules in respect of any input or capital goods, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention has been committed, or ten thousand rupees, whichever is greater.*
> >
> > *(2) In a case, where the CENVAT credit in respect of input or capital goods has been taken or utilized wrongly on account of fraud, wilful mis- statement, collusion or suppression of facts, or contravention of any of the provisions of the Excise Act or the rules made thereunder with intention to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of section 11AC of the Excise Act.*
> >
> > *(3) If any person, takes CENVAT credit in respect of input services, wrongly or without taking reasonable steps to ensure that appropriate service tax on the said input services has been paid as indicated in the document accompanying the input services specified in rule 9, or contravenes any of the provisions of these rules in respect of any input service, then, such person, shall be liable to a penalty which may extend to an amount not exceeding ten thousand rupees.*
> >
> > *(4) In a case, where the CENVAT credit in respect of input services has been taken or utilized wrongly by reason of fraud, collusion, wilful mis- statement, suppression of facts, or contravention of any of the provisions of the Finance Act or of the rules made thereunder with intention to evade payment of service tax, then, the provider of output service shall also be liable to pay penalty in terms of the provisions of section 78 of the Finance Act.*
> >
> > *(5) Any order under sub-rule (1), sub-rule (2), sub-rule (3) or sub-rule*
> >
> > *(4) shall be issued by the Central Excise Officer following the principles of natural justice."*

6. A plain reading of the said Rule 15 of CCR, 2004, reveals that it consists of five sub-rules for different situations and 2004, these sub-rules directs imposition of personal penalty on the employees of an ering assessee under the said rule. Besides, there is no mention of the relevant sub-rule, as applicable to the appellants, in the noticerition of the coin the order. It is a settle principle of law that penal provisions need strict interpretation and a person could only be able to defend his case only when the particular provision under which he is proposed to be penalized, is mentioned in the notice itself. Further, the case laws referred to by the Id. AR for the Revenue cannot be made applicable to the present case inasmuch as in the instant case, personal penalty has been proposed to be imposed on the appellants under Rule 15 of CCR, 2004, and the authority below has nowhere observed that the correct Rule is other than Rule 15 of CCR, 2004, hence, the plea raised by the Id. AR for the Revenue cannot be accepted at this stage.

7. In the result, the impugned order is set aside to the extent of imposition of personal penalty on the appellants under Rule 15 of CCR, 2004, and the appeals are accordingly allowed."

5. In view of our above observations which are directly supported by the aforesaid decision, penalty under Rule 15(1) on the present appellant, who is merely an employee of the Company, is not sustainable. Accordingly, the impugned order is set- aside and the appeal is allowed with consequential relief.”

6. Following the above decision, I hold that impugned order in Original is without any merit so far as imposition of penalty on the appellant is concerned and therefore, I set aside the same.

7. The appeal is accordingly allowed.

(Pronounced in the open court on 23.10.2024)

(C.L. MAHAR)
MEMBER (TECHNICAL)

PRACHI