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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 10449 of 2019

(Arising out of OIA-CCESA-AUDIT-SRT-VK-23-24-2018-19 dated- 10/12/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

A Kumar Industries **........Appellant**
Survey No 168/1 And 2 Dabhel Industrial Co Operative Society Dabhel
Daman, 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 - 396191

WITH

Excise Appeal No. 10443 of 2019

(Arising out of OIA-CCESA-AUDIT-SRT-VK-23-24-2018-19 dated- 10/12/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Amit Gupta **........Appellant**
Partner Ms A. Kumar Industries
Survey No. 168/1and2 Dabhel Industrial Co Operative Society
Dabhel, Daman
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 - 396191

Appearance:
Shri Ashish K Singh, Advocate appeared for the Applicant
Shri G. Kirupanandan, Superintendent (AR) for the Respondent

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

Final Order No. A/ 11311- 11312 /2022

DATE OF HEARING: 06.10.2022
DATE OF DECISION: 31.10.2022

RAMESH NAIR

These appeals are directed against Order-In-Appeal whereby the order of the Adjudicating Authority was upheld except reduction of penalties.

1.2 The brief facts of the case are that investigating officer visited factory of the appellant and conducted the stock verification of the finished goods. During the stock verification excess stock of 32.15 MT of MS ingots was found as compared to stock recorded in the stock register. The Panchnama was drawn and statement of Shri. Amit Gupta partner of M/s A Kumar Industries was recorded. Thereafter, a show cause notice was issued proposing confiscation of the excess stock, imposition of redemption fine and penalties. The adjudicating authority in the Order –In -Original confiscated the stock of 32.15 MT MS Ingots valued at Rs. 9,87,005/- and imposed redemption fine of Rs. 2 Lakhs and penalty of Rs. 35000/- and the penalty of Rs. 50,000/- was also imposed on Shri. Amit Gupta partner of M/s A Kumar Industries. Being aggrieved by the Order-In Original both the appellants filed appeals before the Commissioner (Appeals). The Learned Commissioner (Appeals) while passing order- in- appeal taking a lenient view reduced the penalty from 35000 to 10,000/- and on Shri. Amit Gupta from 50,000/- to 20,000/-. However, remaining part of the order was upheld therefore the present appeal filed by the appellant.

2. Shri. Ashish K Singh, Learned Counsel appearing on behalf of the appellant submits that the difference in stock was arrived at without carrying out the physical stock of the finished goods. He submits that though investigating officers made Shri. Amit Gupta agrees about the difference in stock and also the manner of the stock taking but the fact remains that no physical stock was taken. The manner was also not specified. He submits that it was impossible to take the physical stock of huge quantity of 625.710 MT which appeared in the RG-1 register. Merely because Shri. Amit Gupta in his statement given the consent to the methodology adopted for taking physical stock it cannot be assumed that the physical stock was conducted. The said methodology was not prescribed. He submits that due to serious discrepancy in the so called stock taking the appellant have requested for cross-examination of panchas which was not allowed by the adjudicating authority, therefore, there is a gross violation of principles of natural justice in passing the adjudication order. As regard the penalty imposed on Shri. Amit Gupta he reiterates the grounds of the appeal.

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

4. I have carefully considered the submissions made by both sides and perused the records. I find that as per the investigating officer excess stock of 32.15 MT was alleged as against the total stock recorded in RG-1 register

of 625.710MT. The appellant have vehemently objected on this difference in the stock merely on the ground that no physical stock taking was conducted and methodology of the stock taking was not disclosed. We find that in this fact I do agree with the Learned Counsel that the adjudicating authority was supposed to give the details of methodology in stock taking and also allowed the cross-examination of panchas. In this fact I am of the considered view that the matter needs to be remanded to the adjudication authority for reconsideration after allowing the cross examination of panchas. As regard appeal of Shri. Amit Gupta partner of M/s A Kumar Industries, I find that without going into the merit, it is settled law that once the penalty is imposed on the partnership firm it's partner cannot be imposed penalty separately. This issue has been considered and settled by the Hon'ble Gujarat High Court in the case Commissioner of Central Excise vs. Jai Prakash Motwani – 2010 (258) ELT 204 (Guj.).

5. Considering the said judgment I am of the view that no penalty is imposable on Shri. Amit Gupta. As per my above discussion and finding I passed the following order:

1)Appeal No. E/10449/2019 of A Kumar Industries is allowed by way of remand to adjudicating authority

2) Appeals No. E/10443/2019 of Shri. Amit Gupta partner of M/s A Kumar Industries is allowed.

(Pronounced in the open court on 31.10.2022)

RAMESH NAIR)
MEMBER (JUDICIAL)

Geeta