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

REGIONAL BENCH-COURT NO.3

EXCISE APPEAL NO. 10507 of 2013-SM

(Arising out of OIO-31/DEM/VAPI/2012 dated 14/12/2012 passed by Commissioner of Central Excise, Customs and Service Tax-VAPI)

Ajay Kuralkar **........Appellant**
Deputy Manager & Authorised Signatory,
M/s. Alok Industries Limited, Plot No. 17/5/1, & 521/1 Saily,
SILVASSA, GUJARAT

VERSUS

COMMISSIONER OF CGST &
CENTRAL EXCISE - CGST & Central Excise Daman **........Respondent**
Customs and Service Tax, Daman,
5th Floor, GST Bhavan,
RCB Compound, Vapi, Valsad-396191, Gujarat

APPEARANCE:
Shri Ramnath Prabhu with Mrs. Dimple Gohil, Advocates appeared for the Appellant
Smt. Sunita Menon, Superintendent(AR) appeared for the Respondent

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

Final Order No. 13179/2024

DATE OF HEARING: 12.12.2024
DATE OF DECISION: 12.12.2024

RAMESH NAIR

The captioned appeal is filed by Mr. Ajay Kuralkar ("**Appellant**"), an employee of Alok Industries Limited ("**Company**" or "**AIL**"), against Order-in-Original No. 31/DEM/VAPI/2012 dated 14.12.2012 ("**Impugned Order"** or "**OIO**") wherein a penalty of Rs.2,00,000/- is imposed on the Appellant under Rule 26 of the Central Excise Rules, 2002 ("**CER**") read with Rule 15(1) of the CENVAT Credit Rules, 2004 ("**CCR**"). Against the said Impugned Order, AIL had also preferred an appeal before this Hon'ble Tribunal.

1.1 The dispute in the company's case is that Cenvat credit of the service tax was inadvertently claimed by the company which related to its spinning unit on 31.03.2008. The said credit amounting to Rs. 5,10,14,355/- was subsequently voluntarily reversed on 01.04.2009 without utilization and well before issuance of the show cause notice. on the allegation of the wrong availment of credit as mentioned above the Commissioner passed the impugned order. Being aggrieved by the said impugned order the appellant has sought to prefer this appeal seeking setting aside the penalty of Rs.2,00,000/- imposed under Rule 26 of Central Excise Rules,2002 read with Rule 15 (1) of the Cenvat Credit Rules,2004.

2. Shri Ramnath Prabhu Learned Counsel with Mrs. Dimple Gohil, Advocate appearing on behalf of the appellant at the outset submits that the company M/s.Alok Industries Limited has availed Cenvat credit not wrongly but due to inadvertent mistake as the Cenvat credit pertains to their own spinning unit. The company voluntarily reversed the entire amount without raising any dispute therefore the nature of alleged offence is not that grave which invite any penal action against an employee of the company M/s.Alok Industries Limited. He placed reliance of the following judgments:-

a. Hubergroup India Pvt Ltd and Shri Suresh Nair v. CCE & ST –Daman, 2023 (1) TMI 688 - CESTAT AHMEDABAD

b. Hindustan Coca Cola Beverages Ltd. CCE & ST-Ahmedabad-III and Amit Radheshyam Gupta v. CCE, Ahmedabad-I, 2022 (3) TMI 452 - CESTAT AHMEDABAD

c. K.J. Gupta v. CCE & ST, Vadodara-I, 2022 (382) E.L.T. 812 (Tri. - Ahmd.)

d. Ran India Steels Pvt. Ltd., Unit-II v. CC & CE, Salem, 2016 (344) E.L.T. 440 (Tri. -Chennai)

e. J.V. Strips Ltd. v. CCE, Delhi-III, 2013 (294) E.L.T. 33 (Tri. - Del.)

2.1 He further submits that from the plain reading of Rule 26, it is manifest that penalty under Rule 26 is imposable if excisable goods have been rendered liable for confiscation under the Act or the Central Excise Rules. No contravention of the CEA or the CER is alleged or averred against the Appellant. Thus, the invocation of the provisions of Rule 26 of the CER against the present Appellant is mis-conceived and unsustainable. In this regard, he placed reliance on the following judgments:-

a. Gouri Shankar Poddar v. CCE & ST-Silvasa, 2024 (9) TMI 615 - CESTAT AHMEDABAD

b. Qumruzzama Khan, Rakesh Kumar Gupta, Director And Delight Cargo Carried v. CCE & ST-VAPI, 2023 (8) TMI 405 - CESTAT AHMEDABAD

c. Shah Tiles Pvt. Ltd. v. CCE & ST –Ahmedabad-III And D R Kumar v. CCE & ST -AHMEDABAD-III, 2024 (10) TMI 1459 - CESTAT AHMEDABAD

d. Yogesh Associates & Others v. CCE & ST –VAPI, 2024 (10) TMI 447 - CESTAT AHMEDABAD

e. CCE, Daman v. Pratap Bhanushali, 2013 (294) E.L.T. 427 (Tri. - Ahmd.)

2.2 He also submits that the company M/s. Alok Industries Ltd has undergone corporate insolvency resolution process under the the Insolvency and Bankruptcy Code, 2016 ("IBC") before the National Company Law Tribunal, Mumbai ("NCLT"). Pursuant to the CIRP, the Resolution Plan of the successful Resolution Applicant i.e., AIL was approved by NCLT. Without prejudice to the submissions set out above, it is submitted that pursuant to the NCLT order dated 08.03.2019 approving the Resolution Plan for the Company under IBC, and in light of the Supreme Court judgment in the case of Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Limited, 2021 SCC Online SC 313, all prior demands against the Company have been extinguished and resultantly, the Department cannot demand and recover any demand, interest or penalty from the Company. The company had also filed an appeal against the said impugned order bearing Excise Appeal No.10491 of 2013. This Hon'ble Tribunal has disposed off the said appeals as infructuous vide Final Order No. A/ 11269-11271 /2022 dated 20.10.2022.

3. Smt. Sunita Menon, Learned Superintendent(AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. I have carefully considered the submissions made by both the sides and perused he records. I find that the appellant was imposed personal penalty under Rule 26 for the wrong availment of the credit by the company M/s. Alok Industries Limited. On scrutiny of the facts related to the wrong availment of the credit by the company it is observed that the company M/s. Alok Industries Limited has inadvertently availed the Cenvat credit which is meant for their own other unit. In this case there cannot be any malafide intention for availament of such credit because the same was available to the same company though in different unit, therefore, there is no gain or loss to the company M/s. Alok Industries Ltd. The company on pointing out an error by the audit party reversed the entire credit voluntarily, therefore, in this fact when the company itself cannot be alleged any malafide intention its employee remotely cannot be implicated for penal action.

5. Therefore, I am of the very clear view that considering the overall facts of the present case and nature of alleged offence the personal penalty under Rule 26 cannot be imposed, therefore, the penalty is set aside. Appeal is allowed.

(Operative portion dictated in open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Bharvi