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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 657 of 2010

(Arising out of OIO-03-COMMISSIONER-RKS-AHD-I-2010 dated- 03/02/2010 passed by Commissioner of Central Excise-AHMEDABAD-I)

Vinod Bhadra **........Appellant**
Partner Of M/S, Bhadra Transformesrs, Polycast Compound,
Gidc, Umbergaon,
Surat, Gujarat

VERSUS

C.C.E.-Ahmedabad-i **......Respondent**
C. Ex Bhavan,
Nr Panjrapole & Polytechnic, Ambavadi,
Ahmedabad, Gujarat – 380015

WITH

Excise Appeal No. 694 of 2010 - Nissan Copper Ltd
Excise Appeal No. 696 of 2010 - Sanjay Mardia
Excise Appeal No. 743 of 2010 - Bablubhai Abdulbhai Khan
Excise Appeal No. 818 of 2010 - Satish B Agarwal
Excise Appeal No. 938 of 2010 - Rampratap M Sharma

Appearance:
Shri Sudhanshu Bissa, Advocate appeared for the Applicant
Shri J. A Patel, Superintendent (AR) for the Respondent

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

Final Order No. A / 11864 – 11869 /2022

DATE OF HEARING: 04.08.2022
DATE OF DECISION: 06.12.2022

RAMESH NAIR

These appeals are directed against the OIO No. 03/COMM/AHD-I/2010 dated 03.02.2010 whereby on the present appellants penalties under Rule 26 of Central Excise Act, 20002 were imposed on the charge of abatement in the offence of fraudulent availment of cenvat credit by M/s Shree Ram tubes Pvt Ltd. The role of the appellants in the present case are as under :-

1. Bablubhai Abdulbhai Khan is the proprietor of M/s. Palghar Golden Road Lines - This appellant is the proprietor of the transport company and the allegation on this appellant is that he facilitated clandestine clearance of

goods in the guise of job work challan. He has provided three blank LRs to M/s. Dhaval showing transportation of goods against the job work challan issued by the M/s. Dhaval Industries. Therefore, the appellant had allegedly facilitated M/s. Shree Ram Tubes to evade the duty of Rs.4,35,079/- therefore penalty of Rs.90,000/- was imposed on the appellant under Rule 26 of Central Excise Rules, 2002.

2. Nissan Copper Ltd - On this appellant the penalty was imposed under Rule 26 on the allegation that they have issued job work challan and cenvatable invoice for passing fraudulent cenvat credit to M/s. Shree Ram Tubes.

3.Shri Sanjay S Maradia, proprietor of Balaji Transport - This appellant is the director in M/s. Nissan Copper Ltd. and floated a fake transport company Balaji Transport which is used for showing the transportation of goods on the basis of which fraudulent cenvat credit was passed on.

4. Shri Vinod Bhadra, Partner of Bhadra Transportation-Umbergaon- This appellant is transporter who facilitated the fraudulent availment of cenvat credit to M/s. Shree Ram Tubes.

5. Shri Rampratap Mahadevprasad Sharma -This appellant is the proprietor of Riddhi Siddhi Roadways who has facilitated by showing the transportation of goods which was otherwise not transported for passing the fraudulent cenvat credit to M/s Shree Ram Tubes Pvt Ltd.

6. Shri Satish B Agarwal is a partner of Time and Space Haulers, New Delhi. Being the transporter he has also facilitated the passing of fraudulent credit to Shree Ram Tubes Pvt Ltd.

1.2 Being aggrieved by the impugned order the appellants filed the present appeals, seeking setting aside the penalties imposed under Rules 26 of the Central Excise Rules, 2002.

2. Shri Sudhanshu Bissa, Learned Counsel appeared on behalf of Shri Bablubhai Abdulbhai Khan however none appeared for others. Learned Counsel submits that the appellant Shri Bablubhai Abdulbhai khan was not the proprietor at the relevant time. His father Late. Shri Matiullah Khan was proprietor of M/s Palghar Golden Roadlines who has expired in March, 2007 whereas the period involved in this case is June, 2006. Therefore, SCN ought not to have been issued to the present appellant Shri Bablubhai Abdulbhai Khan. Consequently, there is noquestion of proposing or imposing penalty under Rule 26 of Central Excise Rules,2002

3. Shri J. A Patel, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order which are related to the present appellant.

4. I have carefully considered the submission made by both sides and perused the records. The penalties on the present appellants were imposed under Rule 26 of the Central Excise Rules, 2002 for the different role for the charge of abating the fraudulent availment of cenvat credit by Shree Ram Tubes Pvt Ltd. M/s. Shree Ram Tubes Pvt Ltd and many other noticees have got their case settle under SVLDRS. Therefore, the main case of M/s. Shree Ram Tubes Pvt Ltd could not be decided on merit as the appeal was dismissed as withdrawn.

4.1 In the present appeals as regard the appellant Shri Bablubhai Abdulbhai Khan it was found that this appellant is the Proprietor of M/s. Palghar Golden Roadlines with effect from March 2007 before that his father Late Shri Matiullah was the Proprietor of M/s. Palghar Golden Road Lines. However, the appellant was authorized for all the activities on behalf of Palghar Golden Road Lines and his statement dated 30.08.2007 was recorded wherein he has admitted regarding issuance of blanks LRs. Therefore, he was directly involved in the overall offence of facilitating wrong availment of credit to M/s. Shree Ram Tubes Pvt Ltd. For imposition of penalty under Rule 26 the status of the person is not relevant whereas if any person is involved in any capacity for evading of duty or wrong availment of cenvat credit his offence is punishable under Rule 26 of Central Excise Rules, 2002. Therefore, merely because he was not the proprietor of Palghar Golden Roadlines at the relevant time but he was otherwise actively involved in the modus operandi of wrong availment of Cenvat credit by M/s Shree ram Tubes Pvt Ltd.

4.2 In the appeal of M/s.Nissan Copper Ltd, Shri Sanjay S Maradia, Proprietor of Balaji Transport & Shri Vinod Bhadra, partner of Bhadra Transport their roles are interlinked. Though it was shown that M/s. Nissan Copper have imported copper melting scrap, ingots, wire rods etc. purchased on high sea sale basis but the goods were not brought to their factory, instead they sold such inputs to various buyers situated at Bhiwandi, Pune etc. Investigation also revealed that M/s. Nissan Copper shown the purchase of several consignment of re-melted copper ingots / wire rods from importer of Delhi which cleared from ICD Tuglaqhabad and availed cenvat credit on the strength of bills of entry. It was shown to have sent some of such consignment to M/s. Shree Ram Tubes Pvt Ltd for job work as well as issued cenvatable invoices to Shree Ram Tubes Pvt Ltd for sale of such imported consignments of copper ingots and coppers wires without physical movement of such goods.

4.3 Shri Sanjay Shantilal Maradia, Vice Chairman of M/s. Nissan Copper in his statement dated 31.08.2007 admitted that actually no goods were transported from M/s. Nissan copper (unit-1 & unit-2) to M/s. Shree Ram Tubes Pvt Ltd and only documents were given by them. By this it was established that there is only paper movement whereas no goods were supplied by M/s Nissan Copper to M/s. Shree Ram Tubes Pvt Ltd. Most of the transportation of consignment covered in the central excise invoices as well job work challan issued by M/s. Nissan Copper was shown as transported through two transporters namely M/s. Bhadra Transport, Umbergaon and M/s. Balaji Transport, Silvassa. The investigation also reveals that M/s Balaji Transport was the fake firm created by Shri Sanjay Shantilal Maradia,Vice chairman of M/s. Nissan Copper. It is also the fact that Shri Sanjay S Maradia issued 5 Bogus LRs of M/s Balaji Transport Showing transportation of consignment from M/s. Nissan Copper to M/s. Shree Ram Tubes Pvt Ltd against the job work challans. As per the above facts, the appellant M/s. Nissan Copper Ltd, Shri Sanjay S Maradia, Proprietor of Balaji Transport & Shri Vinod Bhadra were clearly involved in facilitating fraudulent cenvat credit to M/s. Shree Ram Tubes Pvt Ltd therefore, penalty under Rule 26 was rightly imposed.

4.4 Regarding appellant Shri RamPratap Mahadevprasad Sharma, I find that he was the proprietor of Riddhi-Siddhi Roadways, Ghaziabad as per his statement dated 02.08.2007.He admitted that one LR for transportation of re-melted copper ingots and copper wires was issued showing the clearance by D.V Bakshi. They issued LRs but without transportation of goods.Thus, fake LR was issued by Shri RamPratap Mahadevprasad Sharma.Thus, he aided and abated in fraudulent availment of cenvat credit to M/s. Shree Ram Tubes Pvt Ltd.

4.5 Regarding the appeal of Shri Satish B Agarwal, Partner of Time and Space Haulers, New Delhi. I find that Shri Agarwal in his statement dated 24.08.2007 in the capacity of partner of M/s Time & Space Hauler stated that 4 bogus LRs were issued by his employees working in Mumbai without transporting re-melted copper ingots and copper wires from Delhi to various destination in Gujarat / Daman/ Vapi on commission basis. Thus, by arranging to issue 4 fake LRs, Shri Satish B Agarwal aided and abated M/s. Shree Ram Tubes Pvt Ltd in fraudulent availment o cenvat credit .

4.6 As regard the quantum of penalty imposed on the appellants on perusal of the records, I find that penalty amount in respect of each appellant is much lower than the duty involved in the documents dealt with by these appellants. Therefore, the adjudicating authority with proper application of mind imposed reasonable penalty on each appellant. Therefore, there is no scope for reduction in the amount of penalty.

4.7 The identical issue was considered by this Tribunal in the caseof M/s. Ronak Chaudhari vide final order No. A/12576/2021 dated 02.12.2021. The penalty under Rule 26 was upheld except the reduction in the penalty on the basis of facts and circumstances of that case.

5. As per my above discussion and finding all the appellant having direct and active role in entire modus operandi of wrong availment of cenvat credit by M/s. Shree Ram Tubes Pvt Ltd, particularly when M/s. Shree Ram Tubes Pvt Ltd has admitted the liability of wrongly availed cenvat credit. Therefore, in my considered view the penalties imposed on the appellant is correct hence, the same is upheld. Appeals are dismissed.

(Pronounced in the open court on 06.12.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

geeta