(2021) 12 CESTAT CK 0020

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 12167 Of 2018

M/s Ronak Chaudhari APPELLANT

Vs

C.C.E. And S.T. Surat-I RESPONDENT

Date of Decision : 02-12-2021

Acts Referred:
Central Excise Rules, 2002 — Rule 26

Citation : (2021) 12 CESTAT CK 0020

Hon'ble Judges : Ramesh Nair, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

1. The appeal filed by the appellant against the imposition of penalty of Rs. 2 Lakh in terms of Rule 26 of Central Excise Rules, 2002, the penalty was

imposed consequent to the fraudulent availment of cenvat credit without receipt of the inputs by M/s Pramukh Copper (P) Ltd. Against the

confirmation of demand, in respect of M/s Pramukh Copper (P) Ltd., the appellant company has availed the SVLDR Scheme 2019.

2. None appeared on behalf of the appellant despite notice.

3. Shri R. Parekh, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that as

regard the demand case against the main company M/s Pramukh Copper (P) Ltd. attained finality. Against the confirmation of demand though the

appellant was before this Tribunal under Excise Appeal No. 12166 of 2018 however the company got their case settled under SVLDRS-2019 and the

appeal was dismissed by this Tribunal vide Final order No. 11017 of 2021. Therefore, the penalty imposed on the Director who was the overall incharge of the Company and under whose supervision entire fraud has taken place is correct. Therefore, the penalty should be maintained and appeal

should be dismissed.

4. I have carefully considered the submission made by Learned Authorized Representative and perused the records. I find that as regard the offence

against the company M/s Pramukh Copper (P) Ltd. it attained finality as the company has admittedly got the demand case settled before the

SVLDRS-2019. Now in the present appeal, the only issue is that whether the appellant being a Director of the Company was rightly imposed penalty

under Rule 26. The Learned Commissioner (Appeals) given the following finding for upholding the penalty.

â?¢ Being the director of the company, he had ful knowledge about what was going on in the factory. He was aware of the frauds and it

was at his behest that the frauds were being committed.

â?¢ Further, he knew about the non-receipt of the 8mm copper rods in his factory and knew that only invoices were reaching the factory

while the goods were being diverted somewhere else. He knew that the company was availing the CENVAT Credit on these goods even when

they were not reaching the factory.

â?¢ He was fully aware of the fact that there un-accounted goods present in the factory. He knew that these goods were offending in nature

and were to be cleared in a clandestine manner. While keeping the unaccounted goods in the factory, he knew that they were contravening

the provisions of rules and statutes of the central excise.

â?¢ It was at his behest that the goods were removed in clandestine manner under the invoices prepared by Praveen Tiwari.

â?¢ He knew that a parallel set of invoices were being maintained where one set was â??officialâ?, the other set was totally off the record

(the hand written invoices seized during the search proceedings) and that such method was being adopted with the intent of evading

payment of duty.

5. In view of the above findings, it is clear that since the appellant company has fraudulently availed the credit without receipt of the goods, it is not

possible without the knowledge of the Director, therefore, the Director Shri Ronak Chaudhari is directly involved in the fraudulent availment of credit by his company. Therefore, he is correctly liable for penalty under Rule 26. However, looking to the quantum of evasion and overall facts and

circumstances of the case, I am of the view that the appellant deserves some leniency. Accordingly, I reduce the penalty from Rupees Two Lakh to

Rupees One Lakh. The impugned order stand modified to this extent. The appeal is partly allowed in the above terms.

(Dictated and pronounced in open court)

