CUSTOMS,EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH : COURT NO. 3

EXCISE Appeal No. 11095 of 2019-SM

[Arising out of Order-in-Original/Appeal No SUR-EXCUS-000-COM-022-18-19 dated 01.03.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

Mahesh Chowdhary ...Appellant

A-202, Gokul Dham, Parvat Patia, Puna
Khabharia Road
SURAT
GUJARAT

VERSUS

C.C.E. & S.T.-Surat-i ...Respondent

NEW BUILDING...OPP. GANDHI BAUG,
CHOWK BAZAR,
SURAT,
GUJARAT
395001

APPEARANCE:

Present For the Appellant : Shri S. Suriyanarayanan, Advocate

Present For the Respondent: Shri Dinesh Prithiani, Assistant Commissioner (Authorised Representative)

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

FINAL ORDER NO.A/10241 / 2022

DATE OF HEARING/DECISION : 02/03/2022

RAMESH NAIR

In the present case, the appellant was imposed penalty under Rule 25(1) (d) of Central Excise Rules, 2002 for an offence of preparation of Cenvatable invoices for passing of fraudulent CENVAT credit.

2. Shri S. Suriyanarayanan, learned counsel appearing on behalf of the appellant submits that the penalty was imposed on individual person. He is neither a manufacturer, producer of goods or dealer of any goods. In this case, the invoice was issued in the name of M/s Viraj Textiles. Therefore, since the appellant is neither manufacturer, producer nor dealer of goods,

cannot be imposed penalty under Rule 25(1) (d) of Central Excise Rules. He placed reliance on the following judgments:

(1) 2010 (252) E.L.T. 395 (Tri. Chennai)-NGA Steels PVT. LTD. Versus Commissioner of C. Ex., Salem affirmed in 2017 (350) E.L.T. 51 (Mad.) NGA Steels (P) LTD. Versus CESTAT, Chennai

(2) 2013 (290) E.L.T. 223 (Tri. - Del.)-Shri Balaji Flexipacks Versus Commissioner of Central Excise, Delhi-I affirmed in 2013 (290) E.L.T. 200 (Del.)- Commissioner OF Central Excise, Delhi-I Versus Balaji Trading Co.

(3) 2014 (313) E.L.T. 209 (Tri. - Mumbai) - Rashtriya Chemicals & Fertilisers LTD. Versus C.C.E. & S. T., LTU, Mumbai

(4) 2014 (314) E.L.T. 411 (Tri. - Mumbai) -Sharda Synthetics LTD. Versus Commissioner Of Central Excise, Raigad

(5) 2017 (349) E.L.T. 765 (Tri. - Mumbai)- Pharmaica Versus Commissioner Of Central Excise, Thane-II

(6)2018 (362) E.L.T. 278 (Tri. Del.)-Mohid Bearing Agency Versus Commissioner OF C. EX., CUS. & CGST, Delhi-I

3. Shri Dinesh Prithiani, learned Assistant Commissioner (Authorised Representative) appearing on behalf of the Revenue reiterated the findings of the impugned order. He also placed reliance on the following judgments:

1. 2011 (266) ELT 436 (P & H) - Vee Kay Enterprises Vs. Commi. Central Excise

2. 2018 (359) ELT 110 (P & H) - Kay Iron Works (Jorian) P. Ltd. Vs. CCE, Delhi-IV

3. 2014 (304) ELT 598 (Tri.-Chennai) - Sam Turbo Industries Ltd. Vs. CCE, Coimbatore

4. 2014 (309) ELT 241 (P&H) - MS Metals Vs. CCE, Haryana

5. 2013 (289) ELT 302 (Tri.-Del.) - Shripal Aggarwal Vs. CCE, Rohtak

4. On careful consideration of the submissions made by both the sides and perusal of records I find that there is an allegation on the appellant that the appellant has prepared the invoice for passing of fraudulent Cenvat Credit. The invoices were issued from the firm M/s Viraj Textiles. The proprietor of Viraj Textiles is Shri Radeshkumar Bhupendra Desai who is also penalized separately. The penalty on the appellant is imposed under rule 25(1)(d) of Central Excise Rules, 2002 which is reproduced below:

Rule 25. Confiscation and penalty. –

(1) Subject to the provisions of section 11AC of the Act, if any producer, manufacturer, registered person of a warehouse (or an importer who issues an invoice on which CENVAT credit can be taken) or a registered dealer:-

(a) removes…

(b) ….

(c) …..

(d) contravenes any of the provisions of these rules or the notifications issued under these rules with intent to evade payment of duty,

then, all such goods shall be liable to confiscation and the producer or manufacturer or registered person of the warehouse or a registered dealer, as the case may be, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention of the nature referred to in clause (a) or clause (b) or clause (c) or clause (d) has been committed, or [rupees two thousand], whichever is greater.

As per the plain reading of the above rule it is clear that penalty under Rule 25(1)(d) can be imposed only on certain persons such as manufacturer, producer of goods or registered dealer of the goods. In the present case, the invoice was issued from the firm M/s Viraj Textiles which is a proprietary firm and the proprietor is Shri Radeshkumar Bhupendra Desai. In this case, the invoice was prepared by the appellant who is neither a dealer nor manufacturer or producer of goods. Therefore, the penalty under rule 25(1)(d) cannot be imposed on the appellant. This issue has been considered in various judgments cited by the learned counsel for the appellant according to which penalty under rule 25(1)(d) cannot be imposed on the person who is neither a manufacturer, producer or dealer of goods. Therefore, in my considerate view, penalty was wrongly imposed under rule 25(1)(d) of the Central Excise Rules, 2002 and the same deserves to be set aside. Accordingly, the impugned order is set aside. Appeal is allowed.

(Dictated and pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Diksha