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

REGIONAL BENCH – COURT NO. 03

EXCISE Appeal No. 12273 of 2019

[Arising out of OIO-AHM-EXCUS-003-COM-003-19-20 dated 10/07/2019 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-III]

Balaji Logistics **.....Appellant**
A-266, Sayajipura Market, Nr. Apmc Market,
Nh 8, Vadodara,
Gujarat

VERSUS

C.C.E. & S.T.-Ahmedabad-iii **.....Respondent**
Custom House... 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura,
Ahmedabad,
Gujarat-380009

WITH

EXCISE Appeal No. 12428 of 2019

[Arising out of OIO-AHM-EXCUS-003-COM-003-19-20 dated 10/07/2019 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-III]

Topline Switchgear P Ltd **.....Appellant**
Survey No. 797/1p, Opp. Riddhi Plastic,
Vadsar-Kalol Road, Vill- Vadsar,
Tal-Kalol
Gandhinagar, Gujarat

VERSUS

C.C.E. & S.T.-Ahmedabad-iii **.....Respondent**
Custom House... 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura,
Ahmedabad,
Gujarat-380009

AND

EXCISE Appeal No. 12960 of 2019

[Arising out of OIA-AHM-EXCUS-003-COM-003-19-20 dated 10/07/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-III]

RIDDHI STEEL & TUBE LTD **.....Appellant**
83-84, Piprej Pirana Road
Ahmedabad,
Gujarat

VERSUS

C.C.E. & S.T.-AHMEDABAD-III **.....Respondent**
Custom House... 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura,
Ahmedabad,
Gujarat-380009

APPEARANCE:
None appeared for the Appellant

Shri. Tara Prakash, Assistant Commissioner (Authorized Representative) for the Respondent

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

FINAL ORDER NO.A / 11854-11856 /2022

DATE OF HEARING:24.11.2022
DATE OF DECISION: 01.12.2022

RAMESH NAIR

These appeals are directed against order in original passed by the Learned Commissioner (Appeals), whereby the present appeals were imposed penalty under Rule 26(2)(i) on the charge that these appellants have facilitated the fraudulent availment of Cenvat Credit to M./s Archon. The appellants being aggrieved by the imposition of penalty under Rule 26(2)(i) of Central Excise Rules, 2002 filed the present appeals.

2. When the matter was called out, none appeared on behalf of the appellant. From the record, it is observed that these appeals were listed on various dates i.e. 20.10.2022, 06.10.2022, 11.08.2022, 30.06.2022, however no one appeared for the hearing, therefore, the appeals are taken up for disposal.

3. Shri Tara Prakash, Learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order with regard to the imposition of penalty on the present appellants. He submits that against the same impugned order in respect of similarly placed appellant M/s Samir Transport Company and S. B Roadlines, this Tribunal has upheld the penalty vide order No. A/11313-11314/2022 dated 31.10.2011, therefore, in this case also applying the same ratio penalty is sustainable and appeals are liable to be dismissed.

4. I have carefully considered the submission made by learned AR and perused the records. I find that on all the appellants penalty under Rule

26(2)(i) of Central Excise Rules, 2002 was imposed for the charge of facilitating on the process of fraudulent passing of credit to M./s Archon. The Adjudicating Authority for imposition of penalty given the following finding:

- **Balalji Logistic**

> *"In this case the penalty was imposed on the appellants for the reason that they have provided the blank LR, which has supported M./s Archon to avail Cenvat credit on the strength of invoices issued by M/s Accord in fraudulent manner. Therefore, the appellants has rendered himself liable to penalty."*

- **Topline Switchgear P Ltd:**

> "*On scrutiny of three invoices showing clearance of 'Hotdip Galvanised Steel Structure' issued during January, 2013 by M/s Topline to M/s Archon withdrawn under panchnama dated 27.03.2015, it was noticed that there was no mention about the dispatch documents in the invoices. Therefore, a statement dated 27.03.2015 of Shri Prajapati Kalpesh Ranchhodbhai, Excise Executive and authorized signatory of M/s Topline recorded wherein he inter-alia stated that he was looking after all Central Excise related matters of M/s Topline, including issuing of Central Excise invoices etc; that they had not supplied any goods to M/s Archon under the Invoices No. Ex-518 dated 23.01.2013, EX-521 dated 25.01.2013 and Ex- 525 dated 28.01.2013, shown to have issued by them; that these invoices were only paper transactions to facilitate M/s Archon to avail CENVAT Credit wrongly. The said statement of Shri Ranchhod bhai was backed by Shri Jitendrabhai Manilal Patel, Sr. Manager of M/s. Topline and Shri Shailesh M. Patel, Director of M/s Topline in their respective statement dated 27.03.2015 and 18.04.2017."*

- **Ridhhi Steel:**

> "*On scrutiny of Sales Invoice Books for the period 2013-14 & 2014-15 withdrawn under Panchnama dated 27.03.2015, it was observed that M/s Riddhi was showing clearance of H. R. Coil (input removed as such) to M/s Archon during 2013-14. Further, as per the invoices M/s Safari Carriers were shown as transporter. On scrutiny of Transport documents withdrawn under the aforementioned panchnama issued by M/s Safari Carriers for transport of H. R. Coil from M/s Riddhi to M/s Archon, it was observed that there were no transport bills in relation to H. R. Coil & Slitted Coil from M/s Riddhi to M/s Archon available on record However, other LR transaction of Pipe from M/s Archon to M/s Riddhi through M/s Safari was mentioned on the bill raised by M/s Safari to M/s Riddhi. Further, there was no test report found available in the record of M/s Archon withdrawn under panchnama dated 09.09.2014 and 11-12/09/2013 for the goods mentioned on the aforesaid*

> *invoices issued by M/s Riddhi against the receipt of H R Coil & Slitted Coil received in relevant period and despite CENVAT Credit taken.*
>
> *Besides, five invoices bearing Sr. No. 1676, 1677, 1682, 1683 & 1684 all dated 26.08.2013 shown as issued by M/s Riddhi for supply of Slitted Coil to M/s Archon was found in a courier cover along with its delivery challans and consignment notes issued by M/s Safari which were withdrawn under panchnama dated 11/12-09-2013 at the factory premises of M/s Archon and on being enquired about the material mentioned on the said invoices, Shri Sunil Mishra, Director (Projects) in M/s Archon has stated that they have not received the material mentioned on the said invoices, viz Slitted Coil but only Invoices were received by them from M/s Riddhi"*

From the above findings, it is clear that as regard Balaji Logistics they have issued blank LRs**,** which were used for issuing cenvatable invoices without supply of the goods. On the identical facts on two parties against the same impugned order in the case of the M/s Samir Transport Company and S. B Roadlines, on the identical offence this Tribunal vide Order dated 31.10.2022 upheld the penalty. Therefore, in the present case also the appellant was rightly imposed the penalty under Rule, 26(2)(i). As regard Topline Switchgear P Ltd and Riddhi Steel & Tube Ltd., as per the facts discussed by the Adjudicating Authority, it was found that only invoices were issued and no goods were supplied. Therefore, it is establish that all the three appellants have helped M./s Archon for availing the fraudulent Cenvat credit. Accordingly, I do not find any infirmity in the impugned order imposing penalty under Rule, 26(2)(i) of Central Excise Rules, 2002.

5. Hence, the penalties are upheld, appeals are dismissed.

(Pronounced in the open Court on 01.12.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

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