

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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 10275 of 2013 - DB

(Arising out of OIA-PJ-373-374-VDR-I-2012 dated 24/12/2012 passed by Commissioner of Central Excise-VADODARA-I)

Azaz Lokhandwala Director

.....Appellant

Schurter Electronics India Pvt Ltd,
Plot No E/59/60/61 Epip Zone,
Gidc Estate Manjusar Taluka Savli
Vadodara, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-i

.....Respondent

1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat-390007

APPEARANCE:

Shri Saurabh Dixit, Advocate for the Appellant

Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR**

Final Order No. 11710/2023

DATE OF HEARING: 24.04.2023

DATE OF DECISION: 18.08.2023

RAMESH NAIR

This appeal is filed by Shri Azaz Lokhandwala who is director of Schurter Electronis (India) Pvt. India Pvt. Ltd challenging the imposition of penalty of Rs 1 Lakh under Rule 26 of Central Excise Rules, 2002. As regard the case of demand of duty against the company M/s Schurter Electronis (India) Pvt. Ltd the same was settled under Sabka Vishwas (Legacy Dispute Resolution Scheme), 2019 and the appeal stand dismissed as deemed withdrawn by this Tribunal vide final order No. A/11724/2021 dated 30.04.2021. The penalty against the director was imposed on the ground that he was aware of all the facts regarding payment of duty without obtaining authorization from the development commissioner and it was also

known that such DTA entitlement requires authorization as the said authorization was obtained by them for the earlier period therefore knowingly he was involved in short payment of duty in respect of DTA clearance without permission.

2. Shri Saurabh Dixit, Learned Counsel, appearing on behalf of the appellant at the outset submits that the short payment of duty is due to inadvertence on the part of the company which is procedure lapse. Therefore for this reason personal penalty cannot be imposed for any procedure lapse on the part of the appellant he further submits that in show cause notice the goods penalty was proposed under Rule 25(1)(d), whereas, in the adjudication order penalty was confirmed under Rule 26 for this reason also penalty is not sustainable.

3. Shri A.K. Samota, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by the both the sides and perusal on record, we find that in the show cause notice there is no charge made against the director of the company and straight way the penalty under Rule 25(1)(d) of Central Excise Rules, 2002 was proposed however in the Adjudication order the penalty was confirmed under Rule 26 of Central Excise Rules, 2002. The adjudicating Authority has given the findings that merely by motioning wrong provision the penalty cannot be set aside.

4.1 In this regard we find that it is not only wrong rule mentioned in the show cause notice but even there is no effective charge was made holding the present appellant liable for penalty under either rule 25 or Rule 26.

4.2 Moreover we find that in the present case there is a procedural lapse on the part of the company the goods were cleared on payment of duty. The only lapse is that the appellant could not obtain the permission for the quantity cleared in DTA. There is no suppression of facts in the entire case as the goods were cleared by on the appropriate invoice and on payment of duty therefore even though if there is a short payment of duty for which the penalty cannot be imposed on the director of the company. For this reason we are of the opinion that penalty of Rs. 1 Lakh imposed to the director of the company is not sustainable.

5. Accordingly, the penalty is set aside appeal is allowed.

(Pronounced in the open court on 18.08.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)