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

REGIONAL BENCH – COURT NO. 03

Excise Stay Application No. 1144 of 2010
Excise No. 1277 of 2010

[Arising out of OIO-15-BVR-COMMISSIONER-2010 passed by Commissioner of Central Excise-BHAVNAGAR]

M/s. Atul Hiralal Khatri **....Appellant**
Virali Exports, G-1, Shivanand Apartments,
Behind Bhulka Bhavan School, Near Jain Wadi, Adajan,
Surat, Gujarat.

VERSUS

C.C.E. & S.T.-Bhavnagar **......Respondent**
Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat-364001

APPEARANCE:
Shri K.I Vyas, (Advocate) for the Appellant
Shri. Govind Jha, Authorized Representative for the Respondent

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

FINAL ORDER NO.A/ 12237 /2019

DATE OF HEARING: 18.11.2019
DATE OF DECISION:18.11.2019

RAMESH NAIR

The Background of the case is that this Tribunal vide Stay Order No. S/1217-1218/WZB/AHD/2011 dated 29.08.2011 disposed of the Stay Applications including the present applications with the condition of the pre-deposit of 50% amount of duty against the main appellant M/s. Virali Exports and subject to payment of the 50% of the duty amount. The Stay Applications of all other co-appellant including the present one were allowed. The main appellant M/s. Virali Exports did not comply the direction of 50 % pre-deposit, therefore, their appeal has been dismissed. Since, the stay order to the present applicant was subject to payment of 50% by the main appellant, therefore, this application is taken separately for disposal.

2. Sh. K.I. Vyas, Ld. Counsel appearing on behalf of the appellant summits that as per the Gujarat High Court judgment in the case of Vishnu Choitram Bhatia vs. Union of India-2015 (325) ELT 33 (Guj.) for non compliance of the condition of pre-deposit by the main appellant the co-appellant's Stay Application which was already allowed cannot be disturbed. We further submits that in the present case the penalty was imposed on the partner under Rule 26 of Central Excise Rule, 2002. He submits that the main appellant has already been penalized i.e. partnership firm, therefore separate penalty on partner should not be imposed. He relied upon the judgment in the case of Hon'ble Gujarat High Count in the case of Pravin Shah-2014 (305) ELT 480 (Guj.), Mohammed Farookh Mohammed Ghani Vs. C.C.E. & C., Surat-II-2010 (259) ELT 179 (Guj.). He submits that on merit also the appeal deserved to be allowed.

3. Shri. G. Jha, Ld. Superintendent, Authorized representative appearing on behalf of the Revenue submits that since the pre-deposit order to the main appellant was conditional, therefore, the co-appellant cannot get waiver of pre-deposit. As regard merit he submits that the Madras High Court has passed the judgment in the case of N. Chittaranjai Vs. CESTAT, Chennai-2017 (350) ELT 78 (Mad.) that penalty on partner and partnership firm can be imposed simultaneously.

4. Heard both the sides and perused the record. We find that since on merit the jurisdictional Gujarat High Court in the cited judgment held that simultaneously penalty on Partner and partnership firm should not be imposed. The appellant has made out the prima facie case of waiver of pre-deposit, therefore the Stay Application is allowed. With the consent of both the side, we are taking up the appeal itself for disposed. Without going into the facts of the case, we observed that in the present case penalty on the partner and partnership firm was imposed under simultaneously. The Hon'ble Gujarat High Court in the case of Mohammed Farookh Mohammed Ghani and Parvin Shah (supra) held that once partnership firm has been penalized, separate penalty is not impossible upon partner of the firm because the partner is not separate legal entity and cannot be equated with employee of firm if no specific rule attributed to the partner. As regard Hon'ble Madras High Court judgment in the case of N. Chittaranjai (supra) cited by the Ld. AR though it is a conflicting

judgment but we being under State of Gujarat Bond by the Hon'ble jurisdictional Gujarat High Court judgment. Considering the judgments of jurisdictional High Court, we set aside the impugned order and allow the appeal

(Dictated Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Prachi