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

REGIONAL BENCH- COURT NO. 2

Excise Appeal No. 12303 of 2013-SM
(Arising out of OIO-22/OA/CEX/COMMR/BRC-I/2013 Dated- 16/04/2013 passed by Commissioner of Central Excise and Service Tax-VADODARA-I)

Shakil Zakaria Memon **........Appellant**
Plot No 71/71a/72/73/74/83
Gidc, Nandesari, VADODARA
GUJARAT

VERSUS

C.C.E. & S.T.-Vadodara-i **.......Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat-390007

APPEARANCE:
Shri. R K Tomar, Advocate for the Appellant
Shri. P Ganesan, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

Final Order No. A/ 12363 /2023

DATE OF HEARING:25.10.2023
DATE OF DECISION:27.10.2023

C. L. MAHAR

The brief facts of the matter are that in present matter the main noticee was M/s. Coromandel International Limited and the appellant give the relevant time was working as the director of the previous firm namely Liberty Phosphate Limited. M/s. Liberty Phosphate Limited was brought over by M/s. Coromandel International limited in the year 2012-2013 and thus they step into the issues of M/s. Liberty Phosphate Limited who were the main appellants. A show cause notice dated 07.05.2012 was issued to M/s. Liberty Phosphate Limited for denial of benefit of exemption notification for Magnesium Sulphate which was being manufactured by the main appellant firm in amount of Rs. 88,31,300/- of Central Excise Duty was demanded from the main appellant and the present appellant was given notice for penalty under Rule 26 of the Central Excise Rules, 2002. The matter was adjudicated by the learned Commissioner vide Order-In-Original dated 16.04.2013 wherein all the charges against the main noticee namely M/s. Liberty Phosphate Limited now M/s. Coromandel International Ltd. got confirmed. A penalty of Rs. 10,00,000/- have been imposed on the appellant under Rule, 26 of the Central Excise Rules, 2002.

2. The appellant are before us against aforementioned impugned Order-In-Original against the imposition of penalty. The learned Advocate appearing for the appellant submitted that the main appellant M/s. Coromandel International Limited has availed the benefit of the resolution of the dispute under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. It has been the submission of learned Advocate on behalf of the appellant that he was not involved in the face of the main appellant since the year 2013-2014 and was not even aware that main appellant M/s. Coromandel International Limited have got the matter resolved under SVLDRS Scheme, 2019 and therefore he could not apply for availing the benefit of the dispute resolution scheme. It is further in submitted that since the main appellant having resolved the demand of duty under SVLDRS Scheme, 2019. The benefit of the same should also be extended to the appellant. It has been contended that only allegation against the appellant is that he was director during the relevant period and Rule 26 of the Central Excise Rules, 2002 has wrongly been invoked against him. Since, he was only a paid employee and the issue was only interpretational and therefore he should not have been imposed penalty under Rule 26 of the Central Excise Rules, 2002.

3. The learned Advocate appearing for the appellant has submitted that this Tribunal has already been held that that once demand of duty against

the main party is resolved under the SVLDRS Scheme, 2019. There is no cost remains for imposing penalty the director of the firm. The learned advocate has relied upon the following two decisions of this Tribunal:-

> *"15. The Appellant herein relies on the following precedents, which are enclosed as EXHIBIT-C and D respectively: -*
>
> > *(a) Shri V.K. Aggarwal & Shri J.K. Aggarwal Vs. Commissioner of Central Excise, CGST & Central Excise, New Delhi reported vide 2023 (9) TMI 178 - CESTAT New Delhi;*
> >
> > *(b) M/s. Seimens Ltd. (Formerly known as M/s. Morgan Construction Co. Pvt. Ltd.), Mr. Sunil Chellani Vs. Commissioner of Central Excise, Mumbai-Ill reported vide 2023 (5) TMI 377 CESTAT, Mumbai."*

4. I have heard both the sides and of the view that since the demand of the duty has already been settled under SVLDRS Scheme and there is no cause for imposition of penalty under Rule 26 of the Central Excise Rules, 2002 on the director of the company who has been a paid employee and issue of the demand was primarily of interpretation of the exemption notification. I also follow the decision in case of V.K Aggarwal & Shri. J.K Aggarwal vs. Commissioner of Central Excise, CGST and Central Excise New Delhi reported in 2023 (9) TMI 178 -CESTAT-New Delhi, the relevant extract of the same is reproduced here below:-

> *"14. The judgements so referred clearly says that when the demand of duty has been settled under SVLDR Scheme, the imposition of penalty would fail on simple ground that if the appellants had applied under the said scheme, they would have paid 'nil' duty, in view of the relief available to them under Section 124(1)(b) of the Finance Act. This Tribunal in similar circumstances has set aside the said penalty imposed in the case of Shri B.V. Kshatriya (supra). The relevant paragraph is given below:-*
>
> > "3.2 Thereafter, on introduction of the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019, the main noticee, M/s. Bhikusa Papers Pvt. Ltd and other co-noticees settled the dispute under SVLDRS, but the present appellant, who is a director of the main noticee failed to opt under the Scheme. However, without considering the directions given in the remand order and allowing cross examination, Commissioner has imposed penalties on the appellant, just for reason that the appellant did not settle the issue along with others under SVLDRS. Such approach of Commissioner cannot be justified.

Even if the appellant has not approached under SVLDRS, Commissioner should have adjudicated as directed by Tribunal. No justification for imposition of penalty on reconsideration as per order of Tribunal is forthcoming."

15. I find no reasons to differ with the aforesaid view of the Tribunal and, therefore, I set aside the impugned order and the penalty imposed on the appellants. Both the appeals are accordingly allowed."

5. Following the above decision of this Tribunal, I allow the appeal.

(Pronounced in the open court on 27.10.2023)

(C. L. MAHAR)
MEMBER (TECHNICAL)

PRACHI