

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

Appeal No. E/11108/2018-SM

[Arising out of OIO-SUR-EXCUS-000-COM-015-17-18 dated 11.12.2017 passed by Commissioner
(Appeals) Surat-I]

M/s Shri Suresh Chhajuramji Singal Appellant

Vs

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

Represented by:

For Appellant: Shri Willingdon Christian (Advocate)

For Respondent: Shri. T.K. Sikdar (A.R.)

CORAM:

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

Date of Hearing/Date of Decision:28.12.2018

Final Order No. A/ 12939 /2018

Per: Ramesh Nair

The limited issue involved is that whether the appellant is liable for consolidated penalty under Section 112B of Customs Act, 1962 and Rule 209A of Central Excise Rules, 1944.

2. Sh. Willingdon Christian, Ld. Counsel appearing on behalf of the appellant, at the outset submits, that the consolidated penalty under different sections and/ or rules cannot be imposed. He submits that the very same issue has been decided by this Tribunal in the case of R.G. Agarwal 2007 (210) ELT 274 (Tri. Amd.) which has been affirmed by the Hon'ble High Court of Gujarat which is reported at 2009 (234) ELT 215 (Guj.). He relied upon the decision of this Tribunal in the case of Sunshine Overseas vs CCE 2011 (263) ELT 617 (T) which has been affirmed by the Hon'ble Gujarat High Court reported at 2013 (296) ELT A122 (Guj.). He submits that in view of settled legal position, consolidated penalty imposed by the lower authority in the present case

under Section 112B of Customs Act, 1962 and Rule 209A of Central Excise Rules, 1944 is incorrect and illegal.

3. Shri T. K. Sikdar, Ld. Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. I have carefully considered the submission made by both the sides and perused the records. There is no dispute that the adjudicating authority has imposed the consolidated penalty under Section 112B of Customs Act, 1962 and Rule 209A of Central Excise Rules, 1944. On the very similar issue whether the consolidated penalties were imposable under different provision of law, the Hon'ble Gujarat High Court upholding the order of this Tribunal confirmed that the consolidate penalty under two different provision of law cannot be imposed in the case of R.G. Agarwal and Sunshine Ovserseas (supra). Following the settled position of law in the above cited decisions, I am of the clear view that a consolidate penalty under two provision of Central Excise Act and Customs Act cannot be imposed, therefore, the penalty is set aside. Appeal is allowed with consequential relief, if any, in accordance with law.

(Dictated and Pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

Neha