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

REGIONAL BENCH – COURT NO. 02

Excise Appeal No. 11252 of 2013-SM

[Arising Out Of OIO-05-CEX-0A-DGCEI-SIMALIN-COMMR-I-2013 Dated- 05/02/2013 Passed Commissioner of Central Excise, Customs and Service Tax-VADODARA-)

Vibrant Decor India Pvt Ltd **.....Appellant**
Nr. Divyadham, B/h. Ramdev Masala,
Sarkhej Rajkot Highway, Changodar,
AHMEDABAD, GUJARAT

VERSUS

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

WITH
Excise Appeal No. 11253 of 2013-SM

[Arising Out Of OIO-05-CEX-0A-DGCEI-SIMALIN-COMMR-I-2013 Dated- 30/01/2013 Passed Commissioner of Central Excise, Customs and Service Tax-VADODARA-)

Esquire Decor Pvt Limited **.....Appellant**
Survey No. 171, Karannagar,
Nr. Tulsi Petrol Pump, Kalol-Kadi Highway, Taluka : Kadi,
MEHSANA, GUJARAT

VERSUS

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

APPEARANCE:
Shri. P.G. Mehta, Advocate for the Appellant
Shri. Anand Kumar, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA MEMBER (JUDICIAL)

FINAL ORDER NO. 12869-12870 /2024

DATE OF HEARING: 20.11.2024
DATE OF DECISION:28.11.2024

In the instant case, the grievance of the Learned advocate is that the appellant has been subjected to the penalty of Rs. 70,000/- for alleged evasion of duty of his master, who eventually went to settlement commission and got the settlement done. However, his client could not be party to the settlement process and it is therefore before this Court in the instant matter since same is maintainable despite settlement by the main accused. However, on merits, he states that neither his statement was recorded nor it has been shown that his client-employee was benefitting in any manner by keeping the records at his premises which were alleged to have contained entries of alleged evasion by his master. He also took various other grounds on merits.

2. Learned AR reiterates the findings of the lower authority and pleads that the penalty be maintained.

3. This Court has considered the adversarial arguments. It has transpired that in this case penalty has been imposed without so much as recording of the statement of the person who is appellant, in the whole proceeding. The reliance of the learned advocate on 2016 (332) ELT 733 (Tri-Del.)- Dabesh Prasad Nanda Vs. CCE, New Delhi, 2020 (33) GSTL-2019-Tribunal-Ahmedabad in Nidhi Auto Pvt. Ltd Vs. Commissioner of Central Excise, Noida-I, 2011 (272) ELT 388 (Tri.-Ahm.) in the matter of Commissioner of Central Excise, Rajkot Vs. Foton Ceramics and 2016 (332) ELT 733 (Tri-Del.) in the matter of Dabesh Prasad Nanda Vs. Commissioner of Central Excise New Delhi. and 2011 (265) ELT 64 (Tri-Ahm) Vs. Commissioner of Central Excise, Surat vs. Overseas Synthetics Ltd., to emphasise the point that in the absence recorded statement of the alleged accused, penalty cannot be imposed, gets the approval of this Court. During investigation department has also not brought on record anything indicating that the appellant as an employee in any manner benefitted from the transaction undertaken by the employer. Penalty therefore irrespective of settlement got done by main accused, cannot sustain.

4. In view of the above, the appeal is allowed with consequential relief.

(Pronounced in the open Court on 28.11.2024)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi