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

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 12113 of 2018-SM

[Arising out of Order-in-Original/Appeal No CCESA-SRT-APPEALS-PS-762-2017-18 dated 08.03.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

Ketan G Shah .... **Appellant**
Proprietor M/s. Parth Polymers.,
A-701, Seven Star Chsl, Jayraj Nagar, Borivali(west),
MUMBAI, MAHARASHTRA- 400091

VERSUS

Commissioner of CGST & Central Excise .... **Respondent**
4th FLOOR, Magnus, Nr. Atlanta Shopping Centre
Althan-Bhimrad Canal Road, Althan Surat, Gujarat - 395017

APPEARANCE :

Shri A. Banerjee, Advocate for the Appellant
Shri Anand Kumar, Superintendent (AR) for the Revenue.

CORAM:
HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

DATE OF HEARING : 20.02.2025
DATE OF DECISION : 28.02.2025

FINAL ORDER NO. 10151 /2025

DR. AJAYA KRISHNA VISHVESHA :

This appeal is directed against order-in-original dated 08.03.2018 passed by Commissioner (Appeals), CGST & Central Excise, Commissionerate Surat, through which the learned Commissioner (Appeals) has upheld the order-in-original dated 29.12.2016 passed by Additional Commissioner, Central Excise & Service Tax, Vapi and also upheld the penalty imposed upon the appellant.

2. The facts of the case, in brief, are that search proceedings were carried out at the premise of M/s. Vraj Packaging wherein it was observed that the assessee was involved in the illicit removal of LLDPE and HDPE. The goods were removed from the store under the guise of being handed over to

manufacturing floor. The requisition slip was also prepared for these goods. However, the goods were routed to the open market without the cover of any invoice (Central Excise) or without the payment of duty. The said goods were cleared to Halol, Ahmedabad and Bhiwandi. For this purpose, several transporters were engaged. The said transporters were also investigated who confirmed the delivery of 'Dana' (LLDPE/HDPE) at Halol, Ahmedabad and Bhiwandi. Further, the requisition slips prepared in the factory of Vraj Packaging correlated with the weighment slips or the 'Lorry Receipts' or other records maintained by the transporters. Shri Dileep Nair, the Manager of Vraj packaging admitted in his statement to have re-routed the LLDPE and HDPE to the open market without having prepared any invoice or paid any duty. Further, Uttamkumar Jain, Director of Shilpa Polypack, Vadodara admitted to have purchased the plastic granules from Vraj Packaging Industries. He further confirmed that the transactions were brokered by Shri Ketan G. Shah i.e. the appellant. For the transportation of these goods the appellant arranged the transporters. Consequentially, Show Cause Notice was issued to the appellant directing to show cause as to why penalty should not be imposed on them under Rule 26 of Central Excise Rules, 2002. The Snow Cause Notice was adjudicated vide order dated 29.12.2016 and penalty of Rs 5,00,000/- was imposed on the appellant under Rule 26(1) of Central Excise Rules, 2002.

3. Being aggrieved by the Order-in-Original, the appellant filed appeal before Commissioner (Appeals). The learned Commissioner (Appeals) dismissed the appeal and upheld the Order-in-Original and also upheld the penalty imposed on the appellant. The appellant filed the present appeal against the impugned order-in-appeal dated 08.03.2018 before this Tribunal.

4. Learned Counsel for the appellant submitted a synopsis today and has argued that the present appeal No. E/12113/2018-SM arising out of Order in Appeal No. CCESA-SRT-APPEALS-PS-762-2017-18 dated 08-03-2018 has been filed for waiver of penalty imposed under Rule 26(1) on M/s. KETAN G SHAH, the present appellant, which originated out of Order-in-Original No. C.Ex./13/ Dem/ADJ/ CSM-ADC/VLS/ 2016-17 dated 29.12.2016 passed by the Additional Commissioner, Central Excise, Customs & Service Tax, Valsad Commissionerate, wherein the main party was M/s. Vraj Packaging Pvt. Limited, who has also preferred an Appeal No. E/12140/2018-DB dated

07.08.2018 before this Tribunal in the same matter arising out of OIA No. CCESA-AUDIT-SRT-VK-097-098-2017-18 dated 24.04.2018. The Appeal No. E/12140/2018-DB dated 07-08-2018 stood withdrawn vide CESTAT Final Order No. A/11013/2021 dated 10-03-2021, as the appellant had preferred settlement of dues under SVLDRS, 2019. He further submits that recently, appeal of another co-noticee in the same Order-in-Original No. C.Ex./13/Dem/ADJ/CSM-ADC/VLS/2016-17 Dated 29.12.2016 namely M/s Shilpa Polypack Pvt. Limited, (Appeal No. E/11858/2018-SM) was allowed for waiver of penalty vide Final Order No. A/13173/2024 dated 12-12-2024. Therefore, it is his submission that as M/s. KETAN G SHAH, the present appellant is also a co-appellant to the original demand order No. C.Ex./13/Dem/ADJ/CSM-ADC/VLS/2016-17 Dated 29.12.2016 passed by the Additional Commissioner, Central Excise, Customs & Service Tax, Valsad Commissionerate, it is requested to award the benefit of SVLDRS, 2019 in this matter also in the interest of justice.

5. In support of above submissions and arguments, learned Counsel submitted copy of order dated 10.03.2021 passed by this Tribunal in Appeal No. E/12140/2018, in the case of M/s. Vraj Packaging Pvt. Limited, in which this Tribunal observed that concerned Commissionerate of Central Goods and Service Tax submitted a list of cases including the present case which have been settled under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and discharge certificate has been issued. Considering the position that case has been settled under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, the appeal pending in this Tribunal was disposed off as deemed to have been withdrawn in terms of Section 127(6) of Chapter V of Finance (No.2) Act, 2019. Accordingly, the appeal may be disposed off as withdrawn. Learned Counsel also filed copy of order dated 12.12.2024 passed by this Tribunal in Appeal No. E/11858/2018-SM in the case of Shilpa Polypack Pvt. Limited observing that in view of the judgment cited by the learned Counsel in the case of **M/s. Siemens Limited**, the issue is settled that if in the case of main party's case where the demand has been confirmed, the case is settled under SVLDRS-2019, penalty on the co-noticee will not sustain. The Tribunal, following the said order, set-aside the penalty imposed on the co-noticee.

6. Per contra, the learned AR appearing for the department argued that M/s. Vraj Vraj Packaging Pvt. Limited was running amok with clear intent to

evade the payment of duty. They met the appellant who provided more destructive means to Vraj Packaging to assist them in such transactions. He submits that this act on the part of the appellant amounted aiding and abetting of an offence which was selfishly aimed at filling their own pockets while causing serious loss to the exchequer. The appellant managed and ensured the transportation for the transfer of goods from the factory of Vraj Packaging to the buyers. Thus, the appellant arranged sought customers for Vraj Packaging and subsequently arranged the transportation of these goods. The Appellant is liable for penal action under Rule 26 of the Central Excise Rules, 2002 and the impugned order is correct in imposing penalty on the appellant. However, the learned AR did not challenge the fact that the case of M/s. Vraj Packaging has been settled under SVLDRS-2019 and the appeal stands disposed of as withdrawn vide order dated 10.03.2021 passed in Appeal No. E/12140/2018.

7. In these circumstances, I am of the opinion that when the demand in the case of main appellant M/s. Vraj packaging Pvt. Limited has been settled under SVLDRS-2019 vide order No. A/11013/2021 dated 10.03.2021, the case of co-noticee for penalty will not sustain. The same view has been taken by this Tribunal in the case of **M/s. Siemens Limited** that penalty on the co-noticee will not sustain when the main party's case of confirmed demand is settled under SVLDRS-2019. Therefore, following the above precedent, I hold that penalty imposed upon the appellant in this case is not sustainable. Accordingly, I set-aside the impugned order-in-appeal. The appeal filed by the appellant is thus allowed.

(Order pronounced in the open court on 28.02.2025)

(Dr. Ajaya Krishna Vishvesha)
Member (Technical)

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