CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 532 of 2011

(Arising out of Order-in-Appeal No. 247/2010 dated 29.11.2010 passed by the Commissioner of Central Excise (Appeals), Mangalore.)

Shri Raghavendra,
Plant Manager
M/s. L.G. Balakrishna & Bros. Ltd.
No.24, Industrial Suburb,
Mysore – 570 008.

Appellant(s)

VERSUS

Commissioner of Central Excise,
S1-S2, Vinaya Marga, Siddhartha Nagar,
Mysore 570 011.

Respondent(s)

APPEARANCE:

Mr. Chandrasekhar C.V., Assistant Manager, Company Representative for the Appellant

Mr. H. Jayathirtha, Superintendent (AR), for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

Final Order No. 20432 /2024

DATE OF HEARING: 18.01.2024
DATE OF DECISION: 22.05.2024

PER : DR. D.M. MISRA

This is an appeal filed against Order-in-Appeal No.247/2010 dated 29.11.2010 passed by the Commissioner of Central Excise(Appeals), Mangalore.

2. Briefly stated the facts of the case are that the appellant is Plant Manager of M/s. L.G. Balakrishna & Brothers Ltd., Mysore. A show-cause notice was issued to M/s. L.G. Balakrishna & Brothers Ltd. alleging clandestine manufacture and clearance of

the finished goods without payment of duty of Rs.30,86,816/- and recovery of the same with interest and penalty. On adjudication, the demand was confirmed with interest and penalty; also penalty of Rs.1 lakh was imposed on the appellant working as Plant Manager of M/s. L.G. Balakrishna & Brothers Ltd. under Rule 25 of Central Excise Rules, 2002. On appeal, the learned Commissioner(Appeals) rejected his appeal. hence the present appeal.

3. At the outset, the learned company representative appearing for the appellant submitted that the company M/s. L.G. Balakrishna & Brothers Ltd. filed necessary application under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and the application was accepted by the Department and discharge certificate in Form-4 was issued. Taking note of the said fact, this Tribunal vide Final Order No.20295/2023 dated 10.04.2023 dismissed the appeal of M/s. L.G. Balakrishna & Brothers Ltd as deemed to have been withdrawn. He submitted that since the main appellant's appeal has been disposed of under SVLDRS, 2019, the present appeal be also disposed/allowed on the same line. In support, he has referred to the judgment of this Tribunal in the case of ***JPFL Films Private Limited & others Vs. CCE, Ludhiana*** [2023(12) TMI 304 -CESTAT CHANDIGARH], which has been followed subsequently in the case of ***Ekam International Vs. CCE, Ludhiana*** [2024(1) TMI 771 – CESTAT CHANDIGARH].

4. Learned AR for the Revenue reiterated the findings of the learned Commissioner(Appeals).

5. Heard both sides and perused the records.

6. The short issue for determination in the present case is whether after acceptance of application of the main applicant under SVLDRS, 2019 regarding the duty liability and penalty imposed, the personal penalty imposed on other notices can

survive. This issue has been dealt by the Tribunal in the case of JPFL Films Private Limited & others(supra). After analysing the relevant provisions, this Tribunal observed as follows:-

> *7. Heard both sides and perused the records of the case. The case of the Department is that the appellants have not made the declaration as required under the SVLDR Scheme; Department relies on Section 125 of the Finance Act, 2019 and Rule 3 of the Rules made under the Scheme and submits that declaration is to be submitted case-wise and therefore, each of the appellants require to file a declaration and therefore, there is no automatic immunity to the conoticees when the main noticee settles the duty and penalty under the Scheme.*
>
> *8. Rule 3 of the Rules made under the Scheme is as follows:*
> *3. Form of declaration under section 125. - (1) The declaration under section 125 shall be made electronically at https://cbic-gst.gov.in in Form SVLDRS-1 by the declarant, on or before the 31st December,2019.*
>
> *(2) A separate declaration shall be filed for each case.*
>
> *Explanation. - For the purpose of this rule, a "case" means –*
> *(a) a show cause notice, or one or more appeal arising out of such notice which is pending as on the 30th day of June, 2019; or*
> *(b) an amount in arrears; or*
> *(c) an enquiry or investigation or audit where the amount is quantified on or before the 30th day of June, 2019; or*
> *(d) a voluntary disclosure.*
>
> *9. We find that the relief available under the Scheme is provided under Section 124 which reads as follows:*
>
> *124. Relief available under Scheme. - (1) Subject to the conditions specified in sub-section (2), the relief available to a declarant under this Scheme shall be calculated as follows: -*
> *(a) where the tax dues are relatable to a show cause notice or one or more appeals arising out of such notice which is pending as on the 30th day of June, 2019, and if the amount of duty is, -*
> *(i) rupees fifty lakhs or less, then, seventy per cent. of the tax dues;*

(ii) more than rupees fifty lakhs, then, fifty per cent. of the tax dues;
(b) where the tax dues are relatable to a show cause notice for late fee or penalty only, and the amount of duty in the said notice has been paid or is nil, then, the entire amount of late fee or penalty; ----

10. It is clear from the provision of Section 124 that the applicants are eligible for relief of entire penalty or late fee. Now the question arises as to whether the immunity or relief is automatic or is consequent upon the declaration required to be filed by the assessees. The statutory provisions indicate that the appellants are eligible for relief for the entire amount of penalty or late fee. The relief is not subject to the satisfaction of the committee constituted for operationalization of the Scheme as in the case of settlement of duty. Had the appellants filed declarations, the said committee had no role but to give relief as contained in Section 124. Thus, we find that the filing of declaration, more so, in the instant case, where only penalty is involved, remains a procedural issue or a formality. Tribunal and High Courts have been consistently holding that procedural infractions, if any, should not come in the way of a substantial right. We find that the very same issue has been deliberated and decided in favour of the assessees by this Tribunal on a number of occasions. We find that this Bench in the case of Col. Randhir Singh Malik (Service Tax Appeal No.60304 of 2017) held that: "considering the fact that the main party has already been discharged and obtained Form-4, in that circumstance, we waive the penalty imposed on the appellant and allow the appeal with consequential relief, if any."The Conclusion by the Tribunal in other cases as cited by the appellants was also similar.

11. … … ...

12. In view of the above, we find that the benefit of the Scheme cannot be denied to the appellants just because they did not file the declaration under SVLDR Scheme. Moreover, as for the submissions of the appellants and our discussion as above, the impugned order cannot be sustained on merits also as far as the imposition of penalty, on the appellants herein, is concerned. Therefore, all the appeals are allowed.

7. The aforesaid order has been subsequently followed by other Benches of this Tribunal. I do not find any reason not to follow the aforesaid precedent of this Tribunal. Consequently,

the appeal filed by the appellant deserves to be allowed and accordingly the same is allowed.

(Order pronounced in Open Court on 22.05.2024)

(D.M. MISRA)
MEMBER (JUDICIAL)

Raja……