CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 310 of 2010

(Arising out of Order-in-Original No. 13/2009-Commr. dated 10.11.2009 passed by the Commissioner of Central Excise and Customs, Belgaum.)

Sri S M Hittalamani,
M/s. Ghataprabha Sahakari Sakkre Karakhane Niyamit,
Gokar – 591 307.
Appellant(s)

VERSUS

Commissioner of Central Excise and Customs,
No.71, Club Road,
Belgaum – 590 001.
Respondent(s)

With

Central Excise Appeal No. 311 of 2010

(Arising out of Order-in-Original No. 13/2009-Commr. dated 10.11.2009 passed by the Commissioner of Central Excise and Customs, Belgaum.)

Sri Lakkan L. Jarkhiholi, Chairaman,
M/s. Ghataprabha Sahakari Sakkre Karakhane Niyamit,
Gokar – 591 307.
Appellant(s)

VERSUS

Commissioner of Central Excise and Customs,
No.71, Club Road,
Belgaum – 590 001.
Respondent(s)

And

Central Excise Appeal No. 312 of 2010

(Arising out of Order-in-Original No. 13/2009-Commr. dated 10.11.2009 passed by the Commissioner of Central Excise and Customs, Belgaum.)

Sri C R Upadhye, Sales-in-Charge,
M/s. Ghataprabha Sahakari Sakkre Karakhane Niyamit,
Gokar – 591 307.
Appellant(s)

VERSUS

Commissioner of Central Excise and Customs,
Respondent(s)

No.71, Club Road,
Belgaum – 590 001.

APPEARANCE:
Mr. Raghavendra B. Hanjeer, Advocate, for the Appellant

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

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

Final Order No. 20435 - 20437 /2024

DATE OF HEARING: 12.01.2024
DATE OF DECISION: 22.05.2024

PER : DR. D.M. MISRA

These three appeals are filed against Order-in-Original No.13/2009-Commr. Dated 09.11.2009 passed by the Commissioner of Central Excise and Customs, Belgaum.

2. Briefly stated the facts of the case are that the appellants are issued with show-cause notice along with M/s. Ghataprabha Sahakari Sakkare Karakhane Niyamit on 23.06.2009 alleging that the noticee company has failed to discharge duty within the due date as prescribed under Rule 8(3A) of Central Excise Rules, 2002. The main noticee M/s. Ghataprabha Sahakari Sakkare Karakhane Niyamit has paid the duty along with interest without utilising the cenvat credit in terms of Rule 8(3A) of Central Excise Rules, 2002 during the period June 2008 to February 2009. The said show-cause notice was adjudicated and the demand issued in the notice was confirmed and the appellants were visited with personal penalty of Rs.2.00 lakhs (appeal No.E/310/2010), Rs.10.00 lakhs (appeal No.E/311/2010) and Rs.10.00 lakhs (appeal No.312/2010). Against the said order, four appeals were filed including that of the company M/s. Ghataprabha Sahakari Sakkare Karakhane Niyamit.

3. At the outset, the learned advocate for the appellants has submitted that M/s. Ghataprabha Sahakari Sakkare Karakhane

Niyamit has approached the Government under the SVLDRS, 2019 which has been accepted by the Department and discharge certificate has been issued in SVLDRS-4 form. The Tribunal taking note of the same dismissed their appeal being deemed to have been withdrawn. He has submitted that since the main appellant's case was settled under the SVLDRS,2019 involving duty and penalty, the penalty imposed on the present appellants cannot survive. 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 noticees would 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.*
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> *11. … … …*
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> *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 appeals filed by the appellants deserve to be allowed and accordingly the same are allowed.

(Order pronounced in Open Court on 22.05.2024)

(D.M. MISRA)
MEMBER (JUDICIAL)

Raja……….