CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

BANGALORE

Regional Bench COURT-2.

Excise Appeal No. 21168 of 2016

[Arising out of the Order-in-Original No. BLR-EXCUS-005-COM-79,80/15-16 dated 31.03.2016 passed by the Commissioner of Central Excise, Bangalore.]

Shri. Shashi Kumar CEO

M/s. Diamond Display Solutions Pvt. Ltd.,

#8, 1st Floor, Near Ashraya English School,
Opp. Ramamurthy Nagar Police Station,
Behind SAIL (Tata Steel Yard),
Vijnapura Extn., Bangalore
Karnataka – 560016 **.......Appellant**

VERSUS

Commissioner of Central Excise
Bangalore V Commissionerate
4th Floor, BMTC Building, Domlur,
Karnataka-560071 **..... Respondent**

AND

Excise Appeal No. 21169 of 2016

[Arising out of the Order-in-Original No. BLR-EXCUS-005-COM-79,80/15-16 dated 31.03.2016 passed by the Commissioner of Central Excise, Bangalore.]

M/s. Diamond Display Solutions Pvt. Ltd.,

#8, 1st Floor, Near Ashraya English School,
Opp. Ramamurthy Nagar Police Station,
Behind SAIL (Tata Steel Yard),
Vijnapura Extn., Bangalore
Karnataka – 560016 **.......Appellant**

VERSUS

Commissioner of Central Excise
Bangalore V Commissionerate
4th Floor, BMTC Building, Domlur,
Karnataka-560071 **..... Respondent**

WITH

Excise Appeal No. 21170 of 2016

[Arising out of the Order-in-Original No. BLR-EXCUS-005-COM-79,80/15-16 dated 31.03.2016 passed by the Commissioner of Central Excise, Bangalore.]

Shri. R. G. Venkatesh, Managing Director,

M/s. Diamond Display Solutions Pvt. Ltd.,

#8, 1st Floor, Near Ashraya English School,
Opp. Ramamurthy Nagar Police Station,
Behind SAIL (Tata Steel Yard),
Vijnapura Extn., Bangalore
Karnataka – 560016 **.......Appellant**

VERSUS

Commissioner of Central Excise
Bangalore V Commissionerate
4th Floor, BMTC Building, Domlur,
Karnataka-560071 **..... Respondent**

Appearance:

Ms. Sakhee Mehta, Advocate for Appellant
Mr. Rajesh Shastry, Authorised Representative for the Respondent

Coram:

Hon'ble P.A. Augustian, Member (Judicial)

Hon'ble Pullela Nageswara Rao, Member (Technical)

FINAL ORDER Nos. 20029-20031 of 2025

Date of Hearing: 22.01.2025

Date of Decision: 22.01.2025

Per: P. A. Augustian

The issue involved in the present appeals is whether confiscation of seized goods, allowed clearance on imposition of redemption fine and penalty and whether penalty imposed on the Shri Shashi Kumar, CEO and Shri R. G. Venkatesh, M.D are sustainable.

2. The brief facts are **M/s. Diamond Display Solutions Pvt. Ltd**. were issued with 2(two) Show Cause Notice Nos. 126/2014-15 dated 16.02.2015, issued for the seized goods and 160/2014-15 dated 31.03.2015 issued for the past clearances. Both the Show Cause Notices were adjudicated by Order-in-Original No. BLR-EXCUS-005-COM-79, 80/15-16 dated 31.03.2016. The impugned order confirmed the demand of Rs. 9,05,94,146/- for the past clearances for the period from 2011-12 to 2014-15 along with interest and imposed equal penalty under Section 11AC and Rule 25 of Central Excise Rules, 2002. As regards the seized goods a duty of Rs. 1,58,912/- was confirmed along with interest. Further a penalty of Rs. 5,00,000/- each was imposed on Shri Shashi Kumar, CEO and Shri R G Venkatesh, M.D of the **M/s. Diamond Display Solutions Pvt. Ltd**. under Rule 26 of Central Excise Rules, 2002. As regards Show Cause No. 126/2014-15 involving the seized goods released provisionally on payment of redemption fine of Rs. 3,21,433/- and penalty of Rs.1,30,000/- on furnishing of the Bank Guarantee by the appellant, on adjudication the bank guarantee was appropriated against the redemption fine. Further a penalty of Rs. 1,30,000/- under Rule 25 of Central Excise Rules, 2002 was imposed on the appellant. Aggrieved by the impugned order, 4(four) Appeals have been filed before this Tribunal.

3. Learned Counsel for the appellant submits that separate appeals vide Excise Appeal No. 21169/2016 and Appeal No. 21166/2016 were filed by appellant **M/s. Diamond Display Solutions Pvt. Ltd**., and Appeal No. 21166/2016 was disposed by this Tribunal vide Final Order No. 20618/2021 dated 25.06.2021, since the dispute is settled under SVLDR Scheme. Now the issue in Appeal No. 21169/2016 before this

Tribunal is regarding imposition of redemption fine and penalty for release of seized and confiscated goods. We find that, since the demand is settled as above, this appeal filed by the appellant **M/s. Diamond Display Solutions Pvt., Ltd.,** is infructuous and is disposed, accordingly.

4. As regards Appeal Nos. E/21168/2016 and E/21170/2016 filed by Shri Shashi Kumar, CEO and Shri R G Venkatesh, M.D of M/s. Diamond Display Solutions Pvt., Ltd., Learned Counsel for the appellant submits that since the main appellant has settled the issue under SVLDR Scheme, penalty imposed on co-noticees being the CEO and Managing Director of the main noticee is unsustainable. Learned Counsel also draws our attention to decision of the Tribunal in the matter of **V K Agarwal Vs. CC, New Delhi – (2024) 15 Centax 220 (Tri. Del) wherein it is** held that:-

> *"14. The judgements so referred clearly says that when the demand of duty has been settled under SVLDR Scheme, the imposition of penalty would fail on simple ground that if the appellants had applied under the said scheme, they would have paid 'nil' duty, in view of the relief available to them under section 124(1) (b) of the Finance Act. This Tribunal in similar circumstances has set aside the said penalty imposed in the case of Shri B.V. Kshatriya (supra). The relevant paragraph is given below:-*
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> > *"3.2 Thereafter, on introduction of the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019, the main noticee, M/s. Bhikusa Papers Pvt. Ltd and other co-noticees settled the dispute under SVLDRS, but the present appellant, who is a director of the main noticee failed to opt under the Scheme. However, without considering the directions given in the remand order and allowing cross examination, Commissioner*

> *has imposed penalties on the appellant, just for reason that the appellant did not settle the issue along with others under SVLDRS. Such approach of Commissioner cannot be justified. Even if the appellant has not approached under SVLDRS, Commissioner should have adjudicated as directed by Tribunal. No justification for imposition of penalty on reconsideration as per order of Tribunal is forthcoming."*

5. Learned Authorised Representative for the Revenue (AR) reiterated the submission and also submits that the issue is settled under SVLDR Scheme as submitted by the appellant.

6. Heard both sides perused the records.

7. Since the issue is squarely covered by the decision of the Tribunal in the matter of **VK Agarwal (Supra)**, we do not find any reason to differ, hence Appeal Nos. E/21168/2016 and E/21170/2016 are allowed. Further we find that Appeal No. E/21169/ 2016 is infructuous and is disposed, accordingly.

(Order dictated and pronounced in open court)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar