CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Central Excise Appeal No. 21616 of 2016

(Arising out of Order-in-Appeal No. 126-127/2016-CE dated 30.08.2016 passed by the Commissioner of Central Excise (Appeals-I), Bangalore)

DPK Generators and Equipments
No. 5/2/451 R P Road,
Secunderbad, Telangana - 500003 **........Appellant**

VERSUS

Commissioner of Central Excise, Bangalore
P B NO. 5400, C R Buildings,
Bangalore, Karnataka – 560001. **...........Respondent**

APPEARANCE:

Shri. Raghavendra.B. Hanjer, Advocate for the Appellant
Shri. Rajashekar.B.N.N, Authorised Representative (AR) for the Revenue

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 22192 /2025

Date of Hearing: 25.09.2025
Date of Decision: 25.09.2025

Per: P. A. Augustian

The issue in the present appeal is whether penalty of Rs. 10,000/- is sustainable on Appellant when the manufacturer availed the SVLDR scheme and settled the issue.

2. The brief facts are alleging undervaluation on the ground that M/s DPK Engineering and M/s DPK Generators are interconnected undertaking and the value adopted by M/s DPK Engineers under Rule 4(1) of the Central Excise Act, 1944 is unsustainable, proceedings were initiated and

Adjudication authority as per the Order-in-Original dated 13.05.2015 confirmed the demand of duty and also imposed penalty Rs. 1,00,000/- was imposed on Appellant. Aggrieved by said order, both M/s DPK Engineering Pvt Ltd and Appellant filed appeal before the Commissioner (Appeals) and Commissioner (Appeals) as per the impugned order dated 30.08.2016 rejected the appeals filed by M/s DPK Engineering Pvt Ltd. The appeal of the present Appellant was partially allowed by reducing the penalty to Rs. 10,000/-. Aggrieved by said order, both the Appellants has filed appeals before this Tribunal. Since M/s DPK Engineering Pvt Ltd was availed the Sabka Viswas Legacy Dispute Resolution Scheme (SVLDRS), 2019, the Appeal No. E/21615/2016 filed by M/s DPK Engineering Pvt Ltd was disposed as withdrawn as per Final order No. 20527/2020 dated 27.08.2020.

3. When the present appeal came up for hearing, the Learned Counsel for the Appellant submits that the issue regarding sustainability of the penalty on co-noticee when main Appellant has settled the issue under SVLDRS is considered by this Tribunal in the matter of **Sri S M HM Hittalamani & others in Final Order No. 20435-23437/2024 dated 22.05.2024** and held that: -

> *"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:*
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>> *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 co-noticees 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 Form4, 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."*

4. Learned Authorized Representative (AR) reiterated the findings in the impugned order.

5. Heard both sides and perused the records.

6. Considering the ratio of the decision of this Tribunal in the matter of **Sri S M HM Hittalamani & others (supra)**, the impugned order confirming penalty on Appellant is unsustainable and liable to be set aside.

7. Accordingly, the penalty imposed on the appellant is set aside and appeal is allowed with consequential relief, if any, in accordance with law.

(Operative portion of the order was pronounced in open court on conclusion of hearing.)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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