**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**CHANDIGARH**
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REGIONAL BENCH – COURT NO. 1

**Excise Appeal No. 2027 Of 2012**

[Arising out of OIA No. 109-110/CE/Appl/CHD-II/2012 dated 20.03.2012 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]

**Ashish Gupta Partner** **: Appellant (s)**
Modern Bricks & Engrs Works, Barwala
Road, Dera Bassi Distt. Sas nagar, Punjab

Vs

**CCE & ST- Chandigarh-II** **: Respondent (s)**
Plot No. 19, C.R.Building, Sector 17-C Chandigarh

APPEARANCE:
None for the Appellant
Shri Ravinder Jangu, Departmental Representative for the Respondent

**CORAM : HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**
**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**ORDER No. A/60122/2023**

Date of Hearing:10.05.2023

Date of Decision:10.05.2023

***Per : S. S. GARG***

This case was listed for final hearing today. The Ld. Counsel for the appellant has sent a letter stating under instruction that the firm of M/s Modern Bricks & Engineering Works has availed Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and their case has already been disposed of by this Tribunal vide Final Order No. A/60019-60482/2021 dt. 22.01.2021. He has also stated that this matter may also be closed accordingly. He has also annexed the copy of SVLDRS Form I and IV alongwith this letter.
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2. Ld. DR submits that the firm has availed Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 but the appellant cannot be given the benefit of the same unless he moves an application before the competent authority. He admits that the appellant is not required to pay anything for availing the SVLDRS Scheme, 2019.

3. As the penalty on the appellant is only to the extent of Rs. 10,000/- under Rule, 26 of Central Excise Rules, 2002, we have decided to dispose of the case on merits itself.

4. We have perused the Order-in-Original and the Order-in-Appeal and find that the Order-in-Original has been passed ex-party and in the Order-in-Original, the Assistant Commissioner without any material on record has observed that the appellant was responsible for day to day working of the factory and has held him guilty under Rule 26 of the Central Excise Rules, 2002 and imposed penalty of Rs. 10,000/- on him.

5. After perusal of the Order-in-Original and Order-in-Appeal, we find that there is no substantive evidence on record to show that Shri Ashish Gupta, appellant was active partner in the said firm, because no statement was recorded nor there is any documentary evidence which shows that the appellant was looking after day to day working of the firm. We also find that the firm has categorically stated before the Ld. Commissioner (Appeals) that Shri Ashish Gupta is only a sleeping partner and works in another independent private company as an employee, but, the Ld. Commissioner (Appeals) has ignored their plea and has given the same finding which was given in Order-in-Original without any basis.

6. Under these circumstances, we are of the considered opinion that the penalty imposed on the appellant is not sustainable in law, therefore, we set-aside the same by allowing the appeal of the appellant.

*(Dictated & pronounced in the open Court)*

**(S. S. GARG)**
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**
MEMBER (TECHNICAL)

*G.Y.*