CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Excise Appeal No.1676 Of 2012

[Arising out of OIO No.12/LDH/2012 dated 26.03.2012 passed by the Commissioner of Central Excise, Ludhiana]

M/s Ekam International **: Appellant (s)**
F-134, Phase-VIII, Focal Point,
Ludhiana, Punjab

Vs

The Commissioner of Central Excise,
Ludhiana **: Respondent (s)**
Central Excise House, F-Block, Rishi
Nagar, Ludhiana, Punjab-141001

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

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

FINAL ORDER No.60016/2024

Date of Hearing: 11.01.2024

Date of Decision: 11.01.2024

Per: P.ANJANI KUMAR

M/s Ekam International, the appellants, have filed the appeal against, the penalty imposed on them under Rules 26& 27 of Central Excise Rules, 2002 on the allegation that they have connived with M/s Govind Castings in the evasion of Central Excise duty, vide impugned order dated 26.03.2012.
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2. None for the appellants. Shri Ravinder Jangu, learned Authorized Representative for the Department, reiterates the findings of the OIO and submits that the Department made a watertight case against the main noticee i.e. M/s Govind Castings, who have settled the case with the Department under SVLDR Scheme. The appellants have not approached the competent authority to settle the dispute and therefore, the penalty imposed on them should be sustained.

3. We find that nobody appeared on behalf of the appellants in spite of repeated notices. Therefore, we proceed to decide the case on the basis of submissions of the learned Authorized Representative for the Department and the records of the case. We find that the brief issue involved in the case is as to whether the co-noticees stand to lose the substantial benefit of settlement under the SVLDR Scheme due to the fact that they have not applied for the Scheme whereas the main noticee has settled the case under SVLDR Scheme.

4. We find that the issue is no longer *res integra* having been decided by various benches of the Tribunal. This Bench vides Final Order Nos. 60677-60689/2023dated 06.12.2023 finds 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 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;

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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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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.

5. In view of the above, the appeal is allowed.

(Operative part of the order pronounced in the open Court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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