CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO. 3

Service Tax Appeal No. 60601 Of 2019

[Arising out of Order-in-Original No. 51/Commr/RK/Audit-II/2018-19 dated 28.02.2019 passed by the Commissioner of Central Goods and Service Tax, Audit-II]

Bijay Kumar Pradhan **: Appellant**
Vice President (Finance & Accounts)
M/s World Phone Internet Services Private Limited
C-153, Okhla Industrial Estate, Phase-I,
New Delhi – 110020

Vs

Commissioner of Service Tax, Delhi-IV, Audit-II : Respondent
1st Floor, EIL Annexe Building, Bhikaji Cama Place
R. K. Puram, New Delhi-110066

with
Service Tax Appeal No. 60602 Of 2019

[Arising out of Order-in-Original No. 51/Commr/RK/Audit-II/2018-19 dated 28.02.2019 passed by the Commissioner of Central Goods and Service Tax, Audit-II]

Shri Aditya Singh Ahluwalia **: Appellant**
Director, M/s World Phone Internet
Services Private Limited
C-153, Okhla Industrial Estate,
Phase-I, New Delhi – 110020

Vs

Commissioner of Service Tax, Delhi-IV, Audit-II : Respondent
1st Floor, EIL Annexe Building, Bhikaji Cama Place
R. K. Puram, New Delhi-110066

APPEARANCE:
Shri Taranjit Singh Chadha, Chartered Accountant for the Appellant
Shri Shashank Yadav, Authorized Representative for the Respondent

CORAM :

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 51562-51563/2025

Date of Hearing:08.08.2025

Date of Decision:10.10.2025

HEMAMBIKA R. PRIYA

The present appeals are directed against the impugned Order-in-Original No. 51/Commr/RK/Audit-II/2018-19 dated 28.02.2019 wherein the Commissioner had confirmed the demand of service tax amounting to Rs. 3,60,10,977/- along with interest on M/s World Phone Internet Services Private Limited[1] and penalty of Rs. 1 lakh each was imposed on Shri Bijay Kumar[2] and Shri Aditya Singh Ahluwalia[3].

2. The brief facts of the case are that the main noticee was engaged in the business of providing Internet Service and Internet Telephony Service and was registered under Section 69 of the Finance Act, 1994 for discharging the service tax liability payable by them. During the course of search of the office premises of the main noticee by DGCEI on 13.12.2013, various records viz., sample invoices agreements, tally printouts and other relevant documents were resumed and statement of Shri Bijay Kumar Pradhan, Vice-President (Finance & Accounts) [Appellant No. 1] of main noticee was recorded wherein he admitted that though they had collected Service tax from their clients/customers for the period 2011-12 to 2013-14 (up to November, 2013), they had not deposited the same with Government exchequer. Investigations by DGCEI revealed that the main noticee had charged and collected Service Tax from their customers but did

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1 Main noticee
2 Appellant No. 1
3 Appellant No. 2

not deposit in the Government exchequer during the period 2011-12 to 2013-14 (up to November, 2013). Investigations further revealed that they have also received input services from various service providers located outside India and did not pay Service Tax on the value paid for procuring such input services under reverse charge mechanism. The main noticee had also availed legal consultancy service and works contract services from various proprietor and partnership firms, but had not paid applicable service tax on the amount paid to proprietor and partnership firms under reverse charge mechanism. Accordingly, a Show Cause Notice dated 03.01.2017 invoking extended period of limitation was issued to the main noticee demanding Service Tax amounting to Rs. 3,60,10,977/- and proposed penalty on Shri Aditya Singh Ahluwalia, Appellant No. 1 and Shri Bijay Kumar Pradhan, Appellant No. 2 under section 78A of the Finance Act, 1994. The Adjudicating Authority vide impugned the Order-in-Original dated 28.02.2019 confirmed the demand of service tax along with interest and imposed penalty of Rs. 1 lakh on appellant No. 1 and appellant No. 2. Aggrieved by the impugned Order-in-Original dated 28.02.2019, the appellants filed these appeals before Tribunal. Meanwhile the main noticee opted for Sabka Vishwas Legacy Dispute Resolution Scheme-2019 on 18.12.2019 and paid the service tax dues as per the Scheme and received the Discharge Certificate (Form-4) dated 28.01.2020 from the Department. The two appellants are before this Tribunal against the imposition of penalty under the impugned order.

3. Learned Chartered Accountant for the appellants submitted that the present appeals were filed challenging the penalty of Rs. 100,000/-

imposed by the adjudicating authority on Appellant No. 1 in his capacity as Vice President (Finance & Accounts) and Appellant No. 2, as Director of the Company. The penalties were imposed on the appellants as a consequence of the penalty of Rs. 360,10,977/- imposed on the main notice under Section 78 of the Act for alleged suppression/misstatement of facts.

3.1 Learned Chartered Accountant further submitted that subsequent to the filing of the present appeal, the Government of India introduced the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (in short SVLDRS), under which the main noticee filed an application for relief vide Form SVLDRS-1 on 18.12.2019. The said application was accepted and a Discharge Certificate in Form SVLDRS-4 was issued on 28.1.2020 showing complete and final discharge of the dues. This certificate categorically discharged the main noticee from any further duty, interest, or penalty related to the case. Consequently, the main noticee was exonerated from the entire penalty of Rs. 360,10,977/- imposed under Section 78 of the Act for suppression of facts. Learned counsel submitted that the main notice was the principal Noticee in the matter, had settled its liability under SVLDRS. Since the penalty imposed on the main noticee was waived in full, the penalty on the Appellant No. 1 & 2 would also not survive, as it was merely a consequential imposition. He submitted that various judicial precedents establish that where confirmed demand against the Main Noticee had been settled under SVLDRS, then no penalty will sustain even if the co-noticees have not filed any declaration under SVLDRS 2019. In this regard, learned Chartered Accountant relied upon the decision of the Tribunal in the case of **Shri V. K. Aggarwal**

& Ors. Vs. Commissioner of Central Tax, CGST and Central Excise[4].

3.2 Learned Chartered Accountant further submitted that an application for waiver of Penalty of Rs. 1,00,000/- had been filed by the two appellants, but a discharge certificate could not be obtained due to procedural lapses. However, the principle of consequential relief should apply in this case. The penalty imposed on the appellant under Section 78A of the Act, arose solely because of the penalty imposed on the main noticee. Since the main noticee's penalty had been fully waived under SVLDRS, 2019, the foundational basis for imposing penalty on the two appellants ceased to exist. Various judicial precedents establish that if the principal liability is waived, any consequential penalties on employees and directors must also be waived. The penalty u/s 78A was levied only because of the main noticee's penally, and was not independently adjudicated based on the individual wrongdoing. As there was no separate finding of fraud or suppression against the appellants individually, the penalties should automatically abate with the main noticee's penalty waiver. He prayed that the appeals may be allowed.

4. Learned Authorized Representative for the Department submitted that the Ld. Adjudicating Authority had correctly imposed penalty of Rs. 1,00,000/- each under section 78A on Shri Aditya Singh Ahluwalia, the Director and Shri Bijay Kumar Pradhan, the Vice President (Finance & Accounts) of the company as they were in-charge and directly responsible for the conduct of the business of the company and were knowingly concerned with contraventions of the

4 Final Order No. 51139-51140/2023

Finance Act. Learned AR submitted that the main noticee, had accepted and paid their Service Tax dues under SVLDRS Scheme and Form-4 had been issued. Both the co-noticees, the appellants had applied under SVLDRS for waiver of their personal penalty but due to procedural lapses they could not get the discharge certificate. Learned AR contended that the appellants reliance on CESTAT Order in case of **V.K. Agarwal vs Commissioner of Central Tax (supra)** was not sustainable, as the instant case was distinguishable from the relied upon case in as much as in the relied upon case SVLDRS was opted before the issue of the adjudication order whereas the adjudicating authority had proceeded to adjudicate the show cause notice and confirmed the penalty on the co-noticees. In the instant case, the appellants had opted for SVLDRS after the adjudication order was passed confirming the demand, interest and penalty on the company as well as co-noticees.

4.1. Learned AR further submitted that the SVLDRS Scheme, 2019 provided relief to the taxpayers by offering concessions from total outstanding tax demand (Section 124). After payment of reduced tax demand under this scheme, a discharge certificate (Form-4) was issued by the Department discharging the declarant from liability to pay any further tax/duty, interest, or penalty. The SVLDRS Scheme explicitly discharged the declarant from liability to pay any further tax, interest, or penalty in the matter. He contended that discharge and exoneration have different meanings in legal terminology. Discharge is done at a pre-trial stage i.e. before the commencement of legal proceedings, whereas exoneration is a final outcome oon the completion of legal proceedings. Thus the SVLDRS Scheme only discharged the declarant and does not exonerate the declarant. In the instant case, the appellants had been penalised under a separate Section 78A for being in charge and directly responsible in the Company for the contravention of the provisions of the Finance Act which clearly evident from their acceptance of tax liability under SVLDRS Scheme. In view of the above, learned AR prayed that the present appeals may be dismissed.

5. We have heard the learned counsel for the appellant and the learned authorised Representative for the Department. The issue involved in the present case is whether when the case of main appellant involved demand of duty interest and penalty has been settled under SVLDRS-2019, can the penalty on the co-noticee can be continued or otherwise?

6. On careful consideration of the submissions made by both the sides and perusal of the records, we find that presently, it is settled legal position that once the duty demand case is settled under SVLDRS-2019, as per the Scheme itself, there is a waiver of penalties on the main assessee against whom the demand was confirmed as well as on other co-noticees. Some of the judgments on this issue are reproduced below:

- **Anil K Modani vide Final Order No. A/87176-87178/2023 dated 30.11.23**

  " We find that the decision in re Indi-Swift Laboratories Ltd, relied upon by the Learned Authorised Representative, was in the specific context of 'conjunctions' employed in rule 14 of CENVAT Credit Rules, 2004 and the consequence thereof for recovery of credit along with interest. Chapter V of Finance Act, 2019 expressly pertains to 'legacy dispute resolution scheme' which considered deposit of duty involved in dispute to suffice

for grant of relief of interest, penalty and any other consequence under Central Excise Act, 1944 or Finance Act, 1944. The scheme is all about 'tax dues' which itself has been set out in section 123 of Finance Act, 2019 with all the alternatives restricting themselves to the total amount of duty or total amount of duty in dispute, as the case may be. Furthermore, section 124 of Finance Act, 2019 specifies relief as percentage of 'tax dues' and of late fee/penalty should those be the only detriments contemplated in a proceeding. It would, therefore, appear that a person imposed with penalty would be eligible to be 'declarant' subject to there being no demand of tax pending in the impugned proceedings.

6. Therefore, to the extent that the impugned order upheld recovery of duties under section 11A of Central Excise Act, 1944 none of the individual appellant herein would have been eligible to be declarant; the scheme itself does not acknowledge the existence of such appellant even though the scheme is intended to erase the detriment of penalty in each and every case. It is on record that the principal-noticee has been accorded the prescribed relief including erasure of penalties arising therefrom. Even though the appellants herein could not, at the time of existence of the scheme have derived the benefits from the coverage by the scheme, the intent and purpose of the scheme being collection of the duty or some percentage thereof, and forgoing interest, fine and penalty, the disposal of the application of M/s JSW Ispat Steel Ltd renders the continuance of the penalty against the three appellants to be not in conformity with the relief scheme. Accordingly, they are eligible for erasure of the penalties against them.

7. For the above reasons, we allow these appeals and set aside the impugned order."

- **Subhash Panchal vide Final Order No. 11014 of 2024 dated 08.05.2024**

"In this appeal the appellant has challenged the personal penalty of Rs.50,000/- under Rule 26 of Central Excise Rules, 2002. The

penalty was imposed on the charge of abating the evasion of duty by M/s. Atlas Plastics.

When the matter was called out written submission was placed on record by the appellant wherein it is submitted that the main party's case of M/s. Atlas Plastics has been settled under SVLDRS 2019 and this Tribunal has disposed of appeal vide order No. 12602/2023 dated 07.11.2023 in the light of the settlement of the case of main party, hence the personal penalty of appellant be set aside. It is also submitted that the appellant has not played any role for evasion of duty by M/s. Atlas Plastics.

2. Shri P Ganesan Learned Superintendent AR appearing for the revenue reiterates the finding of the impugned order.

3. We have carefully considered the submission made by the Learned AR and the Written Submission dated 31.01.2024 submitted by the appellant. Since, the appellant has been penalized under Rule 26 in connection with the duty evasion made by M/s. Atlas Plastics and their case has been settled under SVLDRS and the appeal was disposed by this Tribunal vide order dated 07.11.2023, the personal penalty of the appellant is not sustainable in the light of the following judgments:-

- *Shri V.K. Aggarwal and Shri J.K. Aggarwal v. CCE, New Delhi - 2023 (9) TMI 178 - CESTAT NEW DELHI*
- *M/s. Siemens Ltd. (formerly known as M/s. Morgan Construction Co. Pvt. Ltd.), Mr. Sunil Chellani Vs. Commissioner of Central Excise, Mumbai-III - 2023 (5) TMI 377 – CESTAT-Mumbai*
- *Shri B.V. Kshatriya Vs. Commissioner of GST & CE, Nashik - 2023 (5) TMI 858 – CESTAT Mumbai*
- *Mr. Dinesh Kanoria Vs. Commissioner of Central Excise, Thane-I - 2022 (12) TMI 1408 – CESTAT Mumbai*
- *Shri Ramesh Deshpande and Shri Debdutta Chatterjee Vs. Commissioner of Central Excise, Nagpur - 2021 (7) TMI 1307 – CESTAT – Mumbai*
- *P.B. Vyas and Ors. Vs. Commissioner of Central Excise, Mumbai-III -2021 (3) TMI 1305 – CESTAT Mumbai*

- *Sri Sasthi Charan Banerjee Vs. Commissioner of CGST & CX, Bolpur Commissionerate, - 2022 (12) TMI 1437 – CESTAT Kolkata"*

7. The ld AR has distinguished the facts of this case from the decision of this Tribunal in the case of **Shri V.K. Aggarwal and Shri J.K. Aggarwal v. CCE, New Delhi[5].** However, in view of series of decisions given by the coordinate Benches of this Tribunal, wherein the penalty imposed on the co-noticee was set aside on the ground that the case against main noticee against whom the demand is confirmed, was settled under SVLDRS, we allow this appeal.

8. At this juncture, we would like to dwell on the purpose behind the introduction of the SVLDRS, 2019. In this context we note that the objective of this scheme was examined in the case of **Cap Gemini Technology Services India Limited Vs. Union of India[6],** wherein the Bombay High Court has observed as under:-

> "21. From the above, we find that as a one-time measure for liquidation of past disputes of Central Excise and Service Tax, the SVLDR Scheme has been issued by the Central Government. The SVLDR Scheme has also been issued to ensure disclosure of unpaid taxes by an eligible person. This appears to have been necessitated as the levy of Central Excise and Service Tax has now been subsumed in the new GST Regime. From a reading of the statement of object and reasons, it is quite evident that the scheme conceived as a one-time measure, has the twin objectives of liquidation of past disputes pertaining to central excise and service tax on the one hand and disclosure of unpaid taxes on the other hand. Both are equally important: amicable resolution of tax disputes and interest of revenue. As an incentive, those making

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5 2023 (9) TMI 178 - CESTAT NEW DELHI
6 [(2015) 280 CTR 352],

the declaration and paying the declared tax verified as determined in terms of the scheme would be entitled to certain benefits in the form waiver of interest, fine, penalty and immunity from prosecution. This is the broad picture the concerned authorities are to keep in mind while dealing with a claim under the scheme."

9. In our considered view, denying the benefits of SVLDR Scheme would not only be contrary to object of the scheme but would also be injustice to the appellants who could not pursue their applications under SVLDRS-3 because of procedural lapses.

10. Accordingly, the impugned order is set aside and the appeals are allowed.

(Order pronounced in the open Court on 10.10.2025)

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.