

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Excise Appeal No.76789 of 2018

(Arising out of Order-in-Appeal No.163-64/DGP-CEX/2018 dated 28.02.2018 passed by Commissioner(Appeals), Goods & Service Tax, Siliguri Appeal Commissionerate, Siliguri.)

Shri Uttam Kumar Chatterjee

(C/o M/s.Shivam India Ltd., Angadpur Industrial Area,
Durgapur-15, Dist. Burdwan, W.B.)

...Appellant

VERSUS

Commissioner of CGST & CX, Bolpur Commissionerate

.....Respondent

(Nanoor Chandidas Road, Sian, Bolpur, Dist., Birbhum, West Bengal.)

APPEARANCE

Shri S.P.Siddhanta, Consultant for the Appellant (s)

Shri T.K.Mondal, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 75077/2021

DATE OF HEARING : 9 March 2021

DATE OF DECISION : 9 March 2021

P.K.CHOUDHARY :

Vide Order-in-Original No.12/AC/Shivam/DGP-III/16-17 dated 16.01.2017, a personal penalty of Rs.5.00 Lakhs was imposed upon the appellant under Rule 26 of the Central Excise Rules, 2002. On appeal, the learned Commissioner(Appeals) vide Order-in-Appeal No.163-64/DGP-CEX/2018 dated 28.02.2018 allowed the appeal of the main appellant M/s.Shivam India Ltd.. However, he upheld the penalty imposed on appellant No.2, the appellant herein. Hence the present appeal before the Tribunal.

2. Heard both sides through video conferencing and perused the appeal records.

3. I find that the appellant's position is that of co-accused. The appellant was an employee of the main accused and his actions were in the performance of his duties to the employer. The show cause notice does not bring out any conscious act on his part justifying the penalty imposed under Rule 26 of the Central Excise Rules, 2002. The learned Commissioner(Appeals) also does not find any specific culpability. Moreover, since the learned Commissioner(Appeals) has already found the employer assessee to be not guilty, the finding of guilt cannot be surviving in respect of the employee. I therefore allow his appeal and remit the penalty imposed upon him.

(Dictated and pronounced in the open Court.)

SD/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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