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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.75836 of 2016

(Arising out of Order-in-Original No.24/Commissioner/CE/Haldia/2016 dated 23.02.2016 passed by Commissioner of Central Excise & Service Tax, Haldia Commissionerate.)

Shri Bikram Maheswari,
Proprietor of M/s. Machinex
(Kabrapara, Bankra, Howrah, West Bengal.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Haldia
.....Respondent
(25, Princep Street, 3rd Floor, Kolkata-700072.)

APPEARANCE

Shri S.P. Siddhanta, Consultant for the Appellant (s)
Shri S.Mukhopadhyay, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI P.V.SUBBA RAO, MEMBER(TECHNICAL)

FINAL ORDER NO. 75073/2022

DATE OF HEARING : 21 January 2022
DATE OF DECISION : 21 January 2022

P.K.CHOUDHARY :

The Appellant Shri Bikram Maheswari is proprietor of M/s. Machinex, Kabrapara, Bankra, Howrah. Vide Order-in-Original No.24/Commissioner/CE/Haldia/2016 dated 23.02.2016, which was passed in respect of M/s. Machinex and Cenvat credit to the tune of Rs.74,13,035/- was disallowed and penalty under Rule 15(2) of Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 was imposed on M/s. Machinex. Penalty was also imposed upon Shri Bikram Maheswari, Proprietor of M/s. Machinex in terms of Rule 26 of the Central Excise Rules, 2002. Hence the present Appeal by the Appellant Shri Bikram Maheswari before the Tribunal. Separate Appeal was also filed by M/s. Machinex vide Excise Appeal No.75835 of 2016. Subsequently, M/s. Machinex filed Application under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and the Application was accepted and a Discharge Certificate for full and final settlement of tax dues under Section 127 of the Finance (No.2) Act, 1994 read with Rule 9 of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 was issued in Form SVLDRS-4. Subsequently, the Tribunal vide Final Order NO.75500/2020 dated 12.10.2020 dismissed the Appeal of M/s.Machinex, being Excise Appeal No.75835 of 2016, as withdrawn.

2. It is the case of the Appellant that he, being the proprietor of the firm M/s. Machinex, no separate penalty ought to have imposed upon him. Further, since the proprietory concern M/s Machinex, of which the Appellant is the proprietor, have already settled the dispute arising out of Order-in-Original No.24/Commissioner/CE/Haldia/2016 dated 23.02.2016 and Discharge Certificate for full and final settlement of tax dues has been issued in Form SVLDRS-4, the penalty imposed under Rule 26 of the Central Excise Rules, 2002 upon the Appellant is fit to be deleted.

3. Heard both sides through video conferencing and perused the Appeal records.

4. We find that vide Order-in-Original No.24/Commissioner/CE/Haldia/2016 dated 23.02.2016 in the case of M/s.Machinex, Cenvat credit was disallowed and penalty imposed on the proprietory concern and also upon the proprietor in terms of Rule 26 of the Central Excise Rules, 2002. We also find that the dispute arising out of the above-mentioned Order-in-Original, which is also the impugned order in this Appeal, the proprietory concern M/s. Machinex have settled the dispute under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and the Discharge Certificate for full and final settlement of tax dues in Form SVLDRS-4 has been issued to them. We also observe that the Tribunal has all along held a consistent view that separate penalties are not warranted on the proprietory firm as well as on the proprietor. We also find that the penalty imposed on

Shri Bikram Maheswari is uncalled for and therefore the same is set aside.

Accordingly, the Appeal filed by the Appellant is allowed with consequential relief, if any.

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

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

Sd/

(P.V.SUBBA RAO)
MEMBER (TECHNICAL)

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