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

REGIONAL BENCH - COURT NO.1

Excise Appeal No.76161 of 2018

(Arising out of Order-in-Original No.30/COMMR/CGST & CE/HWH/Adjn/2017-18 dated 26.12.2017 passed by Commissioner of Central Tax (GST & C.Ex), Howrah Commissionerate.)

Shri Dilip Choraria, Director
M/s. BDG Metal & Power Ltd.
("HMP House", 4 Fairlie Place (5th Floor), Kolkata-700001.)

...Appellant

VERSUS

Commissioner, CGST & CX, Howrah Commissionerate

.....Respondent

(15/1, Strand Road, Custom House, M.S.Building, Kolkata-700001.)

APPEARANCE

Shri N.K.Chowdhury, Advocate for the Appellant (s)
Shri S.Chitkara & Shri B.K.Singh, both Authorized Representrative for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI SANJIV SRIVASTAVA, MEMBER(TECHNICAL)

FINAL ORDER NO. 77410/2025

DATE OF HEARING : 29.08.2025
DATE OF DECISION : 29.08.2025

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order, wherein penalty under Rule 26(2) of the Central Excise Rules, 2002 has been imposed to the tune of Rs.17,36,728/-.

2. The facts of the case are that a show cause notice was issued to the appellant along with M/s. Vinny Technocrats Pvt.Ltd. on the allegation that M/s. Vinny Technocrats Pvt.Ltd. has taken Cenvat credit irregularly by way of making paper transaction without physically receiving any inputs. The appellant is the Director of M/s. BDG Metal &

Power Ltd. against whom the allegation is made that they have issued invoices without the accompanying goods. Therefore, a penalty under Rule 26(2) of Central Excise Rules, 2002 was proposed against the appellant. The matter was adjudicated, penalty under Rule 26(2) has been imposed on the appellant. Aggrieved from the said order, the appellant is before us.

3. The Ld.Counsel for the appellant submits that against the same allegation another show cause notice was issued to M/s. BDG Metal and Power Ltd., where the appellant is Director. The said show cause notice was issued to the appellant to demand duty along with interest and to impose penalty under Rule 26(2) of the Central Excise Rules, 2002. While adjudicating the said show cause notice the Ld.Commissioner vide Order No.418-420/BOL-CE/2018-19 dated 20.02.2019 confirmed the penalty of Rs.3.00 Lakh against the appellant and appellant has opted Sabka Vishwas (Legacy Dispute Resolutin) Scheme Rules, 2019 and obtained Form SVLDRS-4 for the same and the said issue has been settled against the appellant by way of Central Excise Appeal No.76253 of 2019 vide Final Order No.75516/2020 dated 21.10.2020. Therefore, no penalty can be imposed for the same allegation against the appellant two times. In that view the penalty in this case has to be dropped.

4. Heard the Ld.Counsel for the Appellant.

5. We find that on the same allegation another show cause notice was issued to the appellant vide show cause notice No.91/SDC/CE/DGP/15 dated 10.11.2015 and a proposal was made to impose penalty against the appellant under Rule 26(2) of the Central Excise Rules, 2002 and penalty of Rs.3.00 Lakhs was confirmed against the appellant. The said penalty has been settled by the appellant in Sabka Vishwas (Legacy Dispute Resolutin) Scheme Rules, 2019 and the said issue has been settled by this Tribunal vide Final Order dated 21.10.2020. These facts are not in dispute.

6. In view of the above observation, we hold that for the same allegation penalty cannot be imposed on the appellant twice.

Accordingly, the penalty imposed on the appellant in this case is set aside. Consequently, the appeal filed by the appellant is also allowed.

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

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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