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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.562 of 2010

(Arising out of Order-in-Original No.CCE/BBSR-I/13/2010 dated 30.03.2010 passed by Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I.)

Shri Mahendra Kumar Tulsian
(C/o. M/s. Oriplast Ltd.
O.T. Road, Balasore-756001, Orissa.)

...Appellant

VERSUS

Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I

.....Respondent

(C.R. Building, Rajaswa Vihar, Bhubaneswar-751007, Orissa.)

WITH

(i) Excise Appeal No.563 of 2010 (Shri Kamal Kishore Agarwal v. Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I); (ii) Excise Appeal No.564 of 2010 (Shri Hemanta Kumar Sinha v. Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I); (iii) Excise Appeal No.565 of 2010 (Shri Durga Shankar Dash v. Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I);

(Arising out of Order-in-Original No.CCE/BBSR-I/13/2010 dated 30.03.2010 passed by Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I.)

APPEARANCE

Shri H.K.Pandey, Advocate for the Appellant (s)

Shri A.Mukherjee, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 77489-77492/2025

DATE OF HEARING : 11.09.2025
DATE OF DECISION : 25.09.2025

Per : R. MURALIDHAR :

M/s. Ori-Plast Pvt.Ltd. having Head Office and Marketing Office at 40, Strand Road, 3rd Floor, Kolkata had received a Show Cause Notice dated 29.09.2008 for an amount of Rs.1,40,29,900/- along with consequential liabilities of interest and penalty for alleged violation of the Cenvat Credit Rules, 2002/2004 pertaining to the period from 2002-03 to 2006-07. In the notice, proposal was also made to impose personal penalty, amongst others, on Shri Kamal Kishore Agarwal, Director and Shri Durga Shankar Dash, Manager (Operations) of M/s. Ori-Plast Pvt. Ltd.

2. The impugned Show Cause Notice was adjudicated by the Ld. Commissioner, Central Excise & Service Tax, Bhubaneswar-I Commissionerate vide Order-in-Original dated 30.03.2010 and in consideration of the facts and circumstances of the case together with the appellant's application, demand of Rs.1,40,29,900/- was confirmed along with all consequential liabilities apart from imposition of penalty of Rs.10,00,000/- on the said Shri Kamal Kishore Agarwal, Director and Rs.1,00,000/- each on Shri Mahendra Kumar Tulsiyan, Shri Hemant Kumar Sinha & Shri Durga Shankar Dash, Manager (Operations) under Rule 26 of the Central Excise Rules, 2002. Being aggrieved by the said order, the appellants are before the Tribunal.

3. After hearing both the sides and on perusal of records, we find that the main Appellant M/s. Oriplast Ltd. has gone for Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and accordingly their Appeal was dismissed as withdrawn vide Final Order No.75424/2020 dated 05.10.2020.

4. We find that this matter came up before the Ahmedabad Bench of the Tribunal in the case of **Prakash Steelage Ltd. & Others v. CCE &**

ST, Bharuch in Excise Appeal No.10911 of 2017 & Others [Final Order No.12591-12595/2024 dated 06.11.2024], which has held as under:-

"4. On careful consideration of the submission made by both the sides and perusal of the records, we find that as of now it is settled that once the duty demand case is settled under SVLDRS-2019, as per 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 Despande 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*

In view of the above judgments, it is settled that once the main case of duty evasion is settled under SVLDRS 2019 the penalty on the Co-appellant shall not survive. 4. Accordingly, the penalty is set aside. The Appeal is allowed."

In view of above judgments given by the two coordinate Division Benches, the penalties imposed on the co-noticees in a case where the main noticee against whom the demand is confirmed, the case is settled under SVLDRS then in respect of other co-noticees penalty will not sustain even if they have not filed a declaration under SVLDRS-2019 and decision on the issue of SVLDRS-2019 in the case of Four R Associates and others reported as 2023 (11) TMI 9 CESTAT-Chennai given by Single Member Bench whereas the aforesaid cited decisions are given by Division Bench. Therefore, Division Bench judgment will prevail over Single Member Bench.

5. Accordingly, the penalties on the appellants are not sustainable. Hence the same are set aside. Appeals are allowed."

5. We find the ratio of this case law, is applicable to the present Appeal.

6. We also find that the present Appeals are emanating from the proceedings initiated against the company M/s.Ori-Plast Ltd. Since they have opted for Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, their Appeal has been dismissed. Therefore, when the case has not been argued on merits by the main party, the present Appellants may not be in a position to defend their case, which basically is on account of corollary penalties. Considering these facts and cited case law, we set aside the penalties and allow the Appeals, along with consequential relief, if any, as per law.

(Order pronounced in the open court on 25.09.2025.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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