CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

REGIONAL BENCH

Excise Appeal No. 137 of 2009

(Arising out of Order-in-Original No. 19/MS-19/2008/Thane-I dated 28.11.2011 passed by Commissioner of Central Excise, Thane-I.)

Mr. A.K. Seth ....Appellant
CEO of M/s Defiance Knitting Industries Pvt. Ltd.
K-6, Addl. Ambernath, M.I.D.C.
Ambernath (E) – 421 506

VERSUS

Commissioner of Central Excise, Thane-I ....Respondent
4th Floor, Navprabhat Chambers,
Ranade Road, Dadar (West),
Mumbai – 400 028

<u>WITH</u>

Excise Appeal No. 138 of 2009

(Arising out of Order-in-Original No. 19/MS-19/2008/Thane-I dated 28.11.2011 passed by Commissioner of Central Excise, Thane-I.)

Mr. Amrit Kumar Bakhsy ....Appellant
Ex-Managing Director of
M/s Defiance Knitting Industries Pvt. Ltd.
501, Nyati Abode, Ramnagar Colony,
Pashan, NDA Road, Bavdhan,
Pune – 411 021

VERSUS

Commissioner of Central Excise, Thane-I ....Respondent
4th Floor, Navprabhat Chambers,
Ranade Road, Dadar (West),
Mumbai – 400 028

<u>AND</u>

Excise Appeal No. 168 of 2009

(Arising out of Order-in-Original No. 19/MS-19/2008/Thane-I dated 28.11.2011 passed by Commissioner of Central Excise, Thane-I.)

Mr. N.T. Dewani ....Appellant
Ex- Director of
M/s Defiance Knitting Industries Pvt. Ltd.
Embee Apparels Pvt. Ltd. 5/1,
Madanaykanahalli, Tumkur Road,
Bangalore – 562 123

VERSUS

Commissioner of Central Excise, Thane-I ....Respondent
4th Floor, Navprabhat Chambers,
Ranade Road, Dadar (West),
Mumbai – 400 028

APPERANCE:

Shri Sachin Chitnis, Advocate for the Appellants

Shri R.K. Dwivedy, Additional Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86626-86628/2021

Date of Hearing: 27.07.2021
Date of Decision: 27.07.2021

PER: DR. SUVENDU KUMAR PATI

We have heard submissions from both the sides and perused the case records.

2. It is learnt that the main appellant Company i.e. M/s Defiance Knitting Industries Pvt. Ltd. has settled the case and duty liability under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 of the Government of India and has also received discharge certificate, for which its appeal was dismissed as deemed withdrawn.

3. These three appellants were its office bearer/person in-charge of the affair of the company against whom personal liability under Rule 26 of the Central Excise Rule, 2002 was fixed and each of them was asked to pay penalty of Rs.10,00,000/- as Director, Managing Director and CEO of the company respectively. Learned Counsel for the appellants submits that whereabouts of these 3 appellants could not be ascertained by him at the appropriate time otherwise they would have also applied under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 after the duty, liability etc. were discharged by the main appellant that would have enabled them to get a discharge certificate with zero liability as contained in the provisions of the scheme.

4. It is noticed from para 35 of the Order-in-Original that allegations against them are general in nature since they carried out day today activities of the company and there is only presumption in favour of their personal knowledge/awareness of the wilful default in payment of tax.

5. This being the facts on record and in view of the fact that the main appellant has resolved the dispute with the respondent-department, continuance of this proceeding after laps of 12 years would not be any help to either of the parties. Therefore, taking a lenient view and having regard to the fact that no specific allegation is available against these appellants to fix a personal responsibility,

we set aside the order passed by the adjudicating authority and discharge the appellants from the penal liability.

4. The appeals are accordingly allowed.

(Pronounced in the open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

Prasad