CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Excise Appeal No. 1888 of 2012

(Arising out of Order-in-Original No. 23/AT(23)COMMR/RGD/12-13 dated 17.09.2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Navi Mumbai.)

Nirmal Kumar Chaudhari ....Appellant
Vice-President-Operations, Zenith Birla (I) Ltd,
Nr. Khopoli Railway Station, Khopoli,
Raigad – 410 203

VERSUS

Commissioner of CGST & Central Excise, Raigad ....Respondent
Utpad Shulk Bhavan, Plot No. 1,
Sector-17, Khandeshwar,
Navi Mumbai – 410 206

APPERANCE:

Shri Rajesh Ostwal, Advocate for the Appellant

Shri Xavier R. Mascarenhas, Supdt., 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/85676/2023

Date of Hearing: 13.03.2023
Date of Decision: 13.03.2023

PER: ***Dr. Suvendu Kumar Pati***

We have heard both the parties and perused the case record.

2. As has been noticed, main Appellant M/s. Zenith Birla (I) Ltd. had settled the dispute under the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 and obtained Form No. SVLDRS-4 with 'nil' tax liability on it and accordingly in exercise of power conferred under Section 127 Clause 6 of the said scheme, the appeal filed by main Appellant M/s. Zenith Birla (I) Ltd. was dismissed as deemed withdrawn by this Tribunal *vide* order dated 02.03.2021. The present Appellant is the Vice-President of M/s. Zenith Birla (I) Ltd.

3. Learned Counsel for the Appellant submits that allegation against the present Appellant is general in nature without any direct involvement in the alleged commission of the Act that would render him liable for penalty, for which Appellant should have been absolved of its liability. Even otherwise also, after the issue has been settled under the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 upon payment of the required money no further penalty can be imposed on the Appellant.

4. Learned Authorised Representative for the Respondent-Department reiterates the findings of the Commissioner and leaves the decision to the discretion of the Bench, in view of the subsequent developments mainly settlement of the dispute under Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019.

5. On perusal of the Order-in-Original it is observed that appellant is implicated as he is in-charge of the entire operation but going by the Order-in-Original noting at para 11, it is noticed that appellant's statement, as has been reproduced by the Commissioner of Central Excise, Customs & Service Tax, Raigad, as Adjudicating Authority to the effect that he was not involved in the day-to-day activities pertaining to Central Excise matter and was being apprised only about the developments from his subordinates. Additionally in his findings, the learned Commissioner also had noted at para 41 that he was not in favour of imposing stringent penalty under Section 11AC of the Central Excise Act, 1944 on the main appellant Company as Rule 6 of the Central Excise (removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2001 provides mechanism for

payment of duty also if, subject goods were not used by the manufacturer for the intended purpose.

6. This being the facts on record, allegations against the appellant and having regard to the fact that the present Appellant's, preferring to file a declaration under the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 would have paid nil penalty in view of the relief available to him under Section 124(i)(b) of the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules 2019, we are of the considered view that even after failure on the part of the Appellant to avail the benefits of the scheme, in view of Board Circular No. 1071/4/2019-CX.8 dated 27.08.2019 and consistent decisions of this Tribunal, including those reported in *[M/s. P. B. Vyas 2021 (378) ELT 177 (Tri. - Mumbai), M/s. Exotica Housing Pvt. Ltd. Final Order No. 50350/2020 dated 17.02.2020],* and in the case of *Dinesh Kanoria Vs. Commissioner of Central Excise, Thane-I* in Appeal No. 1612 of 2012 decided on 20.12.2022, no liability can be fasten on him.

7. We, therefore, allow the appeal and set aside the order of penalty imposed by the Commissioner (Appeals) in respect of the present Appellant.

(Operative portion of the order pronounce in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

Sujeet