CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Excise Appeal No. 1025 of 2012

(Arising out of Order-in-Original No. Sr. No. 19/ST/COMMR/KOP/2012 dated 30.03.2012 passed by the Commissioner of Customs & Central Excise, Kolhapur Commissionerate.)

Mr. Dinesh Sharma ....Appellant
Director of Shreyas Intermediates Ltd.
122-125, Solaris-II, Saki Vihar Road,
Opp. L & T Gate No. 2, Mumbai – 400 072

VERSUS

Commissioner of Central Excise, Kolhapur ....Respondent
Vasant Plaza, Rajaram Road,
Kolhapur -416 003

WITH

(ii) Excise Appeal No. 1026/2012 (M/s. Shivalik International Ltd.); (iii) Excise Appeal No. 1027/2012 (Mr. Shankarlal Sharma); (iv) Excise Appeal No. 1030/2012 [M/s. Shreyas Intermediates Ltd. (DTA Unit)]; (v) Excise Appeal No. 1038/2012 (Mr. Surya Prakash Pandey)

(Arising out of Order-in-Original No. Sr. No. 19/ST/COMMR/KOP/2012 dated 30.03.2012 passed by the Commissioner of Customs & Central Excise, Kolhapur Commissionerate.)

APPERANCE:

Shri Bharat Raichandani, Advocate for the Appellant

Shri Amrendra Kumar Jha, Dy. 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/85694-85698/2023

Date of Hearing: 03.03.2023
Date of Decision: 03.03.2023

PER: DR. SUVENDU KUMAR PATI

These five appeals, which were heard and decided on 03.03.2023, is taken up for detail orders.

2. Legality of the order passed by the Commissioner of Customs & Central Excise, Goa Commissionerate in his capacity as Incharge of Commissioner of Customs and Central Excise, Kolhapur on 30.03.2012 confirming duty demand of Rs. 1,27,48,296/- under Section 11A(2) of the Central Excise Act alongwith interest and equal penalty on the main Appellant Shreyas Intermediates Ltd. (DTA Unit) and penalty on individual Appellants including one M/s. Shivalik International Ltd. having factory at Himachal Pradesh is assailed in this appeal.

3. We have heard submissions from both the sides. Learned Counsel for the Appellant Mr. Bharat Raichandani submitted that on the basis of the same investigation report initiated on intelligence gathered about evading of Central Excise duty allegedly by suppression of production and clandestine clearances of excisable goods manufactured by M/s. Shreyas Intermediates Ltd., another adjudication proceeding was concluded in which Appellant M/s. Shreyas Intermediates Ltd. and its Director Dinesh Sharma were also held guilty for non-payment of Excise duty and suppression,

challenging which they preferred appeal before the CESTAT that was being remanded by this Tribunal *vide* its order dated 20.02.2023 and here only some additional persons are being penalised. He further submitted that for the same allegation there cannot be two proceedings followed by confirmation of duty demand twice and two penalties. Learned Authorised Representative admits that period of dispute is same in both the appeals.

4. We have perused the case record as well as the order passed by us on 20.02.2023 and found substance in the submissions made by the learned Counsel for the Appellant. Only difference noticeable here is that M/s. Shreyas Intermediates Ltd. EOU was Appellant therein alongwith M/s. Shreyas Intermediates Ltd. while M/s. Shreyas Intermediates Ltd. (DTA Unit) is Appellant herein alongwith other Appellants including Shivalik International Ltd. of Himachal Pradesh which is stated to be closedown by the time of occurrence. This being the facts on record, we are of the considered opinion that these appeals, that arose from common investigation report, should also be remanded back to the Commissioner of Customs & Central Excise, Kolhapur Commissionerate for taking a decision on both the appeals together so as to avoid multicity of litigations and also to ensure right against double jeopardy to the Appellant. Hence the order.

THE ORDER

5. The appeals are allowed in part. Matters are remanded back to original authority to be decided alongwith the case remanded back by us vide order in appeal No. E/1024/2012 as both the issues arises of same investigation and are in respect of same demands.

(Operative portion of the order pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

Prasad