CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Excise Appeal No. 88618 of 2013

(Arising out of Order-in-Appeal No. BC/91/BEL/2013-14 dated 30.05.2013 passed by the Commissioner of Central Excise (Appeals), Mumbai-III)

M/s Protochem Industries Pvt. Ltd.
A-737/5, TTC,
MIDC, Industrial Area,
Village Mahape,
Navi Mumbai-400 710

........Appellant

VERSUS

Commissioner of Central Excise, Belapur
1st Floor, CGO Complex,
CBD Be lapur,
Navi Mumbai-400 614

........Respondent

APPERANCE:

Shri R. M. Patkar, Consultant for the Appellant

Shri Vinod S. Chettiparambil, Assistant Commissioner, Authorised Representative for the Respondent.

WITH

Excise Appeal No. 88790 of 2013

(Arising out of Order-in-Appeal No. BC/94/BEL/2013-14 dated 30.05.2013 passed by the Commissioner of Central Excise (Appeals), Mumbai-III)

M/s Reinhold Wuerth India Pvt. Ltd.
Plot No. 139, Door No. 104,
9th Street, Secretariat colony,
Kilpauk, Chennai-600 010

........Appellant

VERSUS

Commissioner of Central Excise, Belapur
1st Floor, CGO Complex,
CBD Belapur,
Navi Mumbai-400 614

........Respondent

AND

Excise Appeal No. 88791 of 2013

(Arising out of Order-in-Appeal No. BC/92/BEL/2013-14 dated 30.05.2013 passed by the Commissioner of Central Excise (Appeals), Mumbai-III)

M/s Wuerth India Pvt. Ltd.
Shivam Building, Plot No. EL-146,
Near L&T Infotech, TTC,
MIDC Mahape, Navi Mumbai- 400 710. ....Appellant

VERSUS

Commissioner of Central Excise, Belapur ....Respondent
1st Floor, CGO Complex,
CBD Belapur,
Navi Mumbai-400 614

AND

Excise Appeal No. 88845 of 2013

(Arising out of Order-in-Appeal No. BC/90/BEL/2013-14 dated 30.05.2013 passed by the Commissioner of Central Excise (Appeals), Mumbai-III)

M/s Marion Wuerth India Pvt. Ltd.
506, 1st Floor,
Patpadgand Indl. Estate,
New Delhi-100 092. ....Appellant

VERSUS

Commissioner of Central Excise, Belapur ....Respondent
1st Floor, CGO Complex,
CBD Belapur,
Navi Mumbai-400 614

APPERANCE IN ABOVE THREE APPEALS:

None for the Appellant

Shri Vinod S. Chettiparambil, Assistant Commissioner, Authorised Representative for the Respondent.

CORAM:

HON'BLE MR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 85010-85013/2024

Date of Hearing: 03.01.2024
Date of Decision: 03.01.2024

PER: BENCH

Both sides are present.

2. We have heard on the appeal filed by Protochem Industries Pvt. Ltd. and peruse the discharge certificate issued in respect of other three Appellants namely Reinhold Wuerth India Pvt. Ltd., Wuerth India Pvt. Ltd., and Marion Wuerth India Pvt. Ltd. These three Appellants Reinhold Wuerth India Pvt. Ltd., Wuerth India Pvt. Ltd., and Marion Wuerth India Pvt. Ltd have settled their disputes under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and received SVLDRS Form-4 that indicates NIL duty liability on these Appellants.

3. Learned Authorised Representative verified those documents and conformed that no duty liability is showing in the said Form-4 namely discharge certificates issued in respect of these three Appellants. In view of the fact of the matter, we dismiss these three appeals filed by Reinhold Wuerth India Pvt. Ltd., Wuerth India Pvt. Ltd., and Marion Wuerth India Pvt. Ltd as deemed withdrawn under Section 127(6) of the amended Finance Act, 1994.

4. In respect of the other Appellant Protochem Industries Pvt. Ltd., Shri R. M. Patkar, Consultant appeared and argued Shri Vinod S. Chettiparambil, AR argued in support of the Department. We have also

perused the appeal case record and relied upon judgments cited by Learned Consultant including three orders passed by the CESTAT Mumbai Zonal Bench in Final Order No. A/87176-87178/2023 dated 30.11.2023, Final Oder No. A/85324/2023 dated 11.01.2023 and Final Order No. A/85432-85436/2023 dated 06.03.2023 on the issue. His argument is based primarily on the fact that had the Appellant applied under the scheme, in view of settlement of the appeal by main Appellant M/s Amogh Industries and issue of discharge certificate in the form of SVLDRS Form-4 that was being duly acknowledged by this Tribunal while disposing of the appeal of M/s Amogh Industries on 22.12.2020 in Excise Appeal No. 88846 of 2013, no penalty would have survived against the present Appellant in view of operation of Section 124(i)(b) Proviso of the Finance Act, 1994. Alternative argument led by him is on the issue of legality of penalty conformed against the present Appellant without proper establishment of his conscious knowledge about the clearance of goods without payment of duty that rendered it liable for confiscation upon erroneous availment of provision of SSI exemption Notification No. 8/2003-CE dated 01.03.2003.

5. In respect of this appeal under context, Learned Authorised Representative argues in favour of the reasoning and rationality of the order passed by the Commissioner (Appeals) and reiterate his findings.

6. Having gone through the submissions and relied upon judgments we are of the considered view that when demand is settled under Sabka

Vishwas (Legacy Dispute Resolution) Scheme, 2019 imposition of penalty under Rule 26 on the Co-Appellant would fail for the reason that the said Proviso Section 124(i)(b) of the Finance Act, 1994 that deals with Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and subsequent clarificatory circular issued vide Circular No. 1071/4/2019-CX.8 dated 27.08.2019 as well as consistent decision of this Tribunal, penalty would have been settled at 'Nil' on the Appellant, had he filed an application under the scheme and availed of its opportunity. In respect of the merit of the appeal also we have perused the order passed by the Commissioner (Appeals) and noticed that allegation of violation of provisions of Central Excise Act is made in general without specific reference to the actual conscious knowledge of the Appellant that the goods so purchased by them were liable for confiscation so as to attract penalty under Rule 26 of the Central Excise Rules, 2002.

7. Therefore, we are of the considered view that on merit as well as under the dispute resolution scheme penalty would not survive against the present Appellant M/s Protochem Industries Pvt. Ltd. and accordingly we set aside the order of penalty imposed on the Appellant by the Commissioner (Appeals) vide his order dated 30.05.2013. Hence the order,

THE ORDER

8. Appeal No. E/88790/2013 of Reinhold Wuerth India Pvt. Ltd., Appeal No. E/88791/2013 of Wuerth India Pvt. Ltd. and Appeal No.

E/88845/2013 of Marion Wuerth India Pvt. Ltd. are dismissed as deemed withdrawn as have been settled under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and appeal No. E/88618/2013 of Appellant Protochem Industries Pvt. Ltd. is allowed setting aside the order of penalty imposed on it by the Commissioner (Appeals).

(Dictated and pronounced in the open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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