CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 86019 of 2015

(Arising out of Order-in-Original No. 08/CEX/2015 dated 05.02.2015 passed by the Commissioner of Central Excise, Customs & Service Tax, Nashik-I)

Mahavir Civil Engineering & Services Pvt. Ltd. .... **Appellant**
131, Khandesh Mill Shopping Complex,
Railway Station Road, Jalgaon- 425 001.

Versus

Commissioner of Central Excise, Nasik-I .... **Respondent**
Kendriya Rajaswa Bhavan, 2nd Floor,
Annex. Idg., R.G. Gadkari Chowk,
Old Agra Road, Nashik- 422 002.

With

Excise Appeal No. 86020 of 2015

(Arising out of Order-in-Original No. 08/CEX/2015 dated 05.02.2015 passed by the Commissioner, Central Excise, Customs & Service Tax, Nashik-I)

Siddharth Constructions .... **Appellant**
(Now known as Siddharth Infra Tech Pvt. Ltd.)
47, Ramdas Colony, Near Sagar Park,
Jalgaon- 425 001.

Versus

Commissioner of Central Excise, Nasik-I .... **Respondent**
Kendriya Rajaswa Bhavan, 2nd Floor,
Annex. Idg., R.G. Gadkari Chowk,
Old Agra Road, Nashik- 422 002.

With

Excise Appeal No. 86021 of 2015

(Arising out of Order-in-Original No. 08/CEX/2015 dated 05.02.2015 passed by the Commissioner, Central Excise, Customs & Service Tax, Nashik-I)

Siddharth + Mahavir + SPML (JV) .... **Appellant**
5, A-Wing, Stadium Shopping Complex,
Jalgaon- 425 001.

Versus

Commissioner of Central Excise, Nasik-I .... **Respondent**
Kendriya Rajaswa Bhavan, 2nd Floor,
Annex. Idg., R.G. Gadkari Chowk,
Old Agra Road, Nashik- 422 002.

APPEARANCE:

Shri Mehul Jivani, Chartered Accountant for the Appellants

Shri C.S. Vinod, Authorized Representative for the Respondent

And

Excise Appeal No. 86043 of 2015

(Arising out of Order-in-Original No. 08/CEX/2015 dated 05.02.2015 passed by the Commissioner, Central Excise, Customs & Service Tax, Nashik-I)

GKC Projects Ltd. **.... Appellant**
(Kurha Kakoda Unit)
Survey No. 58, Chinchkheda Shiwar,
Tal. Mukatainagar, Dist. Jalgaon

Versus

Commissioner of Central Excise, Nasik-I **.... Respondent**
Kendriya Rajaswa Bhavan, 2nd Floor,
Annex. Idg., R.G. Gadkari Chowk,
Old Agra Road, Nashik- 422 002.

APPEARANCE:

Ms Kranti Rathi, Advocate for the Appellant

Shri C.S. Vinod, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85492-85495/2025

Date of Hearing: 18.03.2025

Date of Decision: 18.03.2025

Per: S.K. MOHANTY

Heard both sides and examined the case records.

2. Appellant M/s. GKC Projects Ltd., during the disputed period, were engaged in the manufacture of excisable goods viz., MS Pipes, falling under Chapter Heading No. 7305 of the First Schedule to the Central Excise Tariff Act, 1985. The other appellants M/s. Siddharth Constructions and M/s. Mahavir Civil Engineering & Services Pvt. Ltd. had formed a Joint Venture Company in the name of M/s. Siddarth +Mahavir+SPML (JV) to procure the work orders from the Executive Engineer, Minor Irrigation Division, Jalgaon for commissioning of Tapi Irrigation Development Project. Pursuant to the work order issued by the Executive Engineer, Minor Irrigation division, the appellant M/s. GKC Projects Ltd. had supplied the MS Pipes on payment of Central

Excise duty. For the purpose of payment of the duty amount, the said appellant had adopted the value on the basis of Hon'ble Supreme Court's judgement delivered in the case of *Ujjagar Prints Vs. Union of India* - 1989 (39) ELT 493(S.C.) i.e., landed cost of MS Plates + the Job charges, (which included profit of the appellant). However, the valuation provisions adopted to by the appellant M/s GKC Projects Ltd., was objected to by the Department. The Department was of the opinion that the value should be determined on the basis of the provisions contained in Rule 10A (ii) of the Central Excise (Valuation) Rules, 2000. On the basis of such understanding, show cause proceedings were initiated against the appellant, seeking for confirmation of the duty demand along with interest and for imposition of penalties, which were culminated into the adjudication order dated 05.02.2015 (for short, referred to as "the impugned order"), passed by the Ld. Commissioner of Central Excise, Customs and Service Tax, Nasik, wherein the Central Excise duty demand of Rs. 2,92,68,247/- along with interest was confirmed on the appellant M/s. GKC Projects Ltd., and equal amount of penalty was imposed on them. Besides, the impugned order has imposed penalty of Rs.20,00,000/- each on the other appellants M/s. Mahavir Civil Engineering & Services Pvt. Ltd., Siddartha Construction and Joint Venture Company. Feeling aggrieved with the impugned order dated 05.02.2015, these appeals were preferred by the appellants.

3. When the matter was called out for hearing, Ld. Advocate appearing for the appellants M/s. GKC Project Ltd. has submitted that the matter was referred to the Learned National Company Law Tribunal (NCLT) at Hyderabad for Resolution of the dispute; and that as per the directions contained in the order dated 21.11.2019, the Insolvency Resolution Process was initiated; and the order dated 30.03.2021 was passed by the Learned NCLT, Hyderabad, in approving the Resolution Plan including the statutory dues. He further submitted that accordingly the appellant had settled the dispute by depositing the requisite amount indicated in the said order of Learned NCLT. Thus, Ld. Advocate appearing for the said appellant pleaded for abating the appeal in terms of Rule 22 of the CESTAT (Procedure) Rule, 1982. On perusal of the case records, more particularly the order dated 30.03.2021 passed by Learned NCLT, Hyderabad and the calculation sheet submitted by the appellant

together with the proof of payment of the requisite amount, we are of the view that the matter has already been settled and the dispute confirmed in the impugned order shall not be proceeded with. Accordingly, in our considered view, the appeal should abate in terms of Rule 22 *ibid* and accordingly, it is directed that the appeal filed by the appellant M/s. GKC Projects Ltd. stands abated.

4. The impugned order has imposed penalties on the other appellants in terms of Rule 26 of the Central Excise Rules, 2002. Insofar as the imposition of penalty for certain offences or contravention of the statutory provisions are concerned, sub-rule (1) of Rule 26 *ibid* mandates that the person on whom penalties are required to be imposed, should be involved in the fraudulent activities in respect of the goods, which are liable for confiscation under the Central Excise Act, 1944 and the rules made their under. In the present case, we find that no such proposals were made in the showcase notice, seeking for confiscation of the offending goods and the impugned order has also not confiscated any goods, with the option to redeem the same on payment of redemption fine. Since, no specific allegations were levelled against the appellants, seeking for confiscation of the goods, in our considered view, the provisions of sub-rule(1) of Rule 26 *ibid* cannot be invoked for imposition of penalties on the appellants.

5. In view of the above, the impugned order, to the extent it has imposed penalties on the appellants M/s. Mahavir Civil Engineering & Services Pvt. Ltd., Siddartha Construction and Joint Venture Company, are set aside and the appeals are allowed in their favour.

6. All the appeals are disposed of in above terms.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM