



आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आज़ादी का
अमृत महोत्सव

By SPEED POST

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(क)	फाइल संख्या / File No.	GAPPL/COM/CEXP/247/2023-APPEAL / 33 S- 339
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-168/2023-24 and 22.12.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील्स) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	03.01.2024
(ङ)	Arising out of Order-In-Original No. AHM-CEX-003-JC-SP-026-22-23 dated 30.03.2023 passed by the Joint Commissioner, CGST & CEx, Commissionerate: Gandhinagar	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Shri Dilipkumar Tulsidas Patel, Proprietor of M/s. Gurukrupa Steel Corporation, 4/11/125, Mathura Nagar, Near ONGC, Mehsana -384002

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way.

भारत सरकार का पुनरीक्षण आवेदन:-

Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं 2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public



sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन और संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपील के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में 'अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

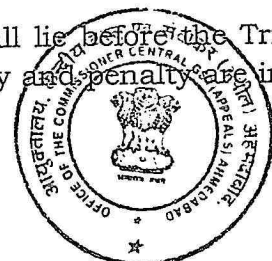
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

(6) (i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



अपीलिय आदेश / ORDER-IN-APPEAL

The present appeal has been filed by Shri Dilipkumar Tulsidas Patel, Proprietor of M/s. Gurukrupa Steel Corporation, 4/11/125, Mathura Nagar, Near ONGC, Mehsana - 384002 (hereinafter referred to as "the appellant") against Order in Original No. AHM-CEX-003-JC-SP-026-22-23 dated 30.03.2023 [hereinafter referred to as "impugned order"] passed by the Joint Commissioner, CGST & CEx, Commissionerate Gandhinagar [hereinafter referred to as "adjudicating authority"].

2. Briefly stated, the facts of the case are that a searches carried out by the officers of Directorate General of Central Excise Intelligence (now Directorate General of GST Intelligence) (hereinafter referred to as DGCEI) at the factory and office premises of M/s. Jay Tripathi Steels Pvt. Ltd. (hereinafter referred to as JTSPL) as well as at the premises of their buyers, suppliers and transporters. During the course of the searches, documents and data showing illicit purchase of raw materials and clandestine clearance of finished goods by JTSPL were recovered which revealed that JTSPL had clandestinely cleared and sold finished goods i.e. M.S. Pipes totally weighing 35.18 MTs, valued at Rs. 11,76,344/-, involving Central Excise duty amounting to Rs.1,21,164/-, to the appellant.

2.1 On conclusion of the investigation, Show Cause Notice No. DGCEI/AZU/36-218/2013-14 dated 06.02.2014 was issued to JTSPL wherein demand of Central Excise duty amounting to Rs.90,93,000/- under the proviso to erstwhile sub-section (1) of Section 11A [now Section 11A (4)] of the Central Excise Act, 1944 along with interest was proposed. Imposition of penalty was also proposed on JTSPL as well as various other firms and persons. The SCN also proposed imposition of penalty on the appellant under Rule 26(1) of the Central Excise Rules, 2002.

3. The said SCN was adjudicated vide OIO No. AHM-CEX-003-ADC-MS-010-20-21 dated 17-03-2021 wherein the demand was confirmed against JTSPL along with Interest. JTSPL thereafter availed the benefit under the SVLDR Scheme, 2019 and therefore, no penalty was imposed upon them. Penalty was also imposed on all other co-noticees under Rule 26 (1) of the Central Excise Rules, 2002. A penalty of Rs.2,00,000/- was imposed upon the appellant under Rule 26 (1) of the Central Excise Rules, 2002.

4. Being aggrieved, the appellant filed appeal before the Commissioner (Appeals), Ahmedabad, who vide OIA No. AHM-EXCUS-003-APP-011/2022-23 dated 25.04.2022 remanded the case back to the adjudicating authority for afresh adjudication with a direction to grant opportunity of personal hearing to the appellant in the interest of natural justice.

5. In the remand proceedings, the case was adjudicated vide the impugned order, wherein the Penalty of Rs.2,00,000/- was imposed under Rule 26(1) of the Central Excise Rules, 2002.

6. Being aggrieved with the impugned order, the appellant have filed the instant appeal on the following grounds;



- In the OIO, it is stated that the main noticee i.e., Jai Tripati Steels Pvt. Ltd has opted under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and that the discharge certificate in the form SVLDRS-4 has been issued in the case of Jai Tripati Steels Pvt. Ltd. As the main noticee has been discharged from interest, penalty and all other charges and has also got relief from tax dues by virtue of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. Further, by virtue of the Circular No. 1071/4/2019-CX.8 dated 27th August, 2019, the declaration under the scheme will not be a basis to assume that the declarant has admitted the position. Thus, when the main noticee has been absolved from interest and penalties and no adjudication proceedings in material sense has taken place. The discharge certificate will be conclusive of the matter and period covered therein. Therefore the penalty under Rule 26(1) of the Central Excise Rules, 2002 on the appellant Co-noticee do not sustain. The penalty is consequential to the demand confirmed by the Adjudicating Authority and since the major demand of duty confirmed itself is not sustainable penalties of co-appellants are also not sustained. They placed reliance on following decisions:
- Wilson Paper Mills (P) Ltd v. CCE & ST, Rajkot, (2020) 9 TMI 645 (Tri-Ahmedabad).
 - M/S. Sangli Aluminium Extrusions Pvt Ltd & Ravindra Jethalal Cheda Versus Commissioner Of Cgst, Kolhapur (2022) 3 TMI 100
 - *2022 (1) TMI 1058 CESTAT MUMBAIASHISH TAMBAWALA AND LALIT LALAN VERSUS COMMISSIONER OF CGST, THANE*
 - *2021 (3) TMI 1305 - CESTAT MUMBAI Other Citation: 2021 (378) E.L.T. 177 (Tri. Mumbai) P.B. VYAS VERSUS COMM. OF CENTRAL EXCISE, MUMBAI-III*
- The Adjudicating authority has erred in law in imposing penalty under Rule 26(1) on the appellant even though the appellant has purchased goods as per proper documents and that the appellant is not having any knowledge about the contents of the statement given. The appellant hardly understood the legal and technical language which are mentioned in the OIO and the SCN has not at all received them and that the signature on the statements were taken under duress. The appellant had no knowledge about the sister concern of the Jai Tripati Steels Pvt. Ltd. or the authority which could confirm as to who is sister concern or who is not. Further, the appellant does not understand the nitty-gritty of the business; he cannot understand and state as to whether the entry that has been made is correct or not.
- Further, the appellant negates all the allegations regarding making payment of cash to the main noticee. Further, the appellant does not have any knowledge regarding payment of central excise or otherwise. The appellant is not registered under Central Excise and also does not issue any cenvatable invoices. Further, it is also submitted that your appellant has no reason to believe that the goods purchased by it are liable for confiscation.



- Rule 26 states that the penalty can be imposed only when the person knows or has reason to believe are liable to confiscation under the Central Excise Act, 1944 or Central Excise Rules, 2002. The appellant is not having any knowledge about the provisions of Central Excise Law as and he is not having Central Excise registration nor they have issued any cenvatable invoices. Also did not have any knowledge as to when the goods are liable for confiscation under Central Excise. On account of aforementioned reason, the penalty is not required to be demanded.
- They relied on following case laws:
- [2018 (4) TMI 1450- Delhi (Tri)]
 - In Cipla Coated Steel v. CCE 1999 (113) ELT (490) (CEGAT),
 - B T Steels Ltd. v. CCE (1997) 95 ELT 130 (CESTAT SMB)
 - In Jaiprakash R Jalan v. CCE (2007) 207 ELT 226 (CETAT),

7. Personal hearing in the case was held on 28.11.2023. Shri Rohan Thakkar, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He reiterated the contents of the written submission and requested to allow their appeal. He further submitted orders of CESTAT, Ahmedabad & Delhi passed in the case of Shri V.K. Aggarwal & Shri J.K. Aggarwal- 2023(9) TMI 178-CESTAT, New Delhi. & the decision passed in the case of Shakil Zakaria Memon Vs CCE-Vadodara-I, in support.

8. I have carefully gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during the personal hearing, additional submissions made by the appellant and materials available on records. The issue before me for decision is whether the penalty imposed on the appellant vide the impugned order, in the facts and circumstances of the case, is legal and proper or otherwise.

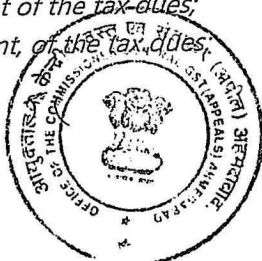
9. The appellant has strongly relied on the decisions passed by Hon'ble Principal Bench, Tribunal New Delhi in the case of **Shri V.K. Aggarwal & Shri J.K. Aggarwal- 2023(9) TMI 178-CESTAT, New Delhi**. & the decision of Hon'ble Tribunal passed in the case of **Shakil Zakaria Memon Vs CCE-Vadodara-I**. The Tribunal in the case of Shri V.K. Aggarwal & Shri J.K. Aggarwal- while deciding the issue whether the adjudication proceedings against the co-noticees (Directors) can be continued when the subject matter of the show cause notice has been settled by the main noticee viz. the Company under SVLDR Scheme, set-aside the penalty on the appellants who were co-noticees in the SCNs and where the main noticee availed the SVLDRS. The relevant text of the decision is reproduced below;

"8. Learned Counsel for the appellant referred to the provisions of Section 124 (1) of the Finance (No.2) Act, 2019, which reads as under:-

"124 (1) Subject to the conditions specified in sub-section (2), the relief available to a declarant under this scheme shall be calculated as follows:-

(a) Where the tax dues are relatable to a show cause notice or one or more appeals arising out of such notice, which is pending as on the 30th day of June, d 2019, and if the amount of duty is, --

- (i) Rupees fifty lakhs or less, then seventy per cent of the tax dues;*
- (ii) more than rupees fifty lakhs, then, fifty per cent, of the tax dues;*



(b) where the tax dues are relatable to a show cause notice for late fee or penalty only, and the amount of duty in the said notice has been paid or is nil, then, the entire amount of late fee or penalty."

9. Learned Counsel for the appellant has then referred to the reply of the CBIC to the Frequently Asked Questions (FAQ) in so far as the liability of the co-noticees was concerned, which is as under :-

"Q 23. What is the coverage of SCNs under the Scheme with respect to main notice vis-à-vis co-noticee particularly when the tax amount has already been paid by the main notice outside the Scheme?

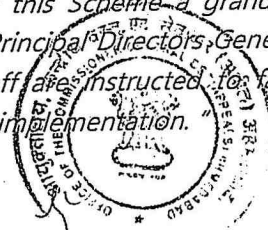
Ans. In case of a SCN issued to an assessee demanding duty/tax and also proposing penal action against him as well as separate penal action against the co-noticee/s, specified therein, if the main notice has settled the tax dues the co-noticee/s can opt for the Scheme for the waiver of penalty. For instance, the main notice has settled the matter before the Settlement Commission and paid the dues and the co-noticee/s were not a party to the proceedings. In such a case, the co-noticee/s can file a declaration under the Scheme. Similarly, in a case of arrears, where the main notice has paid the duty, the co-noticee/s can file a declaration under the Scheme."

10. The learned Counsel for the appellant has pointed out to the provisions to the Circular No.1071/4/2019-CX.8 dated 27.08.2019. The relevant para thereof is quoted below:-

"Section 124(1) (b) provides that where the tax dues are relatable to a show cause notice for late fee or penalty only, and the amount of duty in the said notice has been paid or is 'nil', then the entire amount of late fee or penalty will be waived. This section, inter alia, covers cases of penal action against co-noticees. In case of a show cause notice demanding duty/tax from the main tax payer and proposing penal action against co-noticees, it is clarified that the co-noticees can not avail the benefits of the scheme till such time the duty demand is not settled. Once, the main noticee discharges the duty demand, the co-noticees can apply under this Scheme. This will also cover cases where the main notice has settled the matter before the Settlement Commission and paid the dues and in which co-noticees were not a party to the proceedings before the Settlement Commission."

11. It appears that in terms of the aforesaid circular as well as the FAQ referred above, the co-noticee has a responsibility to opt or apply for the scheme, once the main notice has been issued the discharge certificate of the duty liability, which in the present case, the appellant has failed to do so. I am of the opinion that this is only a procedural flow, for which the appellant cannot be burdened with the liability of penalty, in as much as, there is no loss to the Revenue. The amount proposed in the show cause notice stands settled with the issuance of the discharge certificate issued in favour of the main noticee. The interpretation placed is based on the provisions of the Circular, which explains that the scheme is a bold endeavor to unload the baggage relating to the legacy taxes viz. central excise and service tax that have been subsumed under GST and allow business to make a new beginning and focus on new GST, therefore, it is incumbent on all the officers and staff of CBIC to be partner with the trade and industry to make the scheme a grand success. The closing paragraph of the Circular also says as under:-

"12. The Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 has the potential to liquidate the huge outstanding litigation and free the taxpayers from the burden of litigation and investigation under the legacy taxes. The administrative machinery of the Government will also be able to fully focus on helping the tax payers in the smooth implementation of GST. Thus, the importance of making this Scheme a grand success cannot be overstated. The Principal Chief Commissioners/Principal Directors General/Chief Commissioners/Directors General and all officers and staff are instructed to familiarize themselves with the Scheme and actively ensure its smooth implementation."



12. Thus, keeping in view the avowed object with which the scheme has been introduced and the intention of the Government to make it a grand success, it is necessary that the relief sought by the appellant deserves to be allowed and penalty imposed on them needs to be set aside. The Circular issued by the department is binding on them.

13. XXX

14. The judgements so referred clearly says that when the demand of duty has been settled under SVLDR Scheme, the imposition of penalty would fail on simple ground that if the appellants had applied under the said scheme, they would have paid 'nil' duty, in view of the relief available to them under Section 124(1) (b) of the Finance Act. This Tribunal in similar circumstances has set aside the said penalty imposed in the case of Shri B.V. Kshatriya (supra). The relevant paragraph is given below:-

"3.2 Thereafter, on introduction of the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019, the main noticee, M/s. Bhikusa Papers Pvt. Ltd and other co-noticees settled the dispute under SVLDRS, but the present appellant, who is a director of the main noticee failed to opt under the Scheme. However, without considering the directions given in the remand order and allowing cross examination, Commissioner has imposed penalties on the appellant, just for reason that the appellant did not settle the issue along with others under SVLDRS. Such approach of Commissioner cannot be justified. Even if the appellant has not approached under SVLDRS, Commissioner should have adjudicated as directed by Tribunal. No justification for imposition of penalty on reconsideration as per order of Tribunal is forthcoming."

15. I find no reasons to differ with the aforesaid view of the Tribunal and, therefore, I set aside the impugned order and the penalty imposed on the appellants. Both the appeals are accordingly allowed."

10. I find that similar view was taken by Hon'ble Tribunal in the case of Shakil Zakaria Memon Vs CCE-Vadodara-I- as reported at 2023(11) TMI 6. Further, CEGAT, SOUTH ZONAL BENCH, BANGALORE, in the case of PRADEEP GANNERIWALA- 2002 (148) E.L.T. 599 (Tri. - Bang.) held that;

"Para-3.....the Board's Circular F. No. 275/33/98-CX 8A (Pt) dt. 9-12-98 issued by Ministry of Finance, that proceedings initiated by the Department against other two notices will also come to an end. In this context he referred to the relevant portion in the Circular which is as follows :-

"Under the Scheme some difficulties are being encountered in settlement of certain categories of case of pending show cause notices involving also certain co-noticees against whom penal action is proposed in the same case for the alleged involvement for the irregularities committed by the principal of notices.

It is hereby clarified that no civil proceedings for imposition of fine or penalty shall be proceeded with against the co-noticee and in such case the settlement in favour of declarant under the Scheme shall be deemed to be full and final in respect of other person also on whom show cause notices were issued on the same matter."

Further he referred to a series of decisions of the Tribunal.

XXXX

4. On the other hand Shri Thomas appearing for the Revenue submitted that it is appropriate for the party to withdraw the appeal since the declaration filed by the main party has been accepted under Kar Vivad Samadhan Scheme.

5. We have carefully considered the submissions made by both sides. Show Cause Notice has been issued to the appellants M/s. Triton Synthentic Fibres and the other three appellants



demanding duty as well as penalties. Since Show Cause Notice was common, the main party has opted for the Kar Vivad Samadhan Scheme and it was brought to our notice that declaration filed by the company has also been accepted. Further the Tribunal also has passed an order in respect of KVSS with reference to the Main Company as per Order No. 932/99, dt. 28-4-99."

6. In the facts and circumstances and in view of the Circular referred to above and following the ratio of the decisions referred to above, we accept the contention of the party and accordingly all these appeals are disposed of in terms of the above Circular."

11. Since Hon'ble Tribunal in the above cases set aside the penalty imposed on the co-noticee taking a view that if the main manufacturer have been settled under the SVLDR Scheme and no penalty imposed upon them, it would not be desirable to hold their co-noticee to be guilty of contravening the provisions of Central Excise law and imposing penalty on co-noticee would be unjustifiable. I, therefore, find that the adjudicating authority ought to have set aside the penalty imposed on the appellant, by following the Board's circular which was binding on the authority as held by the Hon'ble Supreme Court in a series of decisions including its decision in the case of *Steel Authority of India v. Collector of Customs* [2000 (115) E.L.T. 42 (S.C.)].

12. By following the above judicial pronouncement, I set-aside the impugned order and allow the appeal filed by the appellant.

13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.

G.C.J.
22.12.2023

ज्ञानचंद जैन
आयुक्त (अपील्स)

Dated: 22nd December, 2023

सत्यापित/Attested :

रेखा
रेखा नायर
अधीक्षक (अपील्स)
सी जी एस टी, अहमदाबाद

BY RPAD / SPEED POST

To
Shri Dilipkumar Tulsidas Patel,
Proprietor of M/s. Gurukrupa Steel Corporation,
4/11/125, Mathura Nagar,
Near ONGC, Mehsana -384002.

The Joint Commissioner,
CGST & C.Ex., Commissionerate Gandhinagar



- Appellant

- Respondent

Copy to: -

1. The Principal Chief Commissioner, CGST & C.Ex., Ahmedabad Zone.
2. The Commissioner, CGST & C.Ex., Commissionerate: Gandhinagar.
3. The Superintendent (System), CGST, Appeals, Ahmedabad. (for uploading the OIA).
4. Guard File.

