IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. E/1750, 1882, 1914 & 2654/2007-EX[DB]

(Arising out of Order-in-Original No. 15/Commissioner/GZB/2007 dated 31/03/2007 passed by Commissioner of Central Excise, Ghaziabad)

M/s Shri Arun Rathi, Director of Rathi Ispat Ltd. (In E/1750/2007),

Shri Pradeep Rathi, Director of Rathi Ispat Ltd. (In E/1882/2007),

Shri M. L. Agarwal (In E/1914/2007) &

Shri Anil Rathi (In E/2654/2007) **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad **Respondent**

Appearance:

Shri Rajesh Chhibber Advocate (In E/1914/2007) &
Ms. Stuti Saggi, Advocate (In E/2654/2007), for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 10/10/2017

FINAL ORDER NO. **71036-71039/2018**

Per: Anil G. Shakkarwar:

The above stated four appeals are taken together for decision because these are arising out of common Order-in-Original No. 15/Commissioner/GZB/2007 dated 31/03/2007 passed by Commissioner of Central Excise, Ghaziabad.

2. The brief facts of the case are that Shri Arun Rathi was Director of M/s Rathi Ispat Ltd. Shri Pradeep Rathi & Anil Rathi were Directors of the same company M/s Rathi Ispat Ltd. & Shri M. L. Agarwal was President of M/s Rathi Ispat

Ltd. On the basis of search conducted by the Central Excise Officers against M/s Rathi Ispat Ltd. a Show Cause Notice dated 31/12/1996 was issued to M/s Rathi Ispat Ltd., wherein there were allegations of undervaluation of S. S. Billets, mis-declaration of Stainless Steel as Other Alloy Steel and certain allegations in respect of Modvat credit such as Modvat credit was availed on inadmissible documents. The said Show Cause Notice had a proposal for imposition of personal penalty on the present appellants under the provisions of Rule 209-A of the Central Excise Rules, 1944. The said Show Cause Notice was adjudicated through Order-in-Original No. 29/Commissioner/M-I/1997 dated 25/11/1997, confirming the demand which was challenged before this Tribunal. This Tribunal through Final Order No. 48-49/2001 remanded the matter back to the file of Original Authority with direction to be complied with. As a consequence of remand directions the issue was adjudicated through impugned Order-in-Original No. 15/Commissioner/GZB/2007 dated 31/03/2007, wherein at Para 10 of the said impugned Order-in-Original it was held that the present appellants willingly schemed and indulged in the fraudulent act of undervaluation of the S.S. Billets, mis-declaration of S.S. Billets as Other Alloy Steel Billets and misrepresentation of the facts about receipt of Modvat inputs and their covering documents with the sole intent to facilitate evasion of Central Excise duty by M/s Rathi Ispat Ltd.

Through the impugned Order-in-Original personal penalty of Rs.50,00,000/- was imposed on each Shri Anil Rathi, Shri Pradeep Rathi & Shri Arun Rathi under Rule 209-A of the Central Excise Rules, 1944. Further, personal penalty of Rs.5,00,000/- was imposed on Shri M. L. Agarwal under the same Rule 209-A of the Central Excise Rules, 1944. Being aggrieved by the said order above stated appellants preferred appeal before this Tribunal.

3. Heard the ld. Counsel for the appellants, who have taken use through Para 2.3, Para 8.5, Sub-Para (k) under Para 12.3, Para 13.9 & Para 16.02 of said Show Cause Notice dated 31/12/1996 and argued that there is no evidence on record to make allegations that the appellants were in any way responsible for any activity which lead to the allegations made in the said Show Cause Notice dated 31/12/1996. The ld. Counsel for the appellants has also submitted that the main noticee M/s Rathi Ispat Ltd. is not appellant before this Tribunal however, neither the Show Cause Notice nor the Adjudication Order has anyway established that the present appellants were responsible for any activity which lead to the allegations in the said Show Cause Notice against M/s Rathi Ispat Ltd.

4. Heard the ld. A. R. for Revenue, who has submitted that the type of evasion that was alleged in the Show Cause Notice could not be possible without active involvement of Directors of the company i.e. M/s Rathi Ispat Ltd.

5. Having considered the rival contentions and on perusal of the facts on record, we find that in Para 8 of the impugned Order-in-Original issues to be decided by the Adjudicating Authority have been framed. The issues framed are relating to under valuation of S.S. Billets, Mis-declaration of Stainless Steel as Other Alloy Steel, receipt of other Modvat inputs, invalid Modvat documents, non-receipt of Modvat inputs & short receipt of Modvat inputs. In the said Para 8 above issues have been dealt with one by one for findings. We do not find any issue framed by the Original Authority in respect of admissibility of the present appellants for imposition of personal penalty under said Rule 209-A of the Central Excise Rules, 1944. We also do not find any finding given on the facts of omission or commission by the present appellants in the present Adjudication Order which made them liable for imposition of penalty. Without any findings, the Original Authority has jumped to the conclusion in Para 10 of the said impugned Order-in-Original 31/03/2007 that the present appellants havewillingly schemed and indulged in the fraudulent act of under valuation of the S.S. Billets mis-declaration of S.S. Billets as Other Alloy Steel Billets and misrepresentation of the facts about receipt of Modvat inputs. We, therefore, find that there is absence of any finding by the Original Authority about the role played by the present appellants in respect of the allegations made against M/s Rathi Ispat Ltd. Therefore, in absence of any finding

imposition of personal penalty on the present appellants is not sustainable. We, therefore, set aside the penalty imposed on the present appellants and modify the impugned Order-in-Original to that extent.

6. In above terms, all the appeals are allowed. The appellants shall be entitled for consequential relief, as per law.

(Dictated & Pronounced in Court)

Sd/-	**Sd/-**
(Anil Choudhary)	**(Anil G. Shakkarwar)**
Member (Judicial)	**Member (Technical)**

Ansari