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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
EXCISE APPEAL BRANCH

Appeal No. : E/1361/2010-EX[DB]

Dated: **17/10/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
TWENTY FIRST CENTURY STEEL LTD.
G T Road, Mandi Gobindgarh, Punjab.

TWENTY FIRST CENTURY STEEL LTD. (Appellant)

VS

C.C.E. CHANDIGARH (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/1224/2012-EX[DB]** dated **16/10/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
C.C.E. CHANDIGARH
C.R. Building, Plot No. 19, Sector 17-C,
Chandigarh 160017

2. Advocate(s) / Consultant(s):
D. S. K. Legal, Attorney & Solicitors
21 UGF, ANTARIKSH BHAWAN,
KASTURBA GANDHI MARG,
NEW DELHI,
DELHI

3. C.D.R
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi-3

7. Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8. Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

10. LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11. TaxIndiaOnline.com Pvt. Ltd., Unit No. 1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

12. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

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Assistant Registrar
EXCISE Appeal Branch

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

Excise Appeal No. 1361 of 2010

[Arising out of the Order-in-Appeal No. 46/CE/Chd./2010 dated 24/02/2010 passed by The Commissioner (Appeals), Central Excise & Customs, Chandigarh.]

Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

M/s Twenty First Century Steel Ltd. Appellant

Versus

CCE, Chandigarh Respondent

Appearance

Shri Balbir Singh, Advocate – for the appellant.

Shri S.R. Meena, Authorized Representative (DR) - for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 15/06/2012.
DATE OF DECISION : 16/10 /2012.

Final Order No. A/1224/2012-B Dated : 16/10/12

Per. Rakesh Kumar :-

The appellant are manufacturers of non-alloy steel ingots and billets chargeable to Central Excise duty under sub-heading 7206.90 of the Central Excise Tariff. The period of dispute in this case is from April 1998 to April 1999. During this period, the appellant were functioning under compounded levy scheme under Rule 96 ZO of the Central Excise Rules and were discharging duty liability on the basis of their monthly duty liability determined by the Commissioner based on their annual capacity of production. The monthly duty liability as per the provisions of the rules was being discharged in two fortnightly instalments. The appellant during the period of dispute failed to discharge their fortnightly duty liability by the due date. Though the duty liability was discharged alongwith interest for the period of delay, there was, as such, delay in the discharge of duty liability for certain fortnights. During the period of dispute, as per the provisions of Rule 96 ZO (3), which came into effect from 1/5/98, an assessee operating under Rule 96 ZO was required to discharge the duty liability for each fortnight by the due date and if he failed to discharge the duty liability by the due date and there was delay, he was required to pay the duty amount due alongwith the interest for the period of delay and beside this, he was also liable to pay penalty equal to outstanding amount of duty or Rs. 5,000/- whichever is greater. In this case, on account of delay in discharge of fortnightly duty liability, the jurisdictional

Superintendent, Central Excise, in terms of the provisions of Rule 96 ZO (3) (ii) of the Central Excise Rules, directed the appellant vide letter dated 11/3/03 to pay a sum of Rs. 1,25,04,000/- as penalty under the provisions of Rule 96 ZO (3) (ii) of the Central Excise Rules as this amount of duty had not been paid by the due date. The appellant filed an appeal before the Commissioner (Appeals), who vide order-in-appeal dated 5/8/03 allowed the appeal and set aside the Superintendent direction dated 11/3/03. The Revenue filed an appeal before the Tribunal against the Commissioner (Appeals)'s order and the Tribunal vide final order dated 5/5/04 set aside the Commissioner (Appeals)'s order and remanded the matter to Commissioner (Appeals) for deciding the matter on merits in accordance with the law. In remand proceedings, the Commissioner (Appeals) passed an order dated 30th July 2004 by which he again set aside the Superintendent's direction dated 11/3/03. The Revenue again filed an appeal against the Commissioner (Appeals)'s order dated 30th July 2004 before the Tribunal and the Tribunal vide final order dated 26th February 2009 set aside the Commissioner (Appeals)'s order and remanded the matter again for deciding afresh in the light of certain directions in the order. In the remand proceedings, the Commissioner (Appeals) vide order dated 24/2/10 confirmed the penalty to the extent of Rs. 1,04,16,070/- and dropped the penalty to the extent of Rs. 20,83,334/- on the ground that the same pertains to delay in discharge of fortnightly duty liability for the period prior to 1/5/98 when Rule 96 ZO (3) (ii) was not there. Against this order of the Commissioner (Appeals), this appeal has been filed by the appellant.

2. Heard both the sides.

3. Shri Balbir Singh, Advocate, the learned Counsel for the appellant, pleaded that though the Apex Court in the case of **Union of India vs. Dharamendra Textile Processors** reported in **2008 (231) E.L.T. 3 (S.C.)** with regard to Rule 96 ZO (3) had held that in the case of delay in discharge of monthly/fortnightly duty liability by a unit operating under this scheme by the due date, penalty imposable was equal to the outstanding duty or Rs. 5,000/- whichever is greater, and the Adjudicating/Appellate Authority has no discretion to impose lower penalty, the Apex Court while interpreting the provisions of this Rule had left the question of its vires open to be decided by the High Courts, that the vires of this Rule was challenged before the Hon'ble Punjab and Haryana High Court in the case of **Bansal Alloys & Metals Pvt. Ltd. vs. Union of India** reported in **2010 (260) E.L.T. 343 (P&H)**, wherein the Hon'ble High Court has held Rule 96 ZO (3) (ii) as ultravires the constitutional provisions, as this Rule prescribing penalty equal to the outstanding duty for slightest delay in payment even due to bonafide reason without any discretionary power to impose lower penalty is arbitrary, that same view has been taken by Hon'ble Gujarat High Court in its judgment in the case of Krishna Processors Vs Union of India, reported in 2012 (290) ELT-186 (Guj) that in view of this, the imposition of penalty equal to the outstanding duty

whose payment had been delayed due to genuine reasons is unwarranted, more so when the delay was only in payment of duty for the first fortnight and the duty had been paid during the same month alongwith interest, and that in view of this, the impugned order is not sustainable.

4. Shri S.R. Meena, the learned Departmental Representative, defended the impugned order relying upon the Apex Court's judgment in the case of **Union of India vs. Dharmendra Textile Processors** (supra) and pleaded that in view of the provisions of Rule 96 ZO (3) (ii) as interpreted by the Apex Court in the case of **Union of India vs. Dharmendra Textile Processors** (supra), in case an assessee delayed the payment of duty for a particular month or fortnight by the due date, he was liable to pay penalty equal to the outstanding duty amount or Rs. 5,000/- whichever is greater and that the Adjudicating Authority or Appellate Authority had no discretion to impose lower penalty. He, therefore, pleaded that there is no infirmity in the impugned order.

5. We have carefully considered the submissions from both the sides and perused the records.

6. Though on the issue involved in this case, the Apex Court in the case of **Union of India vs. Dharmendra Textile Processors** (supra) while holding that in case of delay in discharge of monthly/fortnightly duty liability by an assessee operating under Rule 96 ZO, the penalty in terms of Rule 96 ZO

(3) (ii) penalty equal to the outstanding duty liability or Rs. 5,000/- whichever is greater was attracted and the Adjudicating Authority or Appellate Authority has no discretion to impose lower penalty, the Apex Court in this case had left the issue of vires of this rule open to be decided by the High Courts. The question of vires of this Rule was challenged before Hon'ble Punjab and Haryana High Court in the case of **Bansal Alloys & Metals Pvt. Ltd. vs. Union of India** (supra), wherein the Hon'ble High Court has struck down this rule as ultravires the constitutional provisions. In this regard para 15,16 and 17 of the judgements of the Hon'ble High Court are reproduced below :-

> "15. Applying the above principles to the present situation, the provision for minimum mandatory penalty equal to the amount of duty even for slightest *bona fide* delay without any element of discretion is beyond the purpose of legislation. The object of the rule is to safeguard the revenue against loss, if any. The penalty has been provided in addition to interest. Mere fact that without *mens rea*, an can be punished or a penalty could be imposed is not a blanket power without providing for any justification. In the Indian Constitutional scheme, power of legislature is circumscribed by fundamental rights. Judicial review of legislation is permissible on the ground of excessive restriction as against reasonable restriction which is also described as proportionality test.
>
> ***Conclusion***
>
> 16. For the above reasons, we hold that the impugned provision to the extent of providing for mandatory minimum penalty without any *mens rea* and without any

element of discretion is excessive and unreasonable restriction on fundamental rights and is arbitrary. Moreover, exercise of such power by way of subordinate legislation is not permissible when rule making authority for levying penalty is limited to default "'with intent to evade duty".

17. The writ petitions of the assessees are allowed and impugned provisions in Rules 96(ZO), (ZP) and (ZQ) permitting minimum penalty for delay in payment, without any discretion and without having regard to extent and circumstances for delay are held to be ultravires the Act and the Constitution. In CWP No. 8555 of 2010, penalty has been sustained by the Tribunal to the extent of 100% which will stand quashed without prejudice to any fresh order being passed in accordance with law. It is made clear that if penalty has attained finality as in CWP No. 18099 of 2009 upto this Court, this order will not affect the finality of such order. The appeals filed by the revenue against the orders of the Tribunal sustaining penalty proportionate to the default will stand dismissed."

6.1 Same view has been taken by Hon'ble Gujarat High Court in the case of Krishna Processors Vs Union of India. (supra).

7. In view of the above, we hold that imposition of penalty of Rs. 1,04,16,070/- equal to the outstanding duty liability is not sustainable. However, since there was delay in discharge of duty liability by the due date and the same by itself would attract penalty, imposition of some penalty would be required.

Accordingly, the penalty on the appellant is reduced to Rs. 5,00,000/- (Rupees Five Lakhs).

16/10/2012

(Pronounced in open court on ~~26 /2012.~~)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

PK