IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. E/50438/2017-Ex[SM]

[Arising out of Order-In-Appeal No. BHO-EXCUS-001-APP-496-16-17 dated 14.12.2014-6 passed by Commr. (Appeals) Bhopal]

M/s Hi Mech Manufacturing Pvt. Ltd. ...Appellant(s)

Vs.

C.C.E. & S.T. Bhopal ...Respondent(s)

Appearance:
Mr. K.K. Sharma (Advocate) for the Appellant
Mrs. kanu Verma Kumar (DR) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing/ Decision. 22.06.2017

Final Order No. 54357 /2017

Per S. K. Mohanty:

This appeal is directed against the impugned order dated 14.12.2016 passed by the Commissioner (Appeals) Customs Central Excise, Service Tax, Bhopal. In this case, for short payment of duty amounting to Rs. 5141 within the stipulated time, the department initiated proceedings under Rule 8(3A) of the Central Excise Rules, 2002. The SCN issued in this regard was adjudicated vide order dated 06.08.2015, wherein the proposals made therein for recovery of the duty demand was dropped. However, penalty of Rs. 10 lakhs was imposed on the appellant under Rule 25 ibid for clearing the goods without payment of duty in contravention of the provisions of Rule 8(3A) ibid. In appeal, the Ld. Commissioner (Appeals) has upheld the adjudication order.

2. Heard both the sides and perused the case records.

3. The issue involved in this appeal for consideration by the Tribunal is as to whether the provisions of Rule 25 ibid can be invoked in the circumstances of the present case for imposition of penalty.

4. Clause D of Rule 25 provides that in case of contravention of any of the provisions of Rule or notifications, goods can be liable for confiscation and penalty can be imposed under the said Rule. The clause D also provides that the contravention must be with the intention to payment of duty. In the present case, the appellant defaulted in making payment of Rs. 5141/-, which it subsequently deposited before issuance of SCN along with interest. Thus, it cannot be alleged that the appellant had the intention to defraud the Govt. Revenue of 5000 Rs., whereas during the relevant period it had a balance of Rs. 5,18,603/- in the Cenvat & PLA account. Thus, the provisions of Rule 25 ibid cannot be invoked in this case for imposition of penalty.

5. Therefore after setting aside the impugned order, I allow the appeal in favour of the appellant.

(Dictated and pronounced in open court)

(S. K. Mohanty)
Member(Judicial)

Neha