

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

BENCH-DB

COURT –III

Excise Appeal No. Ex/ROM/50353/2017-EX [SM]

Excise Appeal No. Ex/53031/2015 -EX [SM]

[Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-123-15-16 dated 29.06.2015 passed by the Commissioner (Appeals), Central Excise, Raipur.]

M/s. Dayalal Patel, Director

...Appellant

Vs.

C.C.E. & S.T,- Raipur

...Respondent

Appearance:

Mr. Ranjeet Ranjan, Advocate for the Appellant

Mr. G.R. Singh, AR for the Respondent

Coram:

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

Date of Hearing.16.06.2017

Date of Decision.29.06.2017

Misc. Order No. 50339 /2017

Per S.K. Mohanty:

Heard both sides and perused the records.

2. The applicant has filed this Miscellaneous Application for rectification of mistake and for recalling the Final Order No. A/55862-63/2016 SM(BR) dated 15.12.2016 passed by the Tribunal.

3. Paragraphs 3 and 6 in the Miscellaneous Application are relevant for consideration of the prayer made by the applicant, which are extracted here in below:-

That, during the final hearing mentioned supra, the Hon'ble Bench was pleased to make the following observations in Court as follows:-

- i. Partly allow the appeal to the Main Appellant to the extent of reducing the quantum penalty to 25% under Section 11AC, Central Excise Act, 1949.*
 - ii. Fully allow the appeal of the Applicant by setting aside the penalty of Rs. 2 Lacs imposed under Rule 26, CER, 2002 by relying upon the caselaw of **Tata Motors Ltd. Vs. CCE, Pune reported in 2015 (328) E.L.T. 321 (Tri.-Mumbai)(Page Nos. 12 to 31 of this Application)** on account of the fact that, no excisable goods were confiscated by the Department.*
- 6. That, in view of the submissions put forth in the foregoing paras, the Applicant earnestly requests the Hon'ble Bench to kindly recall the Final Order No. A/55862-63/2016-SM[BR], dated 15.12.2016 to the extent of fully setting aside the personal penalty of Rs. 2 Lacs imposed on Applicant under Rule 26, 2002 on account of the fact that, no excisable goods were confiscated by the Department and following the caselaw of **Tata Motors Ltd. Vs. CCE, Pune reported in 2015 (328) E.L.T. 321 (Tri.-Mumbai)** and thus consequently allowing the Appeal of the Applicant.*

4. With regard to the submissions made at paragraph 3 in the Miscellaneous Application, the same are incorrect and misleading inasmuch as no observations were made by the bench in the open court. The said fact is evident that the order was reserved on the date of hearing and was pronounced on 15.12.2016.

5. On perusal of the impugned order, I find that the in the operative portion at paragraph 8, though it was observed that the appeal are partially allowed to the extent of reducing the quantum of penalty to 25%, but no observations have been made with regard to the penalty imposed on the appellant no. 2. Thus there is apparent mistake in order dated 15.12.2016 passed by this Tribunal, which can be rectified.

6. In the present case, the adjudicating authority has imposed fine on the appellant no. 1 under Section 34 of the Central Excise Act, 1944 in lieu of the confiscation of goods cleared in contravention of the provisions of the Central Excise law. From the operative part of the adjudication order, it is evident that goods were liable for confiscation. Thus, the provisions of Rule 26 of the Central Excise Rules, 2002 can be invoked for imposition of personal penalty. The decision of this Tribunal in the case of Tata Motors Ltd. (supra) is distinguishable from the facts of the present case inasmuch as the goods were not held liable for confiscation. In the case in hand, it has been observed by the Tribunal vide order dated 15.12.2016 that the Director (appellant no. 2) has admitted non-accountal of raw material and clandestine removal of final goods and that the statement recorded before the Central Excise officer has not been

retracted. From the said findings, it is clear that the goods were liable for confiscation and the appellant no. 2 has not furnished any plausible evidence to show that he was not involved in clandestine removal of goods. Thus imposition of personal penalty on the appellant no. 2 under Rule 26 *ibid* is proper and justified. However, considering the duty liability involved in this case, I am of the view that the quantum of penalty can be reduced in case of the appellant no.2. Accordingly, the quantum of penalty is reduced from Rs. 2,00,000/- to Rs. 50,000/-.

7. Therefore, paragraph 8 in the impugned order is modified to read as under.

8. In view of above, the appeal is partly allowed to the extent of reducing the quantum of penalty to 25%. Penalty imposed on Shri Dayalal Patel, Director is reduced to Rs. 50,000/-.

9. This Miscellaneous Application is disposed of in above terms.

(Pronounced in the open court on 29.06.2017)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Sakshi