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

Date of Hearing/Order: 24.11.2017

Appeal No. E/53386-53387/2015-SM

(Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-092 & 106-15-16 dated 16.6.2015 & 18.6.2015 passed by the Commissioner, Central Excise (Appeals), Raipur)

M/s Ganpati Ispat Pvt. Ltd. Appellant
Ashok Kumar Agrawal

Vs.

CCE & ST, Raipur Respondent

Appearance

Shri A.K. Mishra, C.A. - for the appellant

Shri G.R. Singh, DR - for the respondent

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

Final Order No. 58170-58171/2017

Per S.K. Mohanty:

The brief facts of the case are that the M/s Ganpati Ispat Pvt. Ltd. is engaged in the manufacture of hot rerolled products of iron and steel, falling under Chapter 72 of the First Schedule to the Central Excise Tariff Act, 1985. On the basis of intelligence that one M/s Jagdish Ispat Pvt. Ltd. has evaded Central Excise duty, by suppressing the production of finished goods, the officers of DGCEI conducted search at the factory premises of the appellant. During the course of investigation the appellant, the appellant had accepted the duty liability before the officers and deposited the same with the Government exchequer. Thereafter, the department issued a show cause notice, proposing recovery of the duty amount along with interest and for imposition of penalty on the appellant company as well as personal penalty on Shri Ashok Kumar Agrawal, Director of the appellant company. The matter was adjudicated vide order dated 31.10.2014, wherein the original authority has confirmed the duty demand of Rs.4,50,701/- along with interest and appropriated such amount into Government account as deposited by the appellant earlier. Besides equal amount of penalty was also imposed on the appellant company under Rule 25(1) of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944. The adjudicating authority also imposed penalty of Rs. 2 lakhs on the other appellant Shri Ashok Kumar Agrawal under Rule 26 ibid. On appeal, the ld. Commissioner (Appeals) vide the impugned order dated 16.6.2015 has upheld the adjudged demand confirmed by the original authority. Hence, the appellants have filed these appeals before the Tribunal.

2. The ld. Consultant appearing for the appellant submits that the appellants are not contesting the duty demand confirmed against the appellant M/s Ganpati Ispat Pvt. Ltd. However, the contention of the ld. Consultant is that the benefit of Section 11AC ibid for reduced

amount of penalty has not been extended by the authorities below. He further submits that personal penalty cannot be imposed on the appellant M/s Ashok Kumar Agrawal since, he has no active role in clandestine manufacture or removal of goods. Ld. Consultant has relied on the judgement of Hon'ble Gujarat High Court in the case of ***CCE, Surat-I Vs. Santosh Textile Mills*** - 2016 (334) ELT 54 (Guj.) to state that once the duty amount was deposited within 30 days from the date of the adjudication order, the benefit of the reduced amount of penalty should be available to the assessee. He further submits that since there is no delay in payment of duty, interest liability cannot be confirmed against the appellant M/s Ganpati Ispat Pvt. Ltd.

3. On the other hand, the ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. It is an admitted fact on record that on the date of visit of the officers of DGCEI, the appellant had volunteered to pay the duty amount and thereafter deposited such duty amount into the Central Government account before the issuance of the show cause notice. Since the appellant had deposited the duty attributable to the goods

manufactured in the same month, the interest demand cannot be fastened against the appellant since, there no delay in payment of the duty amount. I find that the benefit of reduced amount of penalty of 25% has not been given by the adjudicating authority. Since, the entire amount of duty was deposited by the appellant before issuance of the show cause notice, the option for payment of reduced amount of penalty in terms of Section 11AC ibid should be available to it. I find that the Hon'ble Gujarat High Court in the case of ***Santosh Textile Mills*** (supra) has held that benefit of reduced amount of penalty should be given to the assessee, in the eventually, where the duty has been paid within 30 days from the date of the adjudication order. The SLP filed by Revenue against the Hon'ble Gujarat High Court judgement has been dismissed as reported in 2016 (334) ELT A46 (SC).

6. In view of above, I am of the opinion that the appellant should be given the option to deposit the reduced amount of penalty. Accordingly, the appellant is directed to deposit the reduced amount of penalty of 25% within 30 days of receipt of this order and file the compliance report before the adjudicating authority. On showing deposit of reduced amount of penalty, the adjudicating authority should not proceed further for recovery of the balance amount of penalty from the appellant.

7. Since the appellant M/s Ganpati Ispat Pvt. Ltd. has accepted clandestine manufacture and removal of goods, I am of the view that penalty imposed by the authorities below under Rule 26 is sustainable for the reason that without his active role and participation, the company cannot indulge with the fraudulent activity of removing the goods in clandestine manner. Therefore, imposition of penalty on Shri Ashok Kumar Agrawal is proper and justified. However, considering the quantum of duty liability involved in this case, I am of the view that the penalty imposed on him is on higher side. Accordingly, so far as the appeal of Shri Ashok Kumar Agrwal is concerned, the impugned order is modified to the extent of reducing the quantum of penalty from Rs. 2 lakhs to Rs. 1 lakh.

8. The appeals are disposed in above terms.

(Dictated & pronounced in open Court)

(S.K. Mohanty)
Member (Judicial)

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