IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Customs Appeal No.76755 of 2019

(Arising out of Order-in-Appeal No.168/CUS/CCP-GST/2019 dated 29.03.2019 passed by Commr. (Appeals) of GST,Excise & Customs, Bhubaneswar)

M/s Jai Balaji Industries Ltd.
5, Bentinck Street, 1st Floor, Kolkata-700001

Appellant

VERSUS

Commr. of Customs (Preventive), Bhubaneswar
Central Revenue Building, Rajaswa Vihar, Bhubaneswar-7

Respondent

APPERANCE :

Shri S.Mohapatra, General Manager (Taxation) for the appellant
Shri M.P.Toppo, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.75669/2020

DATE OF HEARING : 09.12.2020
DATE OF DECISION : 09.12.2020

PER P.K.CHOUDHARY :

Briefly stated, the facts of the case in brief are that M/s Jai Balaji Industries Ltd., (hereinafter referred to as 'the appellant') imported coal through Dhamra Port in Odisha. Since the coal was purchased on high sea sale basis, the appellant could not file all the import documents, like commercial invoice, bill of lading, certificate of weight, certificate of quality, etc. Accordingly, all the Bills of Entry were assessed provisionally under section 18 of the Customs Act, 1962, read with Customs (Provisional Duty Assessment) Regulations, 2011 (hereinafter referred to the Regulations) pending submission of these documents.

The appellant duly executed the bond with bank guarantee as prescribed under the Regulations.

2. During the period of nearly 3 years (26.09.2011 to 10.07.2014) the appellant filed 35 Bills of Entry which were all provisionally assessed, initially.

3. The Department issued a show cause notice dated 06.04.2016 proposing penalty under regulation 5 of the Regulations on the ground that the appellants had not submitted all the import documents, timely, as was required to be filed within 30 days in terms of regulation 3(3) of the Regulations .

4. In the reply dated 27.10.2017 to the show cause notice the appellants admitted the slight delay in furnishing all the documents and also sought condonation of delay. By the time the show cause notice came up for adjudication, the appellant submitted all the requisite documents in respect of 27 Bills of Entry which were then duly finalised by the department. In other words, only 8 Bills of Entry remained to be finalised. The adjudicating authority, accordingly, took a lenient view in the matter and vide order dated 01.11.2017, imposed a penalty of Rs. 20,000/-. The appellant did not challenge the order and paid this amount.

5. The Department, however, challenged the said adjudication order before the Commissioner (Appeals) who, vide his Order No. 168/CUS/CCP-GST/2019 dated 29.03.2019, enhanced the penalty to Rs.4,00,000/- (Rs.50,000/- x 8= Rs.4,00,000/-) imposing the maximum penalty of Rs.50,000/- per Bill of Entry which still remained to be finalised. The appellant company is in appeal before the Tribunal against the impugned order.

6. Following submissions have been made by the appellant:-

6.1 Regulation 5 of the Regulations prescribes the **maximum** penalty of Rs.50,000/-. The Commissioner (Appeals) has enhanced the penalty to Rs.50,000/- for each of the 8 bills of entry which remained to be finalised. The Commissioner (Appeals) has not given any reason as to why it was necessary to impose the maximum penalty in this case. It is not the case of the department that the appellant had delayed submission of documents deliberately or with any malafide intention.

6.2 There is no revenue involved in the whole case and, at best, the matter relates to some procedural lapses.

6.3 Section 18 of the Customs Act, 1962, which relates to provisional assessment, does not prescribe any time limit for finalisation of provisional assessment.

6.4 In the reply dated 27.10.2017 to the show cause notice, the appellant had sought condonation of delay in furnishing the requisite documents.

6.5 The appellant had produced the relevant documents as and when they were able to procure them and, as a result of which, out of the 35 Bills of Entry involved 27 got finalised even before the Order-in-Original was passed.

6.6 No penalty can be imposed for procedural lapses [**2019 (26) GSTL 77 (Tri-All)].**

6.7 Getting the provisionally assessed Bills of Entry finalised is a substantive right of the appellant. Substantial benefits cannot be denied due to procedural lapses [**2019 (370) ELT 1352 (Tri-All)].**

6.8 Even under the Customs (Provisional Duty Assessment) Regulations, 2011, penalty cannot be imposed for a bona fide lapse of late submission of requisite documents. [**2015 (329) ELT 401 (Tri-Ahd)].**

7. The learned A.R. for the Revenue, justified the impugned order.

8. Heard both sides through video conferencing and perused the appeal records.

9. I find that this is a case of delay in furnishing of certain documents. There is no revenue implication. The department has not been able to establish any deliberate delay or any malafide intention on the part of the appellant. As and when the appellant could gather the requisite documents they were presented before the assessing officers for finalising the provisional assessments. In fact, out of the 35 Bills of Entry involved, 27 could be finalised even before passing of the adjudication order. Keeping all this in view, the adjudicating authority

took a fair decision and imposed a nominal penalty of Rs. 20,000/- which comes to Rs. 2,500/- for each of the remaining 8 Bills of Entry yet to be finalised for want of all the documents. This amount has already been paid by the appellant. The order of the Commissioner (Appeals) does not establish any ground for enhancing the penalty to the maximum of Rs. 50,000/- per Bill of Entry yet to be finalised.

10. In the case of Essar Oil Ltd. vs Commissioner of Customs (Prev), Jamnagar [2015(329) ELT 401 (Tri-Ahd)], it was held by the Tribunal that when there is some delay in furnishing the documents and there is no revenue implication, penalty is not called for.

11. I, therefore, allow this appeal by setting aside the Order-in Appeal dated 29.03.2019 of the Commissioner (Appeals) and restoring the Order dated 01.11.2017 of the Original Authority.

(Operative part of the order was pronounced in the open Court)

Sd/
(P. K. Choudhary)
Member (Judicial)

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