

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Excise Appeal No.77118 of 2019

(Arising out of Order-in-Appeal No.37-38/CE/RKL-GST/2019 dated 31.05.2019 passed by Commissioner(Appeals), CGST, Central Excise & Customs, Bhubaneswar.)

Shri Basant Kumar Sahu
Vice President (Commercial),
M/s.MSP Sponge Iron Limited
(Haldiguna, Gobardhan, Distt. Keonjhar-758013, Orisha.)

...Appellant

VERSUS

Commissioner of CGST & CX, Rourkela Commissionerate
.....Respondent
(K.K.42, Civil Township, Rourkela-769004.)

APPEARANCE

Shri Jitin Singh, Advocate for the Appellant (s)
Shri S.S.Chattopadhyay, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 75670/2020

DATE OF HEARING : 10 November 2020
DATE OF DECISION : 10 November 2020

P.K.CHOUDHARY :

Shri Basant Kumar Sahu, the appellant herein, is Vice President(Commercial) of M/s.MSP Sponge Iron Limited, Keonjhar. Vide Order-in-Original No.ACCE/KJR/CE No.20/2018 dated 14.02.2018, in the case of MSP Sponge Iron Limited, a demand was confirmed. Vide the same order, a penalty of Rs.48,81,921/- was imposed upon the appellant under Rule 26 of Central Excise Rules, 2002. The appellant had filed appeal on 24.04.2019. The appeal of M/s.MSP Sponge Iron Limited being Excise Appeal No.77327 of 2019 was heard on 07.02.2020 and was disposed vide final Order No.75326/2020 dated

28.02.2020. However, the appeal of the present appellant Shri Basant Kumar Sahu was not listed for hearing along with the main appeal of M/s.MSP Sponge Iron Limited. The same has been listed for hearing today.

2. Shri Jitin Singhal, learned Advocate appearing on behalf of the appellant submitted that the appellant has no specific role in the alleged evasion of duty and is merely an employee and having acted only in his capacity as an employee of the manufacturer, therefore, his case does not fall within the purview of Rule 209A of the Central Excise Rules, 1944. The learned Advocate filed a copy of the Tribunal's Final Order No.75326/2020 dated 28.02.2020 and also submitted that since the Order-in-Original dated 14.02.2018 and the Order-in-Appeal dated 31.05.2019 have been set aside in the case of M/s.MSP Sponge Iron Limited, there is no occasion to maintain the penalty imposed on the present appellant Shri Basant Kumar Sahu.

3. Shri S.S.Chattopadhyay, learned Authorized Representative appearing on behalf of the Respondent Revenue justified the imposition of penalty.

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

5. As the appeal against the main appellant has been allowed, there is no question of any penalty on the other appellant Shri Basant Kumar Sahu. Accordingly, the penalty imposed on Shri Basant Kumar Sahu, the appellant herein, cannot be sustained and the same is set aside. The appeal is thus allowed with consequential relief, if any.

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

SD/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)