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

REGIONAL BENCH - COURT NO.2

Customs Appeal No.75465 of 2019

(Arising out of Order-in-Appeal No.97/CUS/CCP-GST/2018 dated 31.10.2018 passed by Commissioner(Appeals), GST, CX & Customs, Bhubaneswar.)

M/s. MSP Steel & Power Limited
(Village/P.O.-Jamgaon, Distt. Raigarh, Chhattisgarh.)

...Appellant

VERSUS

Commissioner of Customs (Preventive), Bhubaneswar
.....Respondent
(C.R. Building (GST Bhawan), Rajaswa Vihar, Bhubaneswar-751007, Odisha.)

APPEARANCE

Shri Jitin Singhal, Advocate for the Appellant (s)
Shri S.Mukhopadhyay, Authorized Representative for the Respondent (s)

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

FINAL ORDER NO. 75235/2022

DATE OF HEARING : 9 February 2022
DATE OF DECISION : 9 February 2022

P.K.CHOUDHARY :

Briefly stated, the facts of the case are that the Appellant is an importer and imported steam coal through Dharma Port, wherein they have filed 35 Bills of Entry during the period 19.09.2011 to 16.02.2015 for clearance of goods. The Appellant while filing Bills of Entry could not submit various documents like Commercial Invoice, Bill of Lading, Certificate of Weight, Certificate of quality, High Sea Sale Agreement, if any, and other particulars like 'demurrage charges, if any, paid for which Bills of Entry were 'provisionally assessed' under Section 18 of the Customs Act, 1962 pending submission of desired documents. The Appellant had executed Provisional Duty Bonds in terms of Regulation 3 of the Customs (Provisional Duty Assessment)Regulations, 2011, which were accepted by the then Assistant/Deputy Commissioner of Customs, while allowing for 'provisional assessment'. A Show Cause Notice dated 12.04.2016 was issued by the Department proposing penalty under Regulation 5 of Customs (Provisional Duty Assessment) Regulations, 2011 on the ground that the Appellant has failed to submit the required documents within a period of one month. The Appellant contested the Show Cause Notice and submitted that a lenient view may be taken as the delay was not *mala fide* in submitting the documents within one month. The Ld.Adjudicating Authority passed the Order-in-Original dated 20.10.2017 wherein after considering the fact that the same is a procedural lapse, imposed a penalty of Rs.20,000/- on the Appellant. Being aggrieved, the Department filed Appeal before the Ld.Commissioner(Appeals) for enhancement of penalty. The Appellant has also filed cross-objection before the Ld.Commissioner (Appeals). The Ld.Commissioner(Appeals) allowed the Appeal filed by the Department and held that since 4 Bills of Entry out of 35 Bills of Entry were not finally assessed till the date of passing of impugned order, therefore penalty of 2,00,000 (50,000 X 4) would be legal and proper under the provisions of Regulation 5 of the Customs (Provisional Duty Assessment) Regulations, 2011. The Appellant is before the Tribunal against the aforementioned impugned order.

2. Shri Jitin Singhal, Ld.Advocate for the Appellant submitted that Ld.Commissioner(Appeals) erred in enhancing the penalty to the maximum as provided under Regulation 5 of the Customs (Provisional Duty Assessment) Regulations, 2011 without giving any reason whatsoever for enhancement of penalty.

3. It is submitted that on bare perusal of said regulations, it is clear that the provision gives discretion for imposition of penalty and provides maximum penalty of Rs.50,000. The Ld.Commissioner(Appeals) enhanced the penalty to Rs.50,000 for each of the 4 Bills of Entry which remain to be finalized. There is neither allegation in the Show Cause Notice nor in any lower authorities order that the Appellant had delayed the submissions of the documents deliberately or with any *mala fide* intention.

4. It is further submitted that there is no revenue involved in the whole case. It is merely a procedural lapse which has rightly been held by the Ld.Adjudicating Authority. It is well settled law that in case of procedural lapses, penalty cannot be imposed on the assessee. Further, there is no time limit provided for finalization of provisional assessment under Section 18 of the Customs Act, 1962.

5. In short, the following submissions have been made by the Appellant :-

5.1 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 4(four) 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 *mala fide* intention.

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

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

5.4 In the reply dated 27-10-2017 to the Show Cause Notice, the Appellant had sought condonation of delay in furnishing the requisite documents.

5.5 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 31 got finalised.

5.6 No penalty can be imposed for procedural lapses [2019 (26) G.S.T.L. 77 (Tri. - All.)].

5.7 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) E.L.T. 1352 (Tri. - All.)].

5.8 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) E.L.T. 401 (Tri. - Ahd.)].

6. Shri S.Mukhopadhyay, Ld.Authorized Representative for the Revenue, justified the impugned order.

7. Heard both sides through video conferencing and perused the Appeal records.

8. 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 *mala fide* 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, 31 could be finalised. Keeping all this in view, the adjudicating authority took a fair decision and imposed a nominal penalty of Rs. 20,000/-. 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.

9. In the case of *Essar Oil Ltd.* v. *Commissioner of Customs (Prev.), Jamnagar* [2015 (329) E.L.T. 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.

10. I, therefore, allow this Appeal by setting aside the Order-in-Appeal dated 31.10.2018 of the Commissioner (Appeals) and restoring

the Order dated 20.10.2017 of the Original Authority. The Appeal is disposed of in the above terms.

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

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

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