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

REGIONAL BENCH – COURT NO.1

Customs Appeal No.79358 of 2018

(Arising out of Order-in-Appeal No.96/Cus/CCP-GST/2018 dated 31.10.2018 passed by Commissioner (Appeals) of CGST, Central Excise & Customs, Bhubaneswar)

M/s Shyam Sel & Power Limited
(5, C.R.Avenue, Kolkata-700072)

Appellant

VERSUS

Commissioner of CGST,Central Excise & Customs,Bhubaneswar
(C.R.Building, Rajaswa Vihar, Bhubaneswar-751007)

Respondent

APPERANCE :

Written submission submitted by the Appellant
Shri S.Debnath, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO.75048/2025

DATE OF HEARING : 13 JANURARY 2025

DATE OF DICISION : 13 JANUARY 2025

Per Ashok Jindal :

The appellant is in appeal against the impugned order.

2. The facts of the case are that the appellant is an importer through Dhamra Port. They have filed 43 Bills of Entry for clearance of goods imported by them.

2.1 The appellant while filing Bill(s) of Entry as mentioned above failed to submit/produce original/ bank signed documents like Commercial Invoice, Bill of Lading, Certificate of Weight, Certificate of Quality, High Sea Sale agreement and other particulars like 'demurrage charges' paid. Hence, the Bills of Entry were 'provisionally assessed' under Section 18 of the Customs Act, 1962 pending submission of the desired documents.

3. The appellant had executed Provisional Duty Bonds (PD 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'. The appellant, in the said PD Bonds, had undertaken to submit all the desired documents within one month.

4. However, the appellant neither submitted the desired documents within one month from the date of provisional assessment nor had asked for any extension of time for production of same after one month from the date of provisional assessment. Accordingly, a Show Cause Notice dated 12.04.2016 was issued to the appellant for contravention of the provisions of Regulations as provided in the Customs (Provisional Duty Assessment) Regulations, 2011.

5. On adjudication, the ld. adjudicating authority has passed the Order-in-Original No.AC/JJPR/28/2017 dated 25.10.2017, wherein he has observed that the appellant, while filing Bill(s) of Entry had not submitted original/bank signed documents like Commercial Invoice, Bill of Lading, Certificate of Weight, Certificate of Quality, High Sea Sale agreement and other particulars like 'demurrage charges" paid by them for which Bills of Entry were 'provisionally assessed' under Section 18 of the Customs Act, 1962 pending submission of desired documents. Regulation 3(3) of the Customs (Provisional Duty Assessment) Regulations, 2011 provides that:

> *"where provisional assessment is allowed pending the production of any document or furnishing of any information by the importer or the exporter, as the case may be, the bond referred to in regulation shall contain an undertaking that he shall produce such document or information within one month or within such extended period as the proper officer may allow, and the person executing the bond shall pay the deficiency, if any, between the duty finally assessed or reassessed, as the case may be, and the duty provisionally assessed."*

5.1 It is observed in the above Order-in-Original that the appellant had executed Provisional Duty (PD Bonds) 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"; the appellant in the said PD Bonds had undertaken to submit all the desired documents within one month. On the ground that the appellant had not submitted the requisite documents within the prescribed time period of one month, the ld. adjudicating authority has taken the view that the appellant had contravened the statutory provisions of the Customs Act, 1962 read with Customs (Provisional Duty Assessment) Regulations, 2011 in as much as they failed to submit the desired original/ Bank signed documents and other particulars within stipulated time period and thus the appellant had been found to have deliberately contravened the said provisions for which they are liable to be penalized as an act of deterrence. However, considering it as a case of procedural lapse, the ld. adjudicating authority took a lenient view and impose a penalty for contravention of the provisions of the Customs Act, 1962 read with Customs (Provisional Duty Assessment) Regulations, 2011, as under: -

"(*i) I do hereby impose a penalty of Rs. 10,000/- (Rupees Ten Thousand only) under Regulation 5 of the Customs (Provisional Duty Assessment) Regulations, 2011 on M/s. Shyam Metallics & Energy Ltd., PO-Pandalal, Lapanga, Sambalpur, Udisha, Pin-768212 for contravention of the provisions of the Customs Act, 1962 read with Customs (Provisional Duty Assessment) Regulations, 2011…."*

6. On the appeal filed by the Revenue being aggrieved by the above penalty imposed by the ld. adjudicating authority, the Ld. Commissioner (Appeals), G.S.T., C.X. and Customs, Bhubaneswar has allowed the appeal filed by the Revenue vide the impugned order. The observation of the Ld. Commissioner (Appeals) in the impugned order reads as under: -

"5.5: Out of 43 nos. of Bill of Entry, 23 nos. of Bill of Entry have been finalized and 20 nos. of Bill of Entry are yet to be finalized. The purpose of imposition of penalty should be to get the provisional assessment finalized for delay in submission of documents. However, even now, 8 cases have not been finalized. Imposition of mere Rs.15,000/- penalty for 20 cases is meagre. It is the contention of the appellant Department that maximum penalty @ Rs.50,000 X 20 = Rs.10,00,000/- should have been imposed. I am in agreement with the view of the Department"

7. Aggrieved by the above order passed by the Commissioner (Appeals), the appellant has filed the present appeal.

8. None appeared on behalf of the appellant. However, they have submitted a written submission wherein the appellant has requested to finalize the matter on the basis of the submissions made by them.

8.1. Accordingly, the issue is taken up for decision on the basis of the available records with the consent of ld.A.R. for the Revene.

9. In their written submissions filed, the appellant has urged the following grounds: -

(i) The Appellant begs to submit that the issue in the present case pertains to imposition of penalty on the Appellant under Regulation No.5 of the Customs (Provisional Duty Assessment) Regulations, 2011. Regulation 3(3) of the said regulation provides as under:

Regulation 3-

(3) Where provisional assessment is allowed pending the production of any document or furnishing of any information by the importer or the exporter, as the case may be, the bond referred to in regulation shall contain and undertaking that he shall produce such document or information within one month or within such extended period as the proper officer may allow, and the person executing the bond shall pay the deficiency, if any, between the duty finally assessed or reassessed, as the case may be, and the duty provisionally assessed."

Regulation 5 of the said Regulation read as under: "Regulation 5: Penalty - If any importer or exporter contravenes any provision of these regulations or abets such contraventions, or who fails to comply with any provision of these regulations with which it was his duty to comply, he shall be liable to penalty which may extent to Rs.50,000/-"

(ii) Upon a conjoint reading of the Regulations 3(3) and 5 of the above Regulation, it is evident that penalty is liable to be attracted for non-submission of documents / information to the proper officer within one month of the date of execution of the bond, and such penalty "may extend to Rs.50,000/-". Therefore, the quantum of penalty is a matter of discretion of the proper officer and obviously it is not mandatory to impose the maximum penalty of the Rs.50,000/- in each case of default by the importer/exporter.

(iii) In view of the above, the contention of the Respondent that maximum penalty ought to have been imposed on the Appellant in all the 8 cases which were pending finalization, is contrary to statute and has to be rejected by this Hon'ble Bench and the Appellant's appeal deserves to be allowed.

10. The Ld. Authorized Representative for the Revenue appearing today has reiterated the findings in the impugned order.

11. I have perused the appeal papers and other documents placed on record. I find that the appellant could not submit some of the documents required for finalisation of the provisional assessment because of the various appeals pending before the Tribunals and High Courts on the same issue. Thus, I find that the appellant cannot be faulted for the delay in submission of the documents. I find that the ld. adjudicating authority has considered the issue and imposed a penalty of Rs.15,000/- for the violations, if any, committed by the appellant. I observe that this penalty is sufficient for the procedural violations committed by the appellant. I find that similar view has been taken by this tribunal and a lesser penalty has been confirmed on such procedural violations.

12. In the case of Jai Balaji Industries Ltd. Vs. CC (Preventive), Bhubaneswar [2021 (376) ELT 730 (Tri.-Kolkata)], this Tribunal has held as under:-

> *"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 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, 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. 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.

11. 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 25-10-2017 of the Original Authority.

12.1. A similar view has also been taken by this Tribunal in the case of M/s. Shyam Steel Industries Ltd. v. Commissioner of Cus. (Prev.), Bhubaneswar [Final Order No.75020 of 2024 dated 10.01.2024 in Customs Appeal No. 75293 of 2019 – CESTAT, Kolkata].

12.2. I find that the present case on hand is squarely covered by the decisions cited above. Thus, I find that the penalty of Rs.15,000/- imposed by the Ld. Assistant Commissioner would be sufficient to meet the ends of justice. I also find that the Ld. Commissioner (Appeals) has not given adequate reason for enhancing the penalty from Rs.15,000/- to Rs.10,00,000/- in respect of each of the 20 Bills of Entry, for the delay in submission of the documents. In view of discussions and by following the decisions cited above, I hold that the enhanced penalty is not warranted in this case. Accordingly, the same is set aside.

13. In view of the above discussions, I set aside the enhanced penalty and allow the appeal filed by the appellant.

(Dictated and pronounced in the open Court)

(Ashok Jindal)
Member (Judicial)

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