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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 79693 of 2018

(Arising out of Order-in-Appeal No. 93/CUS/CCP-GST/2018 dated 30.10.2018 passed by the Commissioner (Appeals), G.S.T., C.X. & Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751 007)

M/s. Maithan Ispat Limited. **: Appellant**
Kalinga Nagar Industrial Complex,
Vill Dasmania, P.O. Jakhapura,
Dist-Jaipur, Odisha-755026

VERSUS

Commissioner,CGST,Central Excise & Customs, Bhubaneswar **: Respondent**
Central Revenue Building, Rajaswa Vihar,
Bhubaneswar – 751 007

APPEARANCE:

Shri K. K. Acharya for the Appellant (Written submission)

Shri Faiz Ahmed, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (TECHNICAL)

FINAL ORDER NO.75252/ 2025

DATE OF HEARING / DECISION: 03.02.2025

ORDER : [PER SHRI R. MURALIDHAR]

The present appeal has been filed against the impugned Order-in-Appeal No. dated 30.10.2018 passed by the Commissioner (Appeals), G.S.T., C.X. & Customs, Bhubaneswar.

2. The appellant has filed 21 Bills of Entry for clearance of imported goods. While filing the Bills of Entry, the appellant could not submit original/bank signed 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 the Bills of Entry were assessed provisionally, as per Section 18 of the Customs Act, 1962, pending submission of the documents. As per Regulation 3(3) of the Customs (Provisional Duty Assessment) Regulations, 2011, the appellant has to submit the documents within one month or within the extended period the proper officer may allow, so as to finalise the provisional assessments. In the present case, the appellant has neither submitted the documents within the stipulated time period nor obtained any extension of time from the proper officer for submission of the documents.

2.1 Accordingly, penal provisions were initiated and the adjudicating authority has imposed a penalty of Rs.15,000/- for delay in submission of documents for two Bills of Entry, under regulation 5 of the Customs Provisional Duty Assessment) Regulations, 2011.

2.2 The Department filed appeal before the Commissioner (Appeals) for enhancement of the penalty, who vide impugned order has enhanced the penalty from Rs.15,000/- to Rs.2,00,000/-. Aggrieved against the enhancement of penalty in the impugned order, the appellant has filed this appeal.

3. The appellant submits that out of 21 Bills of Entry, they have submitted all the documents in respect of 17 Bills of Entry and the same have been finalized. In respect of the remaining four Bills of Entry also, the documents were submitted with the delay of a few days and the finalization in respect of all the 21 Bills of Entry have already been completed. They submit that the penalty of Rs.50,000/- (Rupees Fifty Thousand only) prescribed under Rule 5 of the said Regulations, 2011, is the maximum penalty; it is not mandatory to impose the maximum penalty in all cases; reduced penalty can be imposed, as non-submission of

documents within the stipulated time period is only a procedural lapse and they have submitted all the documents subsequently and all the Bills of Entry have been finalized. They rely on the following case law:

> *Jai Balaji Industries Ltd. v. Commissioner of Customs (Preventive), Bhubaneswar [2021 (376) ELT 730 (Tri.-Kolkata)]*

4. Relying upon this case law, the appellant prays for setting aside the enhanced penalty imposed in the impugned order.

5. The Ld. Authorized Representative appearing for the Revenue submits that submission of documents within the stipulated time period is necessary for timely finalization of the provisional assessments. Delay in submission of documents have delayed the finalization of the provisional assessment and consequently realization of duty liability, if any, from the appellant. Accordingly, he justified the enhancement of the penalty by the Ld. Commissioner (Appeals) in the impugned order.

6. Heard both sides and perused the appeal documents.

7. I find that the issue involved in the present appeal is imposition of penalty for non-submission of the documents as per Regulation 5 of the Customs (Provisional Duty Assessment) Regulations, 2011.

8. From the records it is seen that the appellant has imported goods vide 21 Bills of Entry and there was a delay in submission of the documents only in respect of four Bills of Entry, for finalisation of the provisional assessments. Subsequently, they have submitted all the documents, in respect of the remaining four Bills of Entry also, and they have been finalised. As there was a delay in submission of documents in respect of four Bills of Entry, the Department initiated

proceedings for imposition of penalty under Regulation 5 of the above said Regulations 2011.

9. I find that the adjudicating authority has imposed a penalty of Rs.15,000/- (Rupees Fifteen Thousand only) as the appellant has already submitted the documents in respect of the two Bills of Entry and they also have been finalized. In the case of *M/s. Jai Balaji Industries Ltd. (supra),* 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.*
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> *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.*
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> *11. I, therefore, allow this appeal by setting aside the Order-in-Appeal dated 29-3-2019 of the Commissioner (Appeals) and restoring the Order dated 1-11-2017 of the Original Authority."*

10. I find that the present case on hand is squarely covered by the above decision. I find that the penalty of Rs.15,000/- (Rupees Fifteen Thousand only) imposed by the Assistant Commissioner would be sufficient to meet the ends of justice.

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

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

(R. MURALIDHAR)
MEMBER (JUDICIAL)

RKP