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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75066 of 2020

(Arising out of Order-in-Appeal No. 190/CUS/CCP-GST/2019 dated 31.05.2019 passed by the Commissioner (Appeals), G.S.T., C.X. and Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. Maan Steel & Power Limited **: Appellant**
58/1, Sarat Bose Road,
Kolkata – 700 025 (West Bengal)

VERSUS

Commissioner of Customs (Preventive) **: Respondent**
Bhubaneswar Commissionerate
Central Revenue Building, Rajaswa Vihar,
Bhubaneswar – 751 007 (Odisha)

APPEARANCE:

Smt. Shubhangi Lata, Chartered Accountant, for the Appellant

Shri Tariq Sulaiman, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76913 / 2025

DATE OF HEARING / DECISION: 14.07.2025

ORDER:

M/s. Maan Steel & Power Limited, 58/1, Sarat Bose Road, Kolkata – 700 025, West Bengal (hereinafter referred to as the "appellant") has imported goods vide 24 Bills-of-Entry. Out of the said 24 Bills-of-Entry, the appellant had not submitted documents in respect of 3 Bills-of-Entry, for finalization of the provisional assessments. Accordingly, penalty has been proposed on the appellant in terms of Regulation 5 of the Customs (Provisional Duty Assessment) Regulations, 2011.

2. A Show Cause Notice dated 06.04.2016 was issued to the appellant alleging, inter alia, that the appellant had neither submitted the requisite documents within one month nor asked for any extension of time for the purpose of finalization of the above provisional assessments as per the said regulations.

3. On adjudication, the ld. adjudicating authority imposed a penalty of Rs.15,000/- under Regulation 5 of the said Regulations vie the Order-in-Original dated 19.12.2017.

3.1. The said order was challenged by the Revenue before the Ld. Commissioner (Appeals), who passed the impugned order dated 31.05.2019, wherein the penalty has been enhanced to Rs.1,50,000/-.

4. Aggrieved by the enhancement of penalty, the appellant has filed the present appeal.

5. During the course of hearing, the Ld. Counsel appearing on behalf of the appellant submitted that the appellant has produced all the documents required for finalization of the provisional assessments. She submits that the ld. adjudicating authority had imposed a penalty of Rs.5,000/- in respect of each Bill-of-Entry for the delay in submission of documents; that there was no deliberate or intentional wrong declaration / mis-declaration on their part and accordingly, it is not mandatory to impose the maximum penalty of Rs.50,000/- in respect of each Bill-of-Entry, as has been done vide the impugned order.

5.1. In this regard, the appellant relies on the decision of this Tribunal in the case of *M/s. Shyam Steel Industries Ltd. v. Commissioner of Customs (Preventive), Bhubaneswar [Final Order No. 75020 of 2024 dated 10.01.2024 in Customs Appeal No. 75293 of 2019 – CESTAT, Kolkata]* wherein under similar facts and circumstances, the penalty imposed had been reduced by this Tribunal to Rs.5,000/- each, in respect of each Bill-of-Entry.

5.2. In view of the above submissions, the Ld. Counsel for the appellant prayed for setting aside the impugned Order-in-Appeal enhancing the penalty imposed on them.

6. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

7. Heard both sides and perused the appeal records.

8. I take note of the appellant's submission that they have already submitted the documents as required for finalization of the 24 Bills-of-Entry in the case on hand. There was a delay in submission of documents in respect of 3 Bills-of-Entry, for which the ld. adjudicating authority has imposed penalties of Rs.5,000/- in respect of each bill of entry, as per Regulation 5 of the Customs (Provisional Duty Assessment) Regulations, 2011, wherein a penalty of Rs.50,000/- has been prescribed as the maximum penalty. However, I find that it is not mandatory to impose the maximum penalty in all cases. A reduced penalty may be imposed when there is a procedural lapse on the part of an assessee. In this case, it is seen that the appellant has submitted all the

documents, even in respect of the remaining three Bills-of-Entry. Accordingly, I am of the view that the reduced penalty can be imposed in this case.

8.1. In this regard, I find that the same view has been expressed in the case of *M/s. Shyam Steel Industries Ltd. v. Commissioner of Customs (Preventive), Bhubaneswar [Final Order No. 75020 of 2024 dated 10.01.2024 in Customs Appeal No. 75293 of 2019 – CESTAT, Kolkata]* wherein an identical issue has been examined by this Tribunal. The relevant observations of the Tribunal in the above cited case are reproduced below: -

> *"9. I find that the adjudicating authority has imposed a penalty of Rs.5,000/- (Rupees Five Thousand only) as the appellant has already submitted the documents while submitting the reply to the show cause notice. The Appellant cited various decisions in support of their contention that reduced penalty can be imposed for such procedural violations. I have perused the decisions cited by the appellant in support of their contentions that the enhance penalty is not sustainable in this case. In the case of Jai Balaji Industries Ltd. (supra), this Tribunal has held as under:-*
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>> *"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.*
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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 on hand is squarely covered by the decisions cited above. The appellant has already submitted the documents necessary for finalization of the provisional assessment while submitting their reply to the show cause notice. Thus, I find that the penalty of Rs.5,000/-(Rupees Five Thousand only) imposed by the Assistant Commissioner would be sufficient to meet the ends of justice. I also find that the Commissioner (Appeals) has not given adequate reason for enhancing the penalty from Rs.5,000/- (Rupees Five Thousand only) to Rs.50,000/- (Rupees Fifty Thousand only) on each Bill of Entry. In view of discussions and the decisions cited above, I hold that the enhance penalty is not warranted in this case. Accordingly, the same is set aside.

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

8.2. I find that the ratio laid down in the above cited case is squarely applicable to the facts of the present case. Therefore, by relying on the decision cited supra, I set aside the impugned Order-in-Appeal dated 31.05.2019 enhancing the penalty imposed on the appellant under Regulation 5 ibid. from Rs.15,000/- to Rs.50,000/-. Accordingly, the penalty of Rs.15,000/- imposed by the ld. adjudicating authority under the said Regulation vide the Order-in-Original dated 19.12.2017 is upheld and the enhanced penalty is set aside.

9. The appeal stands disposed of thus.

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

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd