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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75876 of 2019

(Arising out of Order-in-Appeal No. 115/Cus/CCP-GST/2018 dated 28.11.2018 passed by the Commissioner (Appeals) Central Revenue Building, Rajaswa Vihar, Bhubaneswar 07)

M/s. Tata Metaliks Limited **: Appellant**
Tata Centre, 10th Floor, 43,Jawaharlal
Nehru Road, Kolkata-700071

VERSUS

Commissioner (Appeals), GST, Central Excise & Customs, **: Respondent**
Central Revenue Building,
Rajaswa Vihar, Bhubaneswar 07

APPEARANCE:

None for the Appellant

Shri S. Debnath, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.77265/2025

DATE OF HEARING / DECISION: 06.08.2025

Order: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order wherein a composite penalty has been imposed by the Ld. Commissioner (Appeals), of Rs.13,50,000/-, in respect of 27 Bills of Entry filed by the appellant.

2. The facts of the case are that the appellant had filed 27 Bills of Entry by declaring the goods and the assessment was done on provisional basis. Later on, the appellant could not file the required documents

within thirty days thereof, for the Bills of Entry so provisionally assessed.

3. They executed Provisional Duty Bond in terms of Regulation 3 of the Customs (Provisional Duty. Assessment) Regulations, 2011, which had been accepted by the then Assistant/Deputy Commissioner of Customs by allowing the provisional assessment. In the said bond, the appellant had undertaken to submit all the desired documents within one month, which the appellant failed to do.

4. Therefore, a Show Cause Notice was issued to the appellant for contravention of the provisions of the Regulations as provided in the Customs (Provisional Duty. Assessment) Regulations, 2011.

5. The ld. adjudicating authority vide order dated 20.10.2017 imposed a composite penalty of Rs.15,000/- on the appellant.

6. The said order was challenged before the Ld. Commissioner (Appeals), who vide the impugned order enhanced the penalty at the rate of Rs.50,000/- in respect of each Bill of Entry under Regulation 5 of the Customs (Provisional Duty. Assessment) Regulations, 2011.

7. Against the said order, the appellant is before us.

8. None appeared on behalf of the appellant.

9. We find that the issue is in a narrow compass and has already been examined by this Tribunal in the case of *Saraogi Udyog Pvt. Ltd. v. Commissioner of Customs vide Final Order No. 77255/2024 dated 07.11.2024, appeal no. C/75241/2019* wherein this Tribunal has observed as under: -

9. I find that in this case issues of imposition of penalty for non-submission of documents in terms of Regulation 5 of Customs (Provisional Duty Assessment) Regulations, 2011. Except 6 Bills of Entry, the appellant has filed documents in time but he delayed in filing the documents in respect of 6 Bills of Entry.

10. Accordingly, the proceedings were initiated against the appellant for imposition of penalty under Regulations 5 of the Regulations, 2011. The Adjudicating Authority has imposed the penalty of Rs. 40,000/- .

11. In that circumstances, relying on the decision of Shyam Steel Industries Ltd. (Supra) wherein this Tribunal observed as under:

" 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:-

"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 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."

12. In view of the above cited judgement, I hold that penalty of Rs. 40,000/- imposed by the Adjudicating Authority shall meet the end of justice.

13. Accordingly, the enhancement of penalty by the ld. Commissioner (Appeal) is not warranted in this case.

14. Therefore, the enhancement of penalty by the ld. Commissioner (Appeal) in the impugned order is set aside.

15. In these terms appeal is disposed of.

10. In view of the above, we find that the penalty of Rs.15,000/- imposed by the ld. adjudicating authority shall meet the ends of justice. Accordingly, we hold that the enhancement of the penalty by the

Ld. Commissioner (Appeals) in the impugned order is not warranted.

11. Consequently, we set aside the impugned order and affirm the order passed by the ld. adjudicating authority.

12. In these terms, the appeal is allowed.

(Operative part of Order was pronounced in Open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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