IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,WEST ZONAL BENCH AT MUMBAI

COURT No. II

APPEAL No.E/855/2011

(Arising out of Order-in-Original No.03/MI/2011 dated 25/02/2011 passed by Commissioner of Central Excise (Appeals), Mumbai)

For approval and signature:

Hon'ble Mr. C.J. Mathew, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:Yes
3.	Whether Their Lordships wish to see the fair copy of the Order?	:Seen
4.	Whether Order is to be circulated to the Departmental authorities?	:Yes

==

Mukesh B Shah **Appellant**

Vs.

Commissioner of Central Excise, Mumbai-I **Respondent**

<u>Appearance:</u>

Shri S P Sheth, Advocate for appellant
Shri D S Chauhan, Asst. Comm. (AR), for respondent

<u>CORAM:</u>

Hon'ble Mr C J Mathew, Member (Technical)

Date of Hearing : 11/04/2018
Date of Decision : 11/04/2018

ORDER NO.87084/2018

1. The appellant, Shri Mukesh B Shah, partner of M/s Navrang Art Printers, seeks quashing of penalty of Rs.40,00,000/- imposed on him vide order-in-original no.03/MI/2011 dated 25th February 2011 of Commissioner of Central Excise (Appeals), Mumbai. Appeal is before the Tribunal for the second time.

2. Learned Counsel for appellant submits that on the earlier occasion of challenge to the order of Commissioner of Central Excise, the Tribunal had remanded the matter back for reconsidering the question of penalty while re-quantifying the duty liability in accordance with specific directions and that on re-quantification, the demand had been reduced marginally to Rs.50,70,598/- with the penalty reduced from Rs.50,00,000/- to Rs.40,00,000/-. According to him, the imposition of penalty is not commensurate with the gravity of the offence as established and the duty liability arising thereon. It is his submission that the assesee is no longer in existence and that considerable time has elapsed since the dispute arose and that the appellant is not in good condition physically and financially.

3. Heard Learned Authorised Representative, who submits that the plea of the appellant is not tenable as the assesee and the appellant had been established as having had a major role in

clandestine removal. On a specific query, he was however, unable to inform if the duty liability had been recovered in full.

4. Considering the totality of circumstances, the lapse of time since the occurrence of the offence and the law itself being history row, the interest of justice will be best served by reducing the penalty to Rs.5,00,000/-. Appeal is allowed to that extent.

(Dictated in Court)

(C.J. Mathew)
Member (Technical)

pj