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

COURT No. II

APPEAL No.E/87647/2017

(Arising out of Order-in-Appeal No.PUN-CT-APPII-000-134&135-17-18 dated 28/07/2017 passed by Commissioner of Central Excise, (Appeals), Pune)

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

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S M Shankarrao Mohite Patil SSK Ltd. Appellant

Vs.

CCE & ST, Pune **Respondent**

Appearance:

Shri V B Gaikwad, Advocate for appellant
Shri S J Sahu, Asst. Comm.(AR) for respondent

CORAM:

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

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

ORDER NO.87085/2018

1. The appellant, M/s S M Shankarrao Mohite Patil SSK Ltd seeks setting aside of penalty of Rs 2,38,132/- imposed under the erstwhile rule 13 of CENVAT Credit Rules, 2002, in order-in-appeal no.PUN-CT-APPII-000-134&135-17-18 dated 28th July 2012 of Commissioner of Central Excise, (Appeals), Pune.

2. Learned Counsel submits that they are engaged in the manufacture of rectified spirit and denaturated spirit using molasses as a common input and, according to him, during the relevant period, rule 6 of Cenvat Credit Rules, 2001 required discharge of liability of 8% of the value of exempted products. Subsequently, with effect from 1st March 2002 they were required to restrict the payment to CENVAT credit availed by them on the input used in exempted goods.

3. The tax authorities proceeded against the appellant to confirm liability of Rs 23,81,315/- and to impose penalty of Rs 2,38,132/- which, upon appeal to the Tribunal, was remanded to the original authority, who, in fresh proceedings, imposed penalty of Rs.2,38,132/-. It is the contention of learned Counsel that the dispute was subject to interpretation and that they had suffered a huge interest liability which was sufficient to waive imposition of penalty. It is his further contention that an amount of Rs.5,00,000/- has been reversed

in the first instance in accordance with the erstwhile procedure and therefore, recovery of duty liability on entire clearance is not warranted.

3. Learned Authorised Representative submits that the statutory provision was known to the appellant and that the availment of credit was rectified only after remand order of the Tribunal.

4. Considering the submissions made by both sides and bearing in mind the provisions of rule 13, in vogue then it would appear that the appellant had wrongly resorted to an option that was not available, imposition of penalty in these circumstances is warranted. However, taking note of the discharge of liability, though inappropriately, the penalty is reduced to Rs.1,00,000/-.

(Dictated in Court)

(C.J. Mathew)
Member (Technical)

pj