CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.1

Appeal No.E/85383/2017

[Arising out of Order-in-Appeal No.NGP/EXCUS/000/APPL/364-366/16-17, dt.0811.2016, passed by the CCE & ST, Nagpur]

Pankaj Bansal ......**Appellant**
Director of M/s Shivangi Rolling Mills Pvt. Ltd
475, Sector-3, Industrial Area,
Pithampur, Dist: Dhar (M.P.)

VERSUS

Commissioner ......**Respondent**
Central Excise Bhavan,
2nd floor, Room No.221,
Telangkhedi Road, Civil Line,
Nagpur 440 001

Appearance:
Shri C.S. Birdar, Advocate for the Appellant
Shri Sanjay Hasija, Supdtt. (A.R.) for the Respondent

CORAM:
HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

FINAL ORDER NO.A/85942/2019

Date of Hearing: 17.05.2019
Date of Decision: 17.05.2019

PER: D.M. MISRA

This appeal is filed against Order-in-Appeal No.NGP/EXCUS/000/ APPL/364-366/16-17, dt.0811.2016, passed by the CCE & ST, Nagpur.

2. Briefly stated the facts of the case are that the Appellant who is Director of M/s Shivangi Rolling Mills Pvt. Ltd, Pithampur, has

been registered with Excise department for manufacture of M.S. Ingots and TMT Bars. They availed CENVAT Credit on the basis of invoices issued by the registered dealer M/s Shreyas Enterprises, Jalna during the relevant period. On the basis of the investigation, it came to the knowledge of the Department that M/s Shivangi Rolling Mills Pvt. Ltd, of which the Appellant is Director, availed fraudulent CENVAT Credit only on the basis of invoices without receiving inputs mentioned in the invoices and used in or in relation to the manufacture of finished goods. Consequently, a show cause notice was issued to various persons concerned for recovery of inadmissible CENVAT Credit with interest and penalty and proposing penalty under Rule 26(2) of Central Excise Rules, 2002 on the noticees. On adjudication, the demand was confirmed and personal penalty imposed on various notices including the Appellant.

3. At the outset, the learned Advocate for the Appellant submitted that another show cause notice was issued by Indore Commissionerate levelling the same set of allegation against the Appellant arising out of the same investigation; and on adjudication, penalty was imposed on the Appellant under Rule 26(2) of Central Excise Rules, 2002. He submits that since for the same set of allegation, once penalty has been imposed on the Appellant, imposition of penalty again would result into punishing the Appellant for the same offence twice. He submits that, in any case, the personal penalty of Rs.7.00 lakhs imposed on the Appellant is excessive in comparison to the penalty imposed earlier on him relating to the show cause notice issued by Indore Commissionerate.

4. The learned A.R. for the Revenue reiterates the findings of the learned Commissioner (Appeals).

5. Heard both sides and perused the records. I find that the allegation against the Appellant Pankaj Bansal, Director of M/s Shivangi Rolling Mills Pvt. Ltd has been established after detailed analysis of evidence on record by the authorities below. No contrary evidence has been placed by the Appellant to absolve himself from the allegation of his involvement in the fraudulent transfer and availing of CENVAT Credit. In these circumstances, imposition of personal penalty on the Appellant is justified. However, I find that Appellant has already been penalised by the Indore Commissionerate arising out of the same investigation in connection with another unit and penalty has been imposed on him Rs.1,20,000/-. Keeping in view the said case, the credit involved and other parameters, it would be appropriate to impose penalty of Rs.1,50,000/- on the Appellant.

6. Consequently, the impugned order is modified to the extent of reduction in penalty on the Appellant to Rs.1,50,000/- and the appeal is allowed to the said extent. Appeal partly allowed.

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

(D.M. Misra)
Member (Judicial)

CBBahalkar