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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Nov-12-2003

Reported in : (2004)(91)ECC617

Judge : A Wadhwa, J T V.K.

Appellant : Tisco, Arjun Roy, Sibaji

Respondent : Commr. of Central Excise

Judgement :
1. All the stay petitions are being taken up together for disposal inasmuch as they arise out of the same impugned order passed by the Commissioner of Central Excise, Jamshedpur vide which he has imposed personal penalty of Rs. 13,73,840 on M/s. Tata Iron & Steel Co. Ltd, under the provisions of Rule 57U (6) of the Central Excise Rules, 1944.

Personal penalty of Rs. 20,000 has been imposed upon Shri Kanchan Roy and of Rs. 10,000 each has been imposed on the three other appellants under the provisions of Rule 209A of the Central Excise Rules, 1944.

2. Penalty on M/s. TISCO has been imposed on the ground that they had irregularly availed the modvat credit and utilized the same towards payment of duty on their final product without using the inputs for the manufacture of final product. This was pointed out by the Central Excise Officers who visited the appellants' factory. However, it is the appellants' contention that on being pointed

out, they immediately reversed the credit and as such there was no mala fide on their part.

Shri Dhar, Ld. Advocate has strongly contended that the appellants are receiving number of inputs and are maintaining huge voluminous records and are paying duty to the tune of Rs. 500 crores (approx.) As such, there can be no mala fide on their part so as to penalize them with penalty.

3. Countering the arguments, Shri T.K. Kar, Ld. SDR submits that if the said mistake on the part of the appellants was not detected by the Central Excise Officers, the same would have gone un-noticed and the appellants would have been benefited by irregularly availed modvat credit. It is not a case where the appellants detected the said irregularity suo-moto and reversed credit on their own. As such, he justifies the order of the Commissioner imposing penalty to the tune of 100% on the appellants and prays that they be directed to deposit the entire amount inasmuch as there is no financial difficulty on the part of the appellants.

4. After considering the submissions made from both the sides, we find force in the submissions of the ld. SDR that irregularly availed credit, which the appellants are not disputing, was reversed by them only on being pointed out by the Central Excise Officers. As such, the appellant is liable to penalty for the above technical procedural lapse on their part. However, we are of the view that the penalty to the extent of 100% is not justified inasmuch as the appellants reversed the credit immediately on being pointed out by the Officers. Accordingly, we reduce the penalty on M/s. TISCO to Rs. 2 lakhs (Rupees two laksh only). Penalty imposed upon the other appellants are however set aside.

All the appeals are disposed of in the above terms. Stay Petitions also get disposed of.