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HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 126 of 2017

(Arising out of Final Orders No.50375-50376/2017-SM[BR] dated 18.01.2017 in Appeal No. E/50149/2016 by the CESTAT)

- Navdurga Ispat Private Limited (though Authorised Signatory Mr. Mukesh Pandey, Director), Plot No. 435-A, Sector-C, Urla Industrial Area, Raipur (C.G.)

---- Appellant

Versus

- Commissioner, Customs, Central Excise and Service Tax, Raipur, Office of Commissioner of Customs & Central Excise, Central Excise Building, Dhamtari Road, Tikrapara, Raipur (C.G.)

---- Respondent

And

Tax Case No. 127 of 2017

(Arising out of Final Orders No.50375-50376/2017-SM[BR] dated 18.01.2017 in Appeal No. E/50150/2016 by the CESTAT)

- Navdurga Ispat Private Limited (though Authorised Signatory Mr. Mukesh Pandey, Director), Plot No. 435-A, Sector-C, Urla Industrial Area, Raipur (C.G.)

---- Appellant

Versus

- Commissioner, Customs, Central Excise and Service Tax, Raipur, Office of Commissioner of Customs & Central Excise, Central Excise Building, Dhamtari Road, Tikrapara, Raipur (C.G.)

---- Respondent

For Appellant	:	Shri Sharad Mishra, Advocate
For Respondent	:	Shri Vinay Pandey, Advocate

Hon'ble Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice Sharad Kumar Gupta

Judgment on Board

Per Thottathil B. Radhakrishnan, Chief Justice

24.08.2017

1. We have heard the learned counsel for the Appellant and the learned counsel for the Revenue in these appeals under Section 35G of the Central Excise Act, 1944 against the common decision of Customs, Excise and Service Tax Appellate Tribunal (CESTAT); for short, "the Tribunal".

2. We admit these Appeals treating the question as to whether the imposition of 50% penalty is just and reasonable on the totality of the facts and circumstances of the cases in hand as the substantial question of law arising for decision in these appeals.

3. The Appellant is a service receiver. The service provider had the obligation to pay 25% of the service tax. The 75% component ought to have been borne by the Appellant as service recipient. The service provider paid 100% of the service tax due on account of the services as between it and the Appellant. On that basis, the Appellant, as the service recipient, did not pay any component of service tax. This was unearthed by the Revenue. This led to proceedings which resulted in orders, which were challenged in the Appeals before the Tribunal.

4. The Tribunal did not find way to interfere with the imposition of interest which is a statutory add on liability. The Tribunal also upheld the imposition of penalty of 50% and dismissed the appeals.

5. Hearing the learned counsel for the Appellant and the learned counsel for the Revenue, we do not find any ground to interfere with that part of the impugned orders which relate to interest.

6. The fact of the matter remains that, it had been the consistent case of the Appellant before the authorities that the non-payment of the service tax was on account of payment of entire service tax by the service provider. Though there cannot be any blanket consideration of that issue, as a pure question of law, we are inclined to consider whether ends of justice requires that the penalty component ought to have been reduced from what it is now paid to 50%, on the peculiar facts and in circumstances of the case in hand, particularly when the CENVAT Credit availed was reversed. Reasonably, the amount of penalty can be pegged at 25%, that is to say half of the penalty imposed by the authorities below.

This would obviously be on the condition that the Appellant shall remit the interest and penalty within a period of two weeks from today.

7. In the result, these appeals are allowed modifying the impugned orders and ordering that the penalty will stand reduced to be 25%, that is to say half of the penalty imposed by the authority below on the condition. The such amount of penalty and the interest outstanding shall be paid by the Appellant to the Revenue within a period of two weeks from now. If the condition of payment imposed hereby is not satisfied by the Appellant, this judgment will stand recalled and these appeals will stand dismissed automatically.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge

Chandra