IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14243 OF 2018

Tata Cummins Pvt. Ltd. .. Petitioner

v/s.

Superintendent, Central GST, Range-IV,
Lonand & Ors. .. Respondent

Mr. Rohan Deshpande I/b Alisha Pinto for the petitioner
Mr. Pradeep S. Jetly for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 14th DECEMBER, 2018.

P.C.

1. By consent of the Counsel for the parties, petition is taken up for final disposal. Petition arises in narrow facts, which are as under.

2. The Excise Department had issued show-cause notice to the petitioner for recovery of the duty with interest and penalty. The same resulted into confirmation of demands against the petitioner. It is not necessary to record the details thereof. Suffice it to note, the penalty imposed against the petitioner under Section 11AC of the Central Excise Act, 1944 was Rs.2,28,302/-. As per the statutory provisions, if the petitioner paid 25% of this penalty within 30 days of receipt of the

order, the petitioner would avoid payment of the remaining 75% of the penalty. In the order itself, the Joint Commissioner of Central Excise had quantified the sum at Rs.57,076/-, which comes to 25% of the penalty amount. It is undisputed that within 30 days of the receipt thereof, the petitioner did deposit a sum of Rs.57,058/-. Undisputedly, therefore, the petitioner was short of Rs.18/- of the requirement. The petitioner upon being pointed out, promptly deposited further sum of Rs.20/- and requested the Department to give benefit of reduced penalty. Under communicated dated 17.10.2017, which is impugned before us, such request was rejected on the ground that within the mandatory period of 30 days, the petitioner had not paid 25% of the penalty amount. Resultantly, the petitioner would have to pay remaining 75% penalty amount.

3. In our opinion, in the peculiar facts of the case, the petitioner should get benefit of reduced penalty. The petitioner's intention was never to challenge the penalty order. In fact, the petitioner submitted to the order passed by the adjudicating authority, paid up the duty and also 25% of the penalty amount, short by only Rs. 18/-. This was purely on account of oversight and the amount which was short paid, was also minuscule. It would be a travesty of justice if the petitioner

on account of such entirely unintended oversight, would be visited with liability to pay remaining 75% of the penalty amount. The statute envisages reduction in penalty to avoid further litigation. The intention of the legislature appears to be that instead of challenging the adjudication and penalty imposed, if an assessee voluntarily deposits the duty and 25% of the penalty promptly, the remaining penalty would be waived.

4. We are conscious of the decision of this Court in the case of ***Commissioner of Central Excise, Raigad Vs. Castrol India Ltd. (2012) 286 E.L.T. 194***, in which the Court has held that this period of 30 days for depositing 25% of the penalty is mandatory. However, the distinguishing feature in the said case was that the assessee had disputed the penalty and challenged upto CESTAT level and eventually when lost, sought the benefit of reduced penalty and offered to pay the penalty thereafter. On the other hand, in the decision of Gujarat High Court in case of ***Banian & Berry Bearing Pvt. Ltd. Vs. UOI, 2002 (105) ECR 288***, it was observed that marginal delay of 2 to 10 days in making fortnightly payment on stray occasions, should not result into penal consequence. The Court had referred to Latin Maxim providing that minor lapses in law should not be visited with penalty.

5. In the facts of the case, the impugned communications dated 17th October, 2017 and 6th August, 2018 are set aside. It is declared that the petitioner shall not have to pay any further amount of penalty.

6. Petition disposed of accordingly.

(M.S. SANKLECHA, J.) **(AKIL KURESHI, J.)**