AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 131 of 2018

- The Principal Commissioner CGST & Central Excise, GST Bhavan, Dhamtari Road, Tikrapara, Raipur Chhattisgarh.

---- Appellant

Versus

- M/s Essar Steel India Ltd. (Formerly Known As Essar Steel Ltd) Beatification Plant, Palnar Road, Kirandul, District Dantewada Chhattisgarh. 494556.

---- Respondent

For Appellant	:	Shri Maneesh Sharma, Advocate
For Respondent	:	Shri Romir S. Goyal, Advocate

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per, Ajay Kumar Tripathi, Chief Justice

08.03.2019

1. Heard learned counsel for the Revenue and learned counsel for the Respondent.

2. In our opinion, it is uncalled for appeal which has been filed on behalf of the Revenue against an order and decision passed by the Customs, Excise & Service Tax Appellate Tribunal, Principal Bench, New Delhi (for short 'the Tribunal') on 02.02.2018.

3. The Commissioner (Appeals), Customs & Central Excise, Raipur {for short 'the Commissioner (Appeals)} passed an order dated 12.06.2017 which was in relation to the liability of the Respondent-Company to pay duty as well as penalty as per Rule 8(3A) of the Central Excise Rules, 2002 (for short 'the Rules, 2002').

4. Rule 8(3A) of the Rules, 2002 reads in following words:

> *“Rule 8 (3A). If the assessee fails to pay the duty declared as payable by him in the return within a period of one month from the due date, then <u>the assessee is liable to pay the penalty at the rate of one per cent on such amount of the duty not paid, for each month or part thereof</u> calculated from the due date, for the period during which such failure continues.*

> *Explanation. - For the purposes of this sub-rule, 'month' means the period between two consecutive due dates for payment of duty specified under sub-rule (1) or the first proviso to sub-rule (1), as the case may be.*
>
> (emphasis supplied)*"*

5. The question which arose for consideration before the Tribunal was whether the Respondent-Company for having defaulted in payment of duty on time was obliged to pay penalty for such delay for the entire month even if such payment stood made by a particular date of the month.

6. The learned Tribunal relied on the decision of Madras High Court in the case of ***State of Tamil Nadu Vs. P.T.C. Sanghvi & Co. (1987) 66 STC 69 (Mad)*** and taking cue therefrom held that in terms of Rule 8(3A), the penalty has to be paid at the rate of one percent on such amount of duty not paid for each month or a part thereof, meaning thereby that if a duty is due by a particular date of the month, then if it is not paid by the specified time, not only penalty will be calculated at the rate of one percent for every month, but it can be calculated even for fraction of a month. Meaning thereby, that the penalty virtually means almost everyday of delay even beyond that month and if the Department took a view that if it has been paid by a particular date beyond the cut-off date, then the whole month will have to be calculated for the purposes of recovery of penalty, does not seem to be a correct view to take. In our opinion a plain reading of Rule 8(3A) does not envisage imposing liability upon an Assessee even for one day when there was no default and payments of such duty stood made by a date.

7. Any other interpretation of rounding up for the entire month would be an illegal collection which is not permissible in terms of the statue.

8. The tax case has therefore, no merit. We do not find that the Tribunal has committed any error by interfering with the order of Commissioner (Appeals).

9. Appeal is dismissed.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Chandra