

**The Mangalore Refinery and Vs. the Commissioner of C. Excise and**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT

**Decided On :** May-25-2001

**Reported in :** (2001)(76)ECC808

**Appellant :** The Mangalore Refinery and

**Respondent :** The Commissioner of C. Excise and

**Judgement :**

1. These are two stay applications filed by the applicants for waiver of pre-deposit of duty amounting to Rs. 29,38,437/- in addition to penalty of Rs 2 lakhs and stay of the recovery proceedings.

2. Arguing for the appellants Shri Rajesh Chandra Kumar, learned Advocate submitted that Rs 8 lakhs towards duty amount has already been deposited. However, he submitted that there is an error in quantifying of duty amount and if it is worked out properly it will reduce by Rs 16,10,454/-. On deducting and quantifying correct duty, net duty payable as per the appellants is only Rs 5,27,983/-. He submitted that the appellants have got a strong prima facie case in their favour.

Accordingly he requested for stay.

3. After hearing for some time with reference to the stay petitions filed by the parties we felt that this matter itself can be disposed of on the limited issue. Accordingly, amount required to be deposited for the purpose of hearing the

appeal is dispensed with. Matter was taken for regular hearing with the consent of both sides.

4. Shri Rajesh Chandra Kumar submitted that in any case, the amount of duty allegedly leviable, if any on the proportionate quantity of LSHS has not been correctly determined as the duty liability has been worked out on the basis of LSHS consumed for the entire steam generation whereas only a portion of steam generated was consumed in the generation of electricity. The duty, amount, even as per the Department's own theory works out to Rs 6,38,638/- as against Rs 15,91,562/- demanded by the department.

He also submitted that the very pleas have been taken by the assessee before the adjudicating authority but same has not been considered as can be seen from the Order-in-Original. In this context, he drew out attention to the relevant portion of the Order-in-Original which is as under - "That the duty payable worked out by the Range Superintendent is erroneous in the sense that he has taken into account the fuel consumed for the entire steam generated while working out the fuel consumed in the steam content in electricity diverted to colony, HGIL and other purposes. As a result, assuming without admitting that the department's stand is correct, the duty payable should be only Rs 6,38,63/- as against the amount of Rs 15,91,562/- as mentioned in the show cause notice." 5. On the other hand, Smt Radha Arun appearing for the Revenue submitted that the issue with reference to the quantification of duty has been considered by the adjudicating authority. In this context, she drew out attention to the relevant portion which is as under - "The assessee's contention with regard to the quantification of the demand also cannot be accepted, since, they have not furnished any documentary evidence in support of the worksheets enclosed to their reply to the show cause notice and written submissions." She submitted that since the party has not furnished any documentary evidence in support of worksheets, the Assistant Commissioner was justified in passing the order on available material.

6. On the other hand, Shri Rajesh Chandra Kumar submitted that the very work sheet was very much before the Commissioner (page 55 of Paper Book refers) but the same has not been taken into consideration.

7. We have carefully considered the matter. As can be seen from the records, the party has taken specific pleas before the authority below with reference to the quantification. The pleas taken by the party with reference to the quantification have not been dealt with by the Commissioner (Appeals). On the other hand, the Assistant Commissioner has observed that the party has not furnished any documentary evidence in support of the work sheet. It was brought to our notice that the detailed worksheet was submitted before the authority below but the same has not been taken into consideration. In view of this factual discrepancy, we are of the view that this matter will have to go back for re-consideration. In the view we have taken, we are remanding the matter to the Jurisdictional Assistant Commissioner to examine all the issues afresh and to pass an order in accordance with the law on providing an opportunity to the appellants. All the issues are kept open.

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