

**Eagle Steel Vs. Cce**

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**SooperKanoon Citation :** [sooperkanoon.com/27328](http://sooperkanoon.com/27328)

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

**Decided On :** Jan-23-2002

**Reported in :** (2002)(102)LC632Tri(Mum.)bai

**Judge :** J Balasundaram, J T J.H.

**Appellant :** Eagle Steel

**Respondent :** Cce

**Judgement :**

1. We waive pre-deposit of duty confirmed on the basis of determination of the annual capacity of production of the assessee's re-rolling mill and proceed to dispose off the appeal itself with the consent of both sides since the issue in dispute stands settled by the decision of the larger bench of the Tribunal in the case of Sawan Mal Shibumal Steel Rolling Mills v. CCE, Chandigarh I 2001 (42) RLT 75 : 2001 (94) ECR 155 (T-LB).

2. The brief facts of the case are that the appellant herein were engaged in the manufacture of hot re-rolled products of steel falling under heading 72 of the Schedule to the CETA and opted for compounded levy scheme according to which annual capacity of production of the mill was to be determined and fixed by the jurisdictional Commissioner of Central Excise in accordance with the provisions of Section 3A and the Rules framed thereunder. The annual capacity for the financial year 1997-98 was determined at 32000 MTs. Thereafter the appellants sought change in the parameters of the mill as a result of which the ACP for the same

financial year was re-fixed at 20105 MTs. In 1998-99 they sought re-fixation on the ground that there was further change in parameters and the Commissioner once again re-fixed the ACP at 16627 MTs. to be effect from 1.6.1999. However, the Commissioner amended the ACP to 20105 MTs. w.e.f. 1.6.1999 on the ground that during the period 1996-97 the ACP was 20105 MTs and therefore Rule 5 of the Hot Re-Rolling Steel Mills Annual Capacity Determination Rules, 1998, would apply and the ACP could not be less than the production of the year 1996-97. Against this order the assessee preferred an appeal before the Tribunal which sent the matter back to the Commissioner for fresh decision after taking into account the Tribunal decision in the case of Awadh Alloys (P) Ltd. v. CCE 1999 (122) ELT 719. After remand the present impugned order came to be passed by the Commissioner who once again fixed the ACP at 20105 MTs on the ground that the larger bench of the Tribunal in the case of Sawan Mal Shibumal Steel Rolling Mills v.CCE, Chandigarh-I cited supra has already held that Rule 5 will prevail even in the case of change in the parameters of the mill. Hence this appeal before us.

3. We have carefully considered the rival submissions and perused the Judgment of the larger bench. The larger bench has in para 9 of its order held that in case of change of machinery leading to reduction in production capacity Rule 5 will not apply. In para 7 of the order it held that the effect of Rule 5 would apply where there is no change in capacity or where there was augmentation in capacity. It appears that the adjudicating authority has not considered the Judgment of the larger Bench in its totality.

4. In the light of the larger bench decision, Rule 5 is not applicable in cases where change of parameters leads to reduction of annual capacity and noting that the change in machinery in the factory of the appellant has resulted in reduction of annual capacity, we hold that Rule 5 is not applicable, set aside the impugned order and allow the appeal.