

Mahavir Ispat Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Hyderabad

Decided On : Oct-09-2002

Reported in : (2003)(106)LC19Tri(Hyd.)erabad

Judge : G B Deva, S T S.S.

Appellant : Mahavir Ispat

Respondent : Cce

Judgement :

1. These are two appeals filed by the appellants. After hearing for some time with reference to the stay petitions, we felt that the matter itself can be disposed of. Accordingly the appeals were taken up for regular hearing with the consent of both sides.

2. Issue relates to determination of annual capacity production in terms of Rule 96ZO(3) of Central Excise Rules 1944. Shri K.S.Ravishankar, Advocate appearing for the appellants submitted that the appellants have claimed abatement for the periods factory was closed but the claim has been rejected by the authorities on the ground that there was a delay in filing the intimation of closure. He said that in Appeal No. 24/01, the factory was closed for the period 7.9.1998 to 15.9.1998 and 16.10.1998 to 26.10.1998 and similarly in Appeal No. E 23/01 the factory was closed for the period 17.10.1999 to 1.11.1999. He said that there was only one day delay in respect of period 7.9.1998 to 15.9.1998 and there is a delay of four days for the period 16.10.1998 to 26.10.1998, but the appellants could not intimate

well in time due to Saturday and Sunday added to Ayudha Puja and Vijaya Dasami. He said that same position even in respect of 17.10.1998 to 1.11.1999 as there were intervening gazetted holidays. He said that delay due to intervening holidays was condonable and it was held by the Tribunal in the case of D.C. Steel (P) Ltd. v. CCE, Chandigarh . In that case it was held that abatement was permissible since it was humanly impossible to give notice on Friday evening itself with Saturday and Sunday being holidays.

3. Shri Narasimha Murthy appearing for the Revenue submitted that there was a delay in filing the intimation of closure and since the Commissioner was not empowered to condone the delay as it was held by him in the resj; impugned orders the claim of abatement was rejected.

4. We have carefully considered the submissions made by both sides.

Taking into consideration the facts and circumstances and particularly in view of the fact that there were intervening continuous holidays due which party could not file intimation in time and following the ratio of the decisions referred to above, we hold that delay in intimating the closure is condonable. Accordingly the party is entitled to claim abatement. Thus these two appeals are disposed of in the above terms.

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