

Commissioner of Central Excise Vs. Didar Steel Complex P. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-19-2002

Reported in : (2003)(88)ECC207

Judge : S Kang, a T V.K.

Appellant : Commissioner of Central Excise

Respondent : Didar Steel Complex P. Ltd.

Judgement :

1. This Appeal has been preferred by the Revenue against the Order-in-Appeal No. 144/2002 dated 27.3.2002 passed by the Commissioner (Appeals) holding that deposit of Central Excise duty is not required to be made before claim of abatement of duty is made by the respondents M/s. Didar Steel Complex. Pvt. Ltd.

2. Shri Atul Dixit, learned Senior Departmental Representative, submitted that respondents manufactured non-alloy steel ingots in respect of which they opted to avail the abatement of duty under Rule 96 ZO (3) of the Central Excise Rules, 1944; that as the respondents were having a furnace of 3 MT they were required to pay Central Excise duty of Rs. 51 lakhs per month as full and final despatch of their duty liability; that during the months of August 1998 and September 1998 the Respondents instead of paying Rs. 5 lakhs each month, paid only 3.75 lakhs each month; that as the duty was short paid, a show cause notice dated 26.2.99 was issued to them for demanding the differential duty; that the Deputy Commissioner under Adjudication Order No. 128/2000 dated 1.6.2000 confirmed the demand of duty and imposed penalty of equivalent amount holding that there were no

provision under the Central Excise Act and Rules entitling the respondents to curtail the duty amount themselves; that however, on Appeal the Commissioner (Appeals) set aside the Adjudication Order. Learned Senior Departmental Representative further submitted that as per Rule 96 ZO (3) the respondents are required to pay the duty amount in two equal instalments, the first instalment latest by 15th of each month and second instalment latest by the last date of each month; that the excisable goods cannot be removed from the factory without payment of duty and if no abatement from the amount of duty is to be taken by any manufacturer, he has to submit a request to the proper Authority and the manufacturer cannot himself deduct the amount of abatement from the amount of duty to be paid by him; that the Circular applicable is Circular No. 331 /47/97-CX dated 30.8.97 wherein it was provided that if an induction furnace unit is continuously closed for not less than 15 days, then pre-payment of duty for the closure period is not to be insisted upon provided that the unit has fulfilled all the conditions stated in Sub-rule (2) of Rule 96 ZO; that as in the present matter the respondents unit was closed for a continuous period of less than 15 days; they were required to pay the duty in full. He finally mentioned that the Board's Circular No. 485/51/99-CX dated 1.5.99 which has been relied upon by the Commissioner (Appeals) in the impugned Order is not relevant as the said Circular is in respect of stenters and not in respect of induction furnace; that accordingly the decision in the case of Karamyogi Dyeing Pvt. Ltd. v. Commissioner of Central Excise, Mumbai, 2001 (136) ELT 639(Tri) is also not relevant as the Appellants therein were the processors of textile fabrics.

3. Opposing the Appeal Shri J.S. Agarwal, learned Advocate, submitted that Section 3 A (3) of the Central Excise Act provides that the duty shall be levied at such rates as the Central Government may by notification specify and collected in such manner as may be prescribed; that proviso to Sub-section (3) provides that where the factory did not produce the notified goods during any continuous period of not few than 7 days, duty calculated on a proportionate basis shall be abated in respect of such period if the manufactures of such goods fulfils prescribed conditions. He contended that it is thus evident from these provisions that if a factory remains closed for a period of not less than 7 days continuously, the duty amount is to be collected on a proportionate basis on fulfilment of the conditions;

that the factory of the respondents remained closed during the months of August and September 1998 for a continuous period of 7 days and as such they were required to pay less duty. He relied upon the decision in the case of Karamyogi Dyeing Pvt. Ltd. (supra) wherein it was held that Section 3 A (3) does not contain any provision that duty must be first paid and that the Board in its Circular No. 485/51/99-CX dated 15.9.99 mentioned that abatement should be granted without asking the manufacturer to pay duty first and if he has already paid the duty, it should be reimbursed to him.

4. We have considered the submissions of both the sides. Abatement as per Osborn's Language Dictionary means.-- "a reduction, allowance or rebate." According to Webster Ninth New Collegiate Dictionary, abatement means "an amount abated; esp: a deduction from the full amount of a tax." Section 3 A(3) empowers the Central Government to specify the rate of duty and the manner of payment of duty in respect of goods notified under Section 3 A(1) of the Central Excise Act. The proviso to Sub-section (3) provides for the abatement of the duty if any factory did not produce the notified goods during any continuous period of not less than 7 days subject to the conditions prescribed.

The conditions have been prescribed under Rule 96 ZO(2) which require the manufacturer to notify in writing about the closure to the Assistant Commissioner with a copy to the Superintendent either prior to date of closure or on the date of closure alongwith the closing balance of stock and reading of the electric meter. The manufacturer when he starts production again has to inform in writing about the starting of production to the Assistant Commissioner and Superintendent either prior to the date of production or on the date of starting production alongwith the closing balance of stock on restarting the factory and the reading of electric meter. The abatement from the payment of duty is available on the fulfilment of all these conditions.

A harmonious reading of both, Section 3A(3) and Rule 96ZO, makes it very clear that the abatement from the payment of duty on proportionate basis is available on the fulfilment of these conditions. When any condition is specified then the proper officer has to ascertain before the facility is extended as to whether specific

condition have been fulfilled or not. We are, therefore of the view that neither Section 3A(3) nor Rule 96ZO empowers the assessee to take abatement on his own before making the payment of duty. We therefore do not find ourselves in agreement with the views expressed in the case of Karmyogi Dying Pvt. Ltd. (supra). However as Section 3 A is no more in effect, we are not referring the matter for the consideration of the Larger Bench of the Tribunal. Moreover the decision in the case of Karamyogi Dying case was also based on Board's Circular dated 15.9.99 which provided that where independent processor is eligible for abatement which should be granted to him, where he has paid the duty first or did not pay the duty in anticipation of obtaining the Order of abatement. In the present matter, we find that the respondents have already filed the abatement claims with the jurisdictional Commissioner on 17.9.98 and 22.10.98. In the interest of justice, we are of the view that the Commissioner must decide the eligibility of the respondents to the abatement from payment of duty for two periods as soon as possible, in any case within two months from the date of this Order. If the abatement claims filed by the respondents are allowed and no duty is found to be short paid, the question of payment of any duty by the.

Respondents would not arise. However if the abatement claims are not allowed fully or partially and any duty of excise becomes payable, the respondents are liable to pay the same forthwith. The Commissioner will decide the question of admissibility of abatement of duty after affording a reasonable opportunity of hearing to the respondents. We fully agree with the learned Advocate that the present matter is not a case warranting imposition of any penalty. The Appeal is disposed of in the above terms.

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