

Sunil Steels Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-09-2003

Reported in : (2003)(159)ELT368TriDel

Judge : K Usha, N T C.N.B.

Appellant : Sunil Steels

Respondent : Commissioner of Central Excise

Judgement :

1. This is an application to condone the delay of 304 days in filing this appeal.
2. The appellant is engaged in the production and clearance of Hot re-rolled products falling under Chapter 72 & 73 of the Schedule to the Central Excise Tariff Act, 1985. Under order dated 14-12-2001 the Commissioner determined the Annual Production Capacity of the Hot Rolling Mill of the appellant. Since the order did not contain a preamble, the appellant sent two representations dated 9-1-2002 and 18-3-2002 requesting for issue an appealable order. To the above representations, a reply was received only on 28-10-2002 intimating the appellant that both representations cannot be considered as the Annual Production Capacity has been already fixed by the Commissioner under the Order dated 14-12-2001. It is the case of the appellant that within three months from the date of receipt of the above reply, they have filed the appeal. The appellant would, therefore, contend that the delay was caused due to a bona fide mistake on its part in assuming that the order dated 14-12-2001 is not a final order as it did not contain a preamble.

3. The appellant places reliance on Clause 34 of the Adjudication Manual and also decisions of the Bombay High Court in *Dhanlakshmi Fabrics Ltd. v. Union of India & Others* [2003 (153) E.L.T. 42 (Bom.) = 2003 (54) RLT 11 (Bom.)] and *Balaji Steel Re-rolling Mills v. CCE, Aurangabad* [2001 (133) E.L.T. 619 (Tri-Mum.)] in support of its contention that order dated 14-12-2001 was not an appealable order.

4. The Id. DR would submit that there is no reason for the appellant to have a bona fide impression that the order dated 14-12-2001 is not a final order fixing the Annual Capacity. The above order was preceded by a provisional order dated 24-10-97 and that the order dated 14-12-2001 considers in detail the contentions raised by the appellant and a reading of the order would clearly show that it is a final order fixing the Annual Capacity. He submits that only for the reason that preamble was not added to the order, it does not lose the characteristic of the final order.

5. Clause 34 of the Adjudication Manual directs that all adjudications should be in the form prescribed and should invariably contain a clear direction setting out the procedure of filing an appeal as contained in Rule 213 read with Govt. of India, Ministry of Finance, (Deptt. of Revenue), Notification No. 69/59 G.S.R. No. 8/22 dated 18-7-59. It is true that for the convenience and benefit of the assessee, it would be always better if the order contains the preamble. But only for the reason that there was no preamble the order cannot be one not having the characteristics of a final order. On going through the decision of the Bombay High Court, we find that the Hon'ble High Court was not approving the opinion held by the Consultant in the above case that so long as the order did not contain a preamble, it is not an appealable order. The Hon'ble High Court was inclined to condone the delay, since the assessee was under a bona fide mistake and also for the fact that the assessee's representations were not disposed of in time by the department. On going through the facts of the case decided by the Tribunal referred above, we find there also the assessee had been representing for amendment of the order with the impression that it is not an appealable order in the absence of preamble. It was under these circumstances the Tribunal condoned the delay.

6. Taking into consideration the facts of the case, we find that the assessee who was under a bona fide mistaken impression that the order without a preamble is not appealable. The assessee having approached the Department with two representations, it was only just and proper on the part of the Department to have replied him in time. If such a reply had been given in time there would not have been any delay in filing this appeal. We find that the appellant had filed the present appeal within three months from the date of receipt of the reply from the Department. Taking into consideration these facts, we are inclined to condone the delay. The COD, therefore, stands allowed.

7. Heard both sides. We find that the appellants grievance relates to non-application of a relevant rule while arriving at the Annual Production Capacity in the impugned order. The issue arising for consideration is as to how the Annual Production Capacity has to be arrived at in view of the contention raised by the assessee that it had closed down one of the two mills. This is a matter to be examined in detail at the time of final hearing. We, therefore, grant exemption from pre-deposit and stay of collection of demand.

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