O.P. Steels Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Sep-22-2003

Reported in : (2004)(113)LC414Tri(Chennai)

Judge : S Peeran, R K Jeet

Appellant : O.P. Steels Ltd.

Respondent : Cce

Judgement :

1. The Stay Petition No. E/PD/4] 1/2001 and three appeals bearing No.E/728/2001; E/ 1294/2000 and E/1654/1999 filed by M/s. O.P. Steels Ltd. involves common question of facts and law. We, therefore, waive the pre-deposit of duty amount of Rs. 35,99,823/- (balance duty payable) and take up all the three appeals finally to decide on merits.

2. The brief facts of the case are that the appellants M/s. OP Steels Ltd. are engaged in the manufacture of MS Ingots falling under chapter 72 of the Central Excise Tariff Act, 1985. During the relevant point of time, the appellants were required to pay duty in terms of Section 3A of the Central Excise Act, 1944 under the compounded levy scheme. The appellants were issued with a letter by Assistant Commissioner of Central Excise, Chennai - V Division of chennai - II Commissionerate, Chennai vide letter C. No. IV/16/210/97 dated 30.9.1997 who informed the appellant that on the basis of particulars furnished by them, the total installed capacity of the furnace and the annual Capacity of production have been

determined finally as given below by the Commissioner of Central Excise: They were therefore required to discharge the duty liability as per Sub-rule (3) of Rule 96ZO of the Central Excise Rules, 1944. The appellant assessee requested for abatement for the closure period as below:---S. Letter Nos.

Date & Date of Date & RecommenNo.and date of Time of intimation Time of re-dation of intimation of closure of re- opening DV V Dvn.

closure opening (C. No. & Dt.)01.

OPSL/CEX/98 10.10.199 20.10.199 17.10.199 C. No. -99/66 8 at 9.00 8 8 at IV/16/210/ 21.10.1998 am 2.00 pm 97 - T dt.

27.4.200002. -- 14.11.1998 12.11.199 21.11.199 20.11.199 -do- 8 at 8 8 at 2.3003.

OPSL/CEX/98 10.2.1999 19.2.1999 19.2.1999 -do- -99/107 -- at 6 pm 10.2.199804. -- 10.5.1999 7.5.1999 17.5.1999 15.5.1999 -do- at 10.00 at 4.30 pm05. -- 14.8.1999 13.8.1999 24.8.1999 23.8.1999 -do- at 11.4006. -- 4.3.2000 3.3.2000 14.3.2000 13.3.2000 -do- at 4.00 pm at 13.30 pm 3. The appellants were in correspondence with the Central Excise Department (regarding determination of ACP) since receipt of communication noted supra. The correspondences would show that the appellant have sought for various abatements during the period 03/98 to 03/2000. As a matter of fact, the appellant have sought for redetermination of ACP on various grounds including closure of furnace due to blast and dis-connection of power supply. All the correspondences are on record, as contended by the appellant assessee.

In these circumstances, the Commissioner of Central Excise, Chennai -II Commissionerate vide Communication C. No. IV/16/210/97-T dated 22.6.1999 informed the appellant as under:---S. No.Period Furnaces working Proportionate ACP-- 01.

9/97-3/98 8 MT 14372 MT (Less abatement-561 MT) 02.

4/98 - 8 MT 11788 MT 16.9.199803.

17.9.1998 4 MT 16891 MT -3/9804.

4/1999 - 4 MT 12800 MT 3/2000 4. The appellants have preferred an appeal against the above communication dated 22.6.1999 and the said appeal has been filed before CEGAT on 8.10.1999/12.10.1999. The said papers are also part of this appeal. In the said appeal, the appellants have sought for re-fixing of ACP and allowing abatement of duty/remission of duty as per para 7 of the grounds of the said appeal.

5. The Commissioner of Central Excise, Chennai - II Commissionerate, Chennai after going through the request of the assessee for abatement and verification done by the Central Excise Officers found that the number of days for abatement claim for the period from 10.10.1998 (at 9.00 am) to 17.10.1998 (at 2.00 pm) works out to only 6 which is less than 7 days. Therefore as per Sub-section (3) of Section 3A of the Central Excise Act, 1944 claim for this period was not covered within the eligibility criteria and hence rejected their abatement claim for the period mentioned below vide abatement order No. 11 / IF/ABATEMENT/2000 dated 30.6.2000:---Sl. No. Period Eligible Days for Claim Amount of Duty---01.

13.11.1998 to 7 days 1,55,556.00 19.11.199802.

11.2.1999 to 8 days 1,90,476.00 18.2.199903.

8.5.1999 to 7 days 1,50,538.00 14.5.199904.

14.8.1999 to 9 days 1,93,548.00 22.8.199905.

4.3.2000 to 9 days 1,93,548.00 12.3.2000--- Total 8,83,666.00 6. Subsequent to the fixation of ACP, the appellants opted for payment of duty as per Sub-rule (3) of Rule 96ZO of Central Excise Rules. 1944.

The appellants in these circumstances claimed abatement from duty/remission of duty under Central Excise Rules. The appellant have also sought for re-fixing of ACP on the basis that one of their furnace had become non-functional after blast in the furnace. The appellants provided a date chart relating to the claim of re-fixing of ACP and also abatement/remission of duty. The date chart would also give the particulars regarding the reminders sent to the department. The appellant in these circumstances were required by the Superintendent of Central Excise, in-charge of their Range to pay duty as per Commissioner of Central Excise, Chennai -II Commissionerate letter allowing partial remission/refixing of ACP (for part period). The appellants informed the Superintendent of Central Excise that they have not received any communication in response to various representations made regarding re-fixing of ACP/abatement/remission of duty. The Superintendent of Central Excise, in this circumstance handed over a copy of letter C. No. 1V/16/2 10/97T dated 22.6.1999 during July, 1999.

Subsequent to this communication, the appellants have represented to the Commissioner for re-fixing of ACP/remission of duty for the period not covered by the communication but did not receive any response. The appellants were not able to come to any conclusion whether the Commissioner is yet to consider their request for remission of duty/refixation of ACP for the balance period or the Communication dated 22.6.1999 of the Commissioner referred to above should be considered as rejecting their request. The appellant also did not know whether an appeal can be preferred against the letter dated 22 6.1999 or not. In these circumstances, the appellant had to file this appeal, as the appellants were not able to get any response to their various representations sent to the Commissioner, Assistant Commissioner, Superintendent of Central Excise, in-charge of their Range. The appellants have also not been informed whether their request for re-fixation of ACP/abatement (remission) of duty for the following period have been considered or not:(a) Re-fixation of ACP (i) 6.3.1998 to 31.3.1998 (ii) 1.4.1998 to 14.7.1998 7. The contention of the appellant is that during the period indicated in [7 (a)] above, only one furnace had been working and intimation of the balance was intimated to the appellant which is on record.

Similarly, in response to period [in 6(b)] above, the appellant have sought remission of duty giving specific reasons. But the Commissioner's communication is silent on this aspect and it is not known as to whether the Commissioner has considered the appellants request or not and there is no communication from revenue to this regard.

8. However, he allowed the abatement for the period in exercise of the powers conferred upon him under Rule 96ZO (2) of Central Excise Rules, 1944 read with Sub-section (3) of Section 3A of Central Excise Act, 1944. The Commissioner therefore, allowed an abatement of Rs. 8,83,666/- (Rupees eight lakhs eighty three thousand and six hundred and sixty six only) to the assessee. Commissioner also ordered that the amount of abatement may be adjusted towards past liabilities of the assessee, and if any amount remains even after such adjustment of past liabilities, then the same may be refunded.

9. Aggrieved by the above abatement order No. 11/IF/ABATEMENT/ 2000 dated 30.6.2000 of the Commissioner, the appellant filed an appeal before this Bench on 14.10.2000 vide Appeal No. E/1294/2000 on the ground that the Commissioner failed to appreciate that there was no proper determination of ACP in respect of the appellant's factory (M/s.

OP Steel Ltd.). The Commissioner ought to have appreciated that the communication dated 30.9.1997 received from the Assistant Commissioner cannot be taken as determination of ACP by the Commissioner. They further submitted that the Commissioner ought to have appreciated that the CEGAT has been consistently holding that such communication as sent by the Assistant Commissioner intimating the ACP fixed cannot be accepted as proper/valid determination of the ACP as per Rule 3 of Induction Furnace Annual Capacity Determination Rules, 1997. They further submitted that the Commissioner ought to have appreciated that further order passed regarding abatements on 22.6.1998 and 30.6.2000 are also not valid as original order dated 30.9.1997 of the Assistant Commissioner is itself not maintainable in law being not an order under Section 3A of the Central Excise Act read with Rule 9610(2) of the Central Excise Rules, 1944. Without prejudice to the above grounds taken up in their appeal, they further submitted that the Commissioner has erred in not considering the abatement sought for the period 10.10.1998 and 17.10.1998 and erred in reducing the abatement by one day in each case referred to in the table at para 5 of the impugned order. They further submitted that the Commissioner ought to have put the appellant to notice, if the request of the appellant was not being conceded as such. Therefore there is violation of principles of natural justice. Since the appellants have complied with all the requirements as per Rule 96ZO of Central Excise Rules, 1944, their request for abatement as prayed for by them should have been allowed by the Commissioner, was the further contention of the appellant assessee.

10. The appellant-assessee filed written submission which are extracted herein below: 1. M/S. O.P. Steels Limited, Gummudipoondi [herein after referred to as the appellants] are engaged inter-alia in the manufacture of MS ingots falling under Chapter 72 of Central Excise Tariff Act, 1985.

From 1.9.1997 to 31.3.2000, the appellants were operating under compounded levy scheme and paying duty in terms of Section 3A of Central Excise Act 1944, read with Induction Furnace Annual Capacity Determination Rules, 1997 and Sub-rule [3] of Rule 96ZO of Central Excise Rules 1944.

i. The impugned orders have been passed in violation of principles of natural justice. The arguments inconvenient to the department were ignored. There are no findings to the effect as to how the abatement claimed by the appellants was allowed only partially.

Worksheet showing duty calculation for the demand made in the order is not enclosed with the order.

ii. In respect of Appeal No. 1654/99, it is submitted that impugned communication has been issued without notice and personal hearing and the order is cryptic and no reasons were furnished, for the findings recorded.

iii. In Appeal No. 1294/2000, the Learned Commissioner has not considered Abatement in full and not stated the reasons for partial rejection. The order was passed without granting Personal Hearing, and no SCN was issued for rejection.

iv. In respect of Appeal No. 728/2001, it is submitted that the commissioner had decided to issue, based on the Assistant Commissioner's letter dated 30.9.1997, fixing Annual Capacity of Production, which is not correct in law.

No Worksheet was supplied along with the order to arrive at the balance duty payable. As per the Worksheet of the Appellants, the Appellants have paid duty in excess.

It is settled law that an order passed without considering the argument putforth by the appellants is not a speaking order. Hence the impugned order is liable to be set aside as null and void.

ii. The appellants rely on the following decisions in support of their contentions.

Icycold Commercial Enterprise v. CCE, Calcutta [69] ELT 337 [T] : 1993 (47) Ecr 505 (T) Sri Ramakrishna Mills [Coimbatore] Ltd v. CC, Chennai The total capacity was fixed at 8 tonnes and annual capacity of production was fixed at 25600 tonnes and the same was communicated by Asst. Commissioner of Central Excise Chennai I Division vide his letter C No. IV/16/210/97 dt. 30.9.1997. It is submitted that as per Rule 3 (4) of Induction Furnace Annual Capacity Determination Rules 1997, "the Commissioner of Central Excise shall as soon as may be, after determining, the total capacity of furnaces installed in the factory as also the annual capacity of production by an order intimate to the manufacturer" It is clear from Rule 3(4), the determination of total capacity of furnace installed in the factory and also the annual capacity of production is a quasi judicial function entrusted to the Commissioner of Central Excise and after determining the capacity the Commissioner has to intimate the same by way of an order. This provision is incorporated in the Rules, mainly for the reason that if the assessee is aggrieved by such an order, he is entitled to file an appeal in the appellate forum.

Time and again the Hon'ble Tribunal had repeatedly held that before fixation of ACP hearing is a must and the order has to be communicated by the Commissioner by way of an order under his signature. The appellants had cited such decisions also in support of their contentions during personal hearing. The learned Commissioner chooses to ignore the case laws cited. The proceedings initiated in the various show cause notices based on the letter dated 30.9.1997 sent by the Asst. Commissioner are not sustainable in law. Only after fixing ACP by the Commissioner, by way of a proper order proceedings can be initiated to demand duty if any.

The appellants refer and rely on the following decisions in support of their contentions.: Puspa Industrial Corpn v. Commissioner of Central Excise, Allahabad/Raipur 1999 ELT 496 [T] Raj Ratan Castings Put Ltd v. Commissioner of C.Ex., Kanpur Pasupati Alloys Ltd v. Commissioner of C.Ex., KanpurShri Dhari Steel Rolling Mills (P) Ltd v. Commissioner of Central Excise, New Delhi i. On 6.3.1998, there was a major breakdown and accident in the furnace resulting in huge loss of material and property. The appellants have intimated the facts to the Commissioner by their letter dt. 6.3.1998, and copy of the letter was sent to Asst.

Commissioner of Central Excise and the Superintendent of Central Excise. Thus effectively from 6.3.1998 there was a change in the capacity. From 6.3.1998 to 15.7.1998 the ACP has to be refixed as one furnace (4 MT Capacity) was damaged in the accident that occurred on 6.3.1998 and the power was disconnected. Hence the appellant's capacity during that period was only 4 MTs. The averment of the learned commissioner in his communication dated 22.6.1999, that no Abatement has been allowed for the period 14.3.1998 to 15.7.1998 as one furnace was functioning is not legally correct since, for the damaged furnace duty cannot be demanded, and hence there is no such provision in the Compound Levy scheme. The appellants repaired and restarted the damaged furnace on 16.7.1998, but could not run as it's efficiency was at the lowest and hence it was permanently closed from 15.8.1998. In the impugned order refixation was done only from 17.9.1998 without furnishing any reason as to why refixation was not allowed with effect from 17.8.1998 and in fact the appellants have intimated as early as 18.7.1998 that they intend to close the second furnace and requested for refixation of ACP from the date of such closure Refixation of ACP was done in respect of some other units like RV Steels Pvt. Ltd, Viki Industries Ltd. in Chennai II Commissionerate. It is submitted that for the damaged furnaces no duty can be demanded, as there is no such provision in the compounded levy scheme. As per provisio to Sub-rule (3) of Rule 96ZO the appellants are eligible to pay duty-calculated prorata if there is any change in the total capacity. The Rule 4 of Induction Furnace Annual Capacity Determination Rules, 1997 also provide for payment of duty on prorate basis if there is any change in the total furnace capacity.

In the instant case there was a change in the capacity of production because of closure of furnace due to accident from 6.3.1998. Annual capacity of production cannot be fixed for a closed furnace. There is no such provision in the Induction Furnace annual Capacity Determination Rules 1997. The appellants rely on the decisions of Hon'ble Tribunal in SHREE Durga Agro Industries v. Commissioner of C.Ex., Jaipur : Jupiter Industries v. Commissioner of Central Excise, Jaipur 2001 (137) ELT 1018 (T); Ravi HiTech Ltd. v. CCE, Jamshedpur 2002 (148), ELT 315 (T) & Didar Steel Company Ltd v. CCE, Chandigarh.

Without prejudice to the contention of the appellants that there is no legally sustainable order of fixation of ACP and as a sequel the show cause notices issued to demand duty without a proper order of determination of ACP is not sustainable in law, it is submitted that part of the demand made in the impugned order is time barred. As per Rule 96 ZO (3) a manufacturer has to pay duty due for the month in two installments latest by the last day of each month. Admittedly there is no suppression of facts. Some of the show cause notices have been issued beyond the period of six months and hence the demand is time barred.

ii. A show cause notice dt. 3.9.1998 was issued to demand duty of Rs 4,49,305/- for the period from 9/97 to 3/98. The show cause notice has been issued to demand duty for the period beyond six months and hence the demand for the period from 9/97 to 3/98 is barred by limitation.

i. There are certain mistakes in calculating abatement. For example the appellants have claimed abatement for 52 days whereas abatement was granted only for 40 days. No proper reasons were recorded for the rejection of the part of the abatement. Such an order is not sustainable as held by the Tribunal in the case of B.T. Steels Ltd v. Commissioner of Central Excise, Chandigarh 2001 (138) ELT

106 (T). Further the calculations have been made wrongly without considering the decisions of Hon'ble Tribunal in the case of Singareni Steel (P) Ltd v. Commissioner of C.Ex., Hyderabad-Ill and Vijayaanad Fabricks (P) Ltd v. Commissioner of CE., Hyderabad-II 2001 (138) ELT 1117 (T).

In view of what has been stated herein above the appellants prays that the portion of the impugned order which confirmed the part of the demand may please be set aside as null and void.

11. The department filed a rejoinder vide their letter No. C. No.V/72/2/48/2002 R&T dated 22.4.2002 which is also extracted for ready reference: M/s. O.P. Steels Ltd. are engaged in the manufacture of ingots falling under Chapter 72 of the Central Excise Tariff Act, 1985.

They have filed declaration for fixing Annual Capacity of Production. The said declaration was made on the basis of two furnaces installed in their factory. Accordingly the ACP was fixed at 25,600 M.T. Subsequent to the fixation of the ACP the assessee opted for payment of duty as per Sub-Rule 3 of Rule 96ZO of the Central Excise Rules, 1944. The assessee claimed abatement of duty/remission of duty as provided for in the Central Excise Rules, 1944. They also sought for refixing of ACP on the basis that one of their furnace had become non-functional after blast in the furnace. After considering the representation made by the assessee the Commissioner fixed the ACP vide C. No. IV/16/210/97-T dated 22.6.1999 and also passed abatement order vide No. 11/1F/Abatement/2000 dated 30.6.2000. In the meanwhile the assessee had filed this appeal to consider their representation for abatement which has since been passed by the Commissioner vide reference 11/IF/Abatement/2000 dated 30.6.2000 and therefore the issue has become infructuous.

Paras 1 to 5: On representation from the assessee vide letters dated 6.3.1998, 16.3.1998 and 16.7.1998 Commissioner has examined the matter in detail and has allowed abatement as well as refixation of ACP based on the re-working of ACP in view of the fact that only one furnace was working instead of two furnaces that were initially working. The initial capacity was fixed as 25,600 M.T. Whereas the revised capacity for various periods were refixed as below.-- PERIOD ACP--9/97 to 3/98 (2 furnace 14372 MT (less abatement 561working M.T.)--4/98 to 16.9.1998 (1 furnace 11788 MTworking--17.9.1998 to 3/99 6891 M.T.--4/99 to 3/2000 128000 M.T.-- Therefore, it is obvious that the assessee request has been suitably considered and A.C.P. fixed as per norms and hence there is no irregularity.

Para 6: Re-fixation (Abatement) has been duly considered and suitable orders passed, as per norms and hence there is no irregularity.

Para 7: Re-fixation/ACP has been considered for the relevant period as detailed below: Refixation: i) 9/97 to 3/98 - Refixed as 14372 MT instead of 25600 MT originally fixed ii) 12.11.1998 to 20.11.1998 C. No. V/72/30/50/98 Tech dated Para 8: Commissioner has duly considered the fact that only one furnace was functioning from 14.3.1998 and accordingly order have been passed.

Para 9: Commissioner's abatement order dated 30.6.2000 is self explanatory.

In view of the abatement order dated 30.6.2000 present appeal filed by the assessee is infructuous.

12. The appellants on 22.9.2003 during the course of personal hearing filed comments on the department's submissions which are also extracted herein: In paragraph 2 of the page 1, the Respondent has stated that the appeal filed by the appellants against the order dated 22.6.1999 has become anfractuous as the Commissioner has subsequently passed abatement order dated 30.6.2000. The averment is not correct. In the order dated 22.6.1999, the Commissioner has refixed the capacity for certain periods but left out certain other periods, i.e. for the period from 14.3.1998 to 15.7.1998, only one furnace was functioning, but the refixation has been done only with effect from 17.9.1998. The Commissioner has

not granted personal hearing or notice for rejecting the claim of the appellants. The order dated 30.6.2000, is an "Abatement Order", wherein the commissioner has granted abatement for closure for more than 7 days and it has no bearing on the Order dated 22.6.1999, which is under challenge. So the appeal against the order dated 22.6.1999 is not infructuous.

It is stated in the "Parawise Comments", that the Appellant's request was suitably considered and ACP fixed as per norms and hence there is no irregularity. It is not correct. As stated in the appeal, there was a major breakdown on 6.3.1998 in one furnace resulting in huge loss of material and property, and the furnace was closed till 15.7.1998. It was restarted on trial basis on 16.7.1998, but closed and furnace was dismantled permanently with effect from 17.8.1998. These facts were not considered in the Refixation Order and in the Abatement Order. In the Abatement Order, Abatement for 12 days were not granted and in the parawise comments, it is stated that the Commissioner has duly considered the fact that only one furnace was functioning from 14.3.1998 and accordingly Order has been passed. It is submitted that in the order itself it is stated that Abatement was not allowed for the period 14.3.1998 to 15.7.1998. In fact the appellants were entitled for refixation as stated as held in the case reported in 2003 (54) RLT 537.

Basically, the original order of fixation of ACP was not communicated by the Commissioner by way of an order as required under Rule 3(4) of Induction Furnace Annual Capacity Determination Rules, 1997. Hence subsequently Refixation and Abatement Order and Show Cause Notices, which remanded for the original letter of the Assistant Commissioner is not tenable in law.

13. Counsel besides filing these comments on department's submission vide their letter dated 22.4.2002 vehemently argued that the communication of fixation of ACP by the Commissioner has not been sent under the signature of the Commissioner and it is well settled that the Commissioner has to send under his signature and date and order communicating the ACP fixed. They have also challenged the fixation of ACP since there was a major breakage on 6.3.1996 in one of the furnace resulting huge loss of material and property and the furnace was closed on 15.7.1998 which was restarted on trial basis on 16.7.1998 but

closed and furnace was dismantled permanently with effect from 17.8.1998. The Counsel, therefore, submitted that these facts were not considered in their - re-fixation order and the abatement order. He also submitted that abatement for 12 days was not allowed for the period 14.3.1998 to 15.7.1998 and the comments by the department that the Commissioner has duly considered that one furnace was functioning from 14.3.1998, is incorrect, because of the clear order for not allowing abatement for the period from 14.3.1998 to 15.7.1998. In this connection, counsel of the appellant has also placed his reliance on the judgement of the Tribunal rendered in the case of Didar Steel Complex P. Ltd. v. CCE as reported in 2003 (54) RLT 537 in which it has been clearly held that material elate was the date when the intimation was sent. Therefore the date of intimation has to be taken into consideration and it cannot be excluded. Similar was the order of the Tribunal in the case of M/s.

Hans Castings P. Ltd. contained in Final Order No. A/144-145/2000 NB dated 22.2.2000. Ld. Counsel further submitted that it is a well settled position that the original order fixing of ACP has to be passed and issued under the signature of the Commissioner, whereas in their case the original order of fixation of ACP was not communicated by the Commissioner under his signature and date by way of an order as required under Rule 3(4) of Induction Furnace Annual Capacity Determination Rules, 1997. In view of this legal infirmity in the order of communication of the ACP by an un-authorised officer, that is to say, the Assistant Commissioner has vitiated the re-fixation of abatement order and show cause notices which amanated from this letter of the Assistant Commissioner communicating the fixation of the ACP and such re-fixation and abatement is not tenable in law. In view of the above submission, counsel prays that the portion of the impugned order which confirms the part of the demand may be set aside.

14. Ld. DR Shri C. Mani has relied on the para-wise comments filed by the Commissioner vide his letter dated 22.4.2002. He further submits that the Commissioner has duly considered the fact that only one furnace was functioning from 14.3.1998 and accordingly order has been passed. He also submits that the Commissioner's abatement order dated 30.6.2000 is also self-explanatory and in view of the abatement order dated 30.6.2000, the present appeal filed by the

assessee is infructuous.

15. We have considered the rival submissions and observe that Shri G.Sree Harsha, the then Assistant Commissioner of Central Excise, Chennai v. Division, Chennai II Commissionerate vide his letter C. No.IV/16/2IO/97 dated 30.9.1997, with reference to the appellant's declaration vide Ref. OPS/97-98/84 dated 11.1997, has communicated to the appellant, M/s. O.P. Steels Ltd. that on the basis of the particulars furnished by them, the total installed capacity of the furnace and the Annual Capacity of Production has been determined finally as given below by the Commissioner of Central Excise: The Assistant Commissioner further directed them to discharge the duty liability as per Sub-rule (3) of Rule 96ZO of the Central Excise Rules, 1944. This order of fixation of the ACP has to be signed by the Commissioner, who alone is the prescribed authority to pass such an order under Section 3A(2) of the Central Excise Act, 1944. We are, therefore, of the considered opinion that the letter/order of fixing the Act. by which the assessee was aggrieved was not signed by the Commissioner, who alone is the prescribed authority to pass such an order under Section 3A(2) of the Act and there was no discussion regarding the assessee' contention for fixation of lower capacity in the letter communicated by the Assistant Commissioner on the decision of fixation of ACP by the Commissioner. This Bench in the case of Chamundi Steel Castings (India) Ltd. v. CCE, Chennai-III as had also come to a conclusion that such an order which has been communicated by the Assistant Commissioner was a non-speaking order and had therefore remanded the matter to the original authority, namely, the concerned Commissioner for de novo consideration after hearing the assessee. Since in our considered opinion, the order/letter of fixation of ACP and its communication by the Assistant Commissioner is illegal, we set aside the same. Similarly the Abatement Order No. 11/IF/Abatement/2000 dated 30.6.2000 passed by the Commissioner on the basis of such letter/order communicated by the Assistant Commissioner, is also illegal and has to be set aside and we do so. We also find that the impugned order of the Commissioner vide Order-in-Original No. 18/CLS/2001-TECH dated 18.4.2001 is also illegal as the same is based on the communication sent to the assessee by the Assistant Commissioner, Chennai V Division vide his letter C. No.IV/16210/97 dated 30.9.1997, therefore, it has to be set aside and we order accordingly. We

therefore remand the case back to the original authority, that is, Commissioner of Central Excise for refixation of ACP after taking into consideration all the submissions made by them and after taking into consideration the various citations as discussed above and as relied by the appellant. All the three appeals succeed by way of remand. The stay application also gets disposed of Ordered accordingly.

16. The operative portion of the order was pronounced in the Open Court on 22.9.2003.