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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-01-2003

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

Appellant : R.K. Machine Tools Ltd.

Respondent : C.C.E.

Judgement :

1. Appellant M/s. R.K. Machines Ltd. manufacture non-alloy steel ingots/billets by operating two induction furnaces of 3.5 MT 3 MT capacities. They opted for payment of duty on compounded levy basis.

The present dispute relates to the appellant claim for abatement of duty to the tune of over Rs. 23 lakhs for short periods from August 1997 to January 1998. The ground taken was that during the periods in question, one of the furnaces had been closed down. The impugned order has rejected the claim.

2. We have perused the records and considered the submissions made by both sides. This issue had come up for consideration before this Tribunal in an earlier appeal filed by M/s. Waryam Steel Castings Ltd. Vs. C.C.E., Chandigarh 2003-TaxindiaOnline- -CESTAT and the Tribunal held that abatement will be available only in case of closure of factory and not closure of one of the furnaces. Paragraphs 10 and 11 of the order dealing with the issue raised are reproduced below: "10. The appellants have admittedly got two induction furnaces, one of 2 MT, and other of 3 MT. According to them, induction furnace of 2 MT, remained

closed during the disputed period, while other remained in operation. In view of the face of these admitted facts, it could not be said that the entire factory remain closed for the disputed period. The bare perusal of the proviso appended to sub-section 3 of erstwhile Central Excise Act, reproduced above, makes it abundantly clear that abatement shall be allowed only where the factory did not produce the notified goods during any continuous period of not less than seven days. The argument of the learned counsel that each furnace/unit has to be taken as a factory for the propose of sub-section 3 of erstwhile Section 3A of the Act for allowing the abatement, as ACP is determined always on the basis of each furnace (unit) under the Annual Capacity Determination Rules, But we are unable to subscribe to this contention of the counsel, Under the Annual Capacity Determination Rules, capacity of each furnace has to be taken into account for determining the total ACP of the factory of the assessee. But in a case of abatement, expression usedin 'factory' and not unit in the proviso to sub section 3 of erstwhile Section 3A of the Central Excise Act. The wording of the proviso to this sub-section is quite clear and leaves no doubt in our mind that for the purpose of claiming abatement, the entire factory of the assessee must have remained closed for a period of not less than 7 days. Closure of one of the two units/furnaces in the factory will not be sufficient for him to claim abatement under this provision. In this view, we are also fortified by the ratio of the law load down by the Tribunal in Doaba Rolling Mills Pvt. Ltd. Vs. CCE, Meerut decided vide Final Order No. A/177/99-NB(DB) dated 17.3.99 [reported in 1999 (32) RLT 502 (CEGAT)]. In that case also, similar argument was advanced as had been done by the learned counsel in the present case that closure of one of two units of the factory should be taken to be closure of entire factory for the purpose of sub-section 3 of erstwhile section 3A of the Act but the same was rejected by the Tribunal and it was observed as under :- "Therefore, we are unable to accept the contention of the learned counsel that abatement is to be granted furnace wise. The reliance by the counsel of affixing of annual capacity of production independently for each furnace does not advance the appellants case in view of the fact that total annual production capacity has been taken as only one figure and further, the language of the proviso is very clear that abatement is permissible only if the factory does not produce notified goods." 11. No help can also be

sought by the counsel from the order of the A.C. dated 12.10.99 who allegedly allowed abatement of duty for the disputed period to the appellants. This order became non-existant after service of fresh show cause notice on the appellants after remand of the case by the Tribunal. No reference was even made by the appellants themselves to that order of the A.C. during the adjudication of the fresh show cause notice, before the Commissioner. Since the very conditions stipulated in sub-section 3 of erstwhile section 3A of the Act, did not stand fulfilled as the entire factory of the appellants did not remain closed for the disputed period and what was closed was only one furnace, the abatement claim of the appellants had been rightly rejected by the adjudicating authority. We find no illegality or legal infirmity in the impugned order of the adjudicating authority in this regard." Thus, the issue remains decided by this Tribunal against the assessee.

In that view of the matter, no relief can be granted in the present appeal.

3. A related issue raised in the liability of the assessee to pay interest for the delayed payment. No relief is available on this ground also since payment of interest for delayed payment is an integral part of Rule 96ZO(3).

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