Commissioner of Central Excise Vs. Ganesh Agro Steel Industries and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-24-2003

Judge : J Balasundaram, A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Ganesh Agro Steel Industries and

Judgement :

1. The issue in dispute in the present appeals filed by the Revenue against a common order of the Commissioner of Central Excise (Appeals), Pune, is the admissibility of deemed credit under Ministry of Finance's Order No. TS/36/94-TRU dated 1.3.1994 even after crossing of the ceiling limit of Rs. 75 lakhs in terms of notification 1/93 relating to small scale units, by the respondents herein who are manufacturers of mild steel CTD bars/M.S. round bars etc., although their specific clearances were within the limit of Rs. 2 crores.

2. The respondents' counsel has sought for an adjournment of the appeals against M/s. Ganesh Agro Steel Industries, M/s, Shiva Steel Rolling Mills and M/s. Ajanta Re-rolling Mills Pvt. Ltd.; however we find that the issue is covered by a larger bench decision and hence we do not consider it necessary to grant adjournment.

3. We find that the Commissioner (Appeals) has relied upon the Tribunal's order in the case of CCE, vs. Venkateshwara Steel Industries 1996 (86) ELT 446 wherein it has been held that a SSI unit continues to be so even after it crossed Rs.75 lakhs turnover in a financial year, provided it satisfies the criterion set out in SSI

notification 1/93 and that Deemed Credit Order dated 1.3.1994 continues to be admissible to the SSI unit even after crossing the exemption slab of Rs.75 lakhs when the unit stalls paying duty at full rate. This decision has been subsequently overruled by the larger bench in the case of Digambar Foundary vs. CCE, Allahabad 2000 (118) ELT 85 wherein it has been held that re-rollers, whose aggregate value of clearances in a financial year exceed Rs.75 lakhs, are not eligible to the benefit of deemed credit in view of the order dated 1.3.1994.

4. Following the larger bench decision cited supra, we hold that the benefit of the deemed credit is not admissible to the respondents, set aside the impugned order and allow the appeals.