Gujarat Electromelt Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-29-2003

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

Appellant : Gujarat Electromelt Ltd.

Respondent : C.C.E.

Judgement :

1. Appellants are manufacturers of ingots and billets of non-alloy steel. They were liable to central excise duty at compounded rate. The rate depended upon the installed capacity of production. They had opted for such payment under Rule 96ZO(3) of the Central Excise Rules. Under the impugned order the Central Excise authorities have demanded duty on the basis of capacity of machinery installed in the appellant's factory.

2. The appellant has challenged the above demand on the ground that Diesel Generating (DG) set installed in the appellant's factory had broken down and was not functional leading to non-operation of one mill. Appellant claims that no duty should be demanded in respect of that mill during the period of non-production. It is the appellant's contention that production capacity means the effective production capacity and installed capacity means purposeful installation of machinery. During the hearing of the case, learned Advocate of the appellant emphasized that since the DG set was not generating electricity during the relevant period, the installed capacity of the machinery had to remain idle and any demand for this idle period of machinery would be unjust

3. The appeals challenge Sub-rule

(3) of Rule 96ZO as ultra vires the rule making power of the Central Government under Section 37 of the Central Excise Act, 1944. Para 1 of the appeal memorandum reads as under; "1. The appellant by way of this Appeal challenges the Sub-rule

(3) of Rule 96ZO framed under Section 37 of the Central Excise Act, 1944 as being ultra vires the rule making power of the Central Government under Section 37 of the said Act of 1944 on the ground that it runs contrary to and is framed in violation of mandatory provisions and the scheme reflected in Section 3-A of the Central Excise Act, 1944 and further challenges Order-in-Original NO. 10/Commr Ahmd-II/98 dated 1.5.58 issued on 4.5.98 passed by Commissioner of Central Excise, Ahmedabad II and two Show-cause Notices as being illegal, without jurisdiction, without authority of law and passed contrary to the provisions of statutory provisions and ignoring the relevant considerations and taking irrelevant considerations into considerations on the following set of facts, on the grounds and praying the relief prayed for hereinafter."

4. As against the aforesaid contentions on behalf of the appellants, learned SDR has pointed out that the legal validity of Compounded Levy Scheme remains upheld by the Apex Court - Venus Castings Pvt. Ltd. - 2000

(117) ELT 273 including Rule 96ZO(3). According to the learned SDR in view of the Hon'ble Supreme Court's decision, the present challenge have no merit. He has also pointed out that Rule on the subject takes into account only machinery of production and not ancillary hem like DG set.

5. We have perused the records and have considered the submissions made by both side. We find merit in the submissions made by the learned SDR and accept them. The appeals fail and are dismissed.

(The operative part of the order already pronounced in Court on 29.10.2003).