

Commissioner of Central Excise Vs. Vivek Re-rolling Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-01-2004

Reported in : (2004)(97)ECC688

Judge : S Kang, a T V.K.

Appellant : Commissioner of Central Excise

Respondent : Vivek Re-rolling Mills

Judgement :

1. The Revenue has filed the present Appeal against Order-in-Appeal No.1151/2003 dated 25.11.03 by which the Commissioner (Appeals) has set aside the Adjudication order relying upon the decision in the case of Beauty Dyers v. Union of India, 2002 (52) RLT 635 (Mad.).

2. Shri Virag Gupta, learned Departmental Representative, submitted that the respondents M/s. Vivek Re-Rolling Mills manufactures hot rolled non-alloy steel products, which were liable to Central Excise duty under Section 3A of the Central Excise Act read with Rule 96 ZP of the Central Excise Rules, 1944; that the respondents had filed their declaration under Sub-rule (1) of Rule 3 of the Hot Re-Rolling Steel Mills Annual Capacity Determination Rules, 1997 for determination of their annual capacity of production; that the Commissioner determined their annual capacity of production to be 5207.550MT per annum, on which the liability to Central Excise duty comes to Rs. 15,62,268 per annum and the monthly duty liability is Rs. 1,30,189; that the scrutiny of RT 12 returns reveal that during the

period from April 1998 to June 1998, the respondents had paid the total duty amounting to Rs. 3,32,255 instead of Rs 3,90,567 payable by them; that the Deputy Commissioner under Order-in-Original No. 237/2003 dated 24.2.03 confirmed the demand and imposed equal amount of penalty; that the Commissioner (Appeals) under the impugned order has set aside the impugned order relying upon the decision in the case of Beauty Dyers wherein it has been held by the Madras High Court that the Rules issued under Notification No.42/98-CE are ultra vires of Section 3A of the Central Excise Act.

Learned Senior Departmental Representative, further submitted that the duty is payable by the respondents as per the Annual Capacity of Production determined by the Commissioner; that the decision in the case of Beauty Dyers is not applicable as the Hot Re-rolling Steel Mills Annual Capacity Determination Rules, 1997 have not been issued under Notification No. 42/98 CE which was termed ultra vires by the Madras High Court. Learned Senior Departmental Representative also relied upon the decision of the Larger Bench in the case of Mohindra Steels Ltd. v. CCE Chandigarh. Final Order No. A/953-963/02 NB(DB) dated 8.4.02.

3. Opposing the Appeal, Shri R. Santhanam, learned Advocate submitted that the respondents have paid the duty correctly and no differential duty is demandable from them.

4. We have considered the submissions of both the sides. In Beauty Dyers case, the Rules for consideration of the Hon'ble High Court of Madras was Hot Air Stenter Independent Textile Processor Annual Capacity Determination Rules, 1998 which was issued under Notification No. 42/1998-CE(NT) dated 10.12.98. The rules under which the annual capacity of production of the respondents in the present matter has been fixed are Hot Re-rolling Steel Mills Annual Capacity Determination Rules, 1997 which was issued vide Notification No. 32/97 CE (NT) dated 1.8.97. The mere fact that the Hon'ble High Court has held that the Hot Air Stenter Independent Textile Processors Annual Capacity Determination Rules is ultra virus of Section 3A(2) of the Central Excise Act does not mean that all the Rules issued under Section 3 A(2) became automatically ultra vires. There is no

pronouncement by any High Court or Supreme Court that Hot Re-rolling Steel Mills Annual Capacity Determination Rules, 1997 are ultra vires. In view of this, decision in the case of Beauty Dyers will not be applicable to the facts of the present matter. We, therefore, set aside the impugned order and remand the matter to the Commissioner (Appeals) for deciding the same on merits after following the principles of natural justice. The Appeal is thus allowed by way of remand.

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