

**Dhiman Industries Vs. Cce**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Nov-25-2004

**Reported in :** (2004)(98)ECC442

**Judge :** A T V.K., P Bajaj

**Appellant :** Dhiman Industries

**Respondent :** Cce

**Judgement :**

1. This appeal has been directed against the impugned Order-in-Original vide which the Commissioner of Central Excise, Chandigarh has confirmed the duty demand with penalty for the period September 1997 to September 1998 as detailed therein against the appellants.

2. The learned Counsel has contended that order dated 29.11.2000 determining the annual production of capacity of the mills, after the remand case by the Tribunal vide order dated 23.6.2000 of the appellants alongwith other noticees namely M/s Bhagwati Steel Industries, M/s Shri Guru Hargobind Steel Industries and M/s Baba Balak Nath Steels Ltd., was set aside vide order dated 20.9.2001 by the Tribunal as reported in Bhagwati Steel Industries and Ors. v. CCE, Chandigarh, 2001 (136) ELT 1047 and as such, no differential duty could be confirmed against the appellants on its basis.

3. On the other hand, the learned JDR has not disputed that after setting aside of the order dated 29.11.2000 determining the annual capacity of the mills of the appellants alongwith the other assesseees/noticees detailed above, no fresh order had been passed in that regard. He has however, simply reiterated the correctness of the impugned order.

5. We find that order determining the annual capacity of re-rolling mills of the present appellants and all other assesseees namely M/s Bhagwati Steel Industries, M/s Shri Guru Hargobind Steel Industries and M/s Baba Balak Nath Steels Ltd. was firstly passed on 2.1.98 but that was not aside by the Tribunal aside order dated 23.6.2000 and case was remanded to the Commissioner for fresh determination of the ACP. of these parties. Thereafter, again vide order dated 29.11.2000 re-determining the ACP of the mills of the appellants and other assesseees named above, was set aside by the Tribunal through order dated 20.9.2001. It was also observed in that order dated 20.9.2001 that duty demand could not be enforced without serving notice under Section 11-A of the Act. The Revenue filed Reference Petition against that order of the Tribunal hut the same was dismissed by the Hon'ble Delhi High Court vide order dated 8.1.04. The Counsel has placed a copy of that order on record.

6. Therefore, on the basis of order, which had already been set aside by the Tribunal and after which no fresh order has been passed by the competent authority, the duty demand could not be confirmed against the appellants. The impugned order of the Commissioner is therefore, set aside. The appeal of the appellants is allowed with consequential relief, as per law.

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