Dhar Cement Ltd. and ors. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-28-2004

Reported in : (2005)(121)LC65Tri(Delhi)

Judge : S Kang, Vice, V Agarwal

Appellant : Dhar Cement Ltd. and ors.

Respondent : Cce

Judgement :

1. The appellant filed these appeals against the adjudication order passed by the Commissioner of Central Excise whereby the benefit of Notification No. 24/91-CE dt. 25.7.1991 and 5/93 dt. 28.2.1993 was denied to the appellant.

2. Brief facts of the case are that the appellants are engaged in the manufacture of Ordinary Portland Cement falling under Chapter 25 of Central Excise Tariff. The appellant availed the benefit of above mentioned notifications and cleared the cement at concessional rate of duty. A SCN was issued to the appellant on the ground that annual capacity of the plant is more than 1,98,000 tonnes per annum, therefore, they are not entitled for the benefit of concessional rate of duty as per the provisions of notification.

3. The adjudicating authority denied the benefit of notification. The appellant filed an appeal and the Tribunal vide Final Order No.60-62/02-C dt. 15.3.2002 remanded the matter to the adjudicating authority with the direction to approach

competent authority for ascertaining the installed capacity of the plant during the relevant period.

4. The Revenue authorities obtained a fresh certificate regarding the installed capacity of the plant and again confirmed the demand after denying the benefit of notification.

5. The contention of the appellant is that in pursuance of the remand order, the revenue authorities approached the competent authority i.e., the Directorate of Industries. After taking into consideration all the relevant factors, the authority certified that the installed capacity of the plant was less than 1,98,000 T.P.A. The contention is that in view of this certificate, the benefit of notification cannot be denied.

6. The contention of the revenue is that the appellant for various authorities submitted the various documents claiming that their capacity is more than 1,98,000 T.P.A. The contention of the Revenue is that the appellant had declared their installed capacity before expansion in 1991-1992 as 99,000 T.P.A. subsequently the additional capacity of 1,32,000 T.P.A. was added through expansion. In the Board meeting held on 27.4.1991 and 1.5.1992, it was mentioned that the installed capacity of the plant would be 2,47,000 T.P.A. after expansion. It is also argued by the revenue that the appellant declared the installed capacity of their plant as 2,47,000 T.P.A. to Industrial Credit and Investment Corpn. of India at the time of obtaining terms loan for purchasing the equipment for expansion. In these circumstances, the contention of Revenue is that the appellants are not entitled for the benefit of notification.

7. In this case the appellants were availing the benefit of Notification Nos. 24/91 and 5/93-CE. As per the condition of notifications the concessional rate of duty is applicable to the goods manufactured in factory using rotary kiln with installed capacity certified as not exceeding 600 tonnes per day or 1,98,000 T.P.A. and the total clearance of cement produced by the factory in the financial year shall not exceed 2,20,000 tonnes. As per the condition of the notification, the installed capacity of the factory shall be certified by an officer not below the rank of Director of Industries in the State Govt. The Tribunal remanded the matter to the

adjudicating authority or deciding afresh after getting a fresh certificate from the competent authority. The Tribunal remanded the matter with the following observations: We, in the interest of justice, remand the matter to the Adjudicating Authority with direction to approach the Competent Authority under the notification to certify the installed capacity of the unit at the relevant time after taking into consideration all the facts, material and evidence furnished by both the sides.

Thereafter the Adjudicating Authority will re-adjudicate the matter afresh in accordance with law.

In pursuance to the remand order passed by the Tribunal, the revenue again approached the Director of Industries regarding the installed capacity of the plant. The Commissioner of Industries, M.P., Bhopal vide letter dt. 17.6.2003 certified that the installed capacity of the plant was found to be 1,94,040 tonnes per annum. The Revenue is only denying the benefit of notification only on the ground that installed capacity of the plant is more than 1,98,000 per annum. As per the condition of the notification, the installed capacity of the plant is to be certified by the officer not bellow the rank of Director of Industries. As the competent authority issued a certificate to the effect that the installed capacity of the plant was less than 1,98,000 tonnes per annum during the relevant period, therefore, we find that the appellants are entitled for the benefit of notification as they fulfilled the condition of the notification. The impugned order is set aside and the appeals are allowed.