

**Sunil Steels Vs. Cce**

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

**Decided On :** Mar-01-2005

**Reported in :** (2005)(101)ECC39

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

**Appellant :** Sunil Steels

**Respondent :** Cce

**Judgement :**

1. This appeal has been filed against the impugned Order-in-Original vide which the adjudicating authority has confirmed the duty demand of Rs. 12,06,512 for the period November 1997 to May 1998 against the appellants.

2. From the record, we find that the duty demand has been confirmed against the appellants as during the period in dispute, they were working under the Compound Levy Scheme and their Annual Production Capacity was determined by the competent authority. The plea raised by them before the authority was that, they had two rolling mills, but one out of those was closed from 13.11.1997, and later on it was dismantled even, and as such their ACP was required to be determined in respect of only one mill w.e.f. December 1997. This plea of the appellants was ordered to be considered by the Tribunal the time of setting aside of the earlier order of the Commissioner while determining their ACP. After that order of the Tribunal, the learned Commissioner (Appeals) has re-determined the annual capacity and consequently confirmed the duty demand.

3. The contention raised by the learned counsel is that, the ACP was required to be fixed in respect of only one mill as the other one was closed from 13.11.1997 under intimation to the Department and it was later on dismantled even. But, we are unable to agree to this contention of the learned counsel for want of any tangible evidence to show that one mill was dismantled by the appellants under intimation to the Department. The certificate dated 28.8.1998 issued by the Range Superintendent, referred to by the learned counsel, is not of any help to the appellants as its perusal shows that the Superintendent certified only about the closure of the one mill of the appellants from 13.11.1997. This certificate was given by him in response of the appellants' letter dated 12.5.1998 vide which they only intimated about the closure of their one mill from 13.11.1997. Thereafter, they never informed the date on which the mill was dismantled. The learned counsel has not been able to refer to any letter vide which such an intimation was given by the appellants to the Department. Therefore, the Commissioner (Appeals) has rightly, determined the ACP of the appellants, as detailed in the impugned orders itself. The law laid down in the case of *Shree Balaji Re-rollers v. CCE, Bhubaneswar-II*, 2001 (131) ELT 153, referred to by the learned counsel, is not attracted to the facts of the present case. In that case, it has been observed that the effective date of re-determination of the capacity is the date of actual change in parameter carried out by the assessee irrespective of when actual verification was conducted by the Department.

4. In view of the discussion made above, the impugned order is upheld and the appeal filed by the appellants is dismissed.

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