Kotdwar Steels Ltd. and ors. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-29-2007

Reported in : (2007)(118)ECC25

Judge : N T C.N.B., M Ravindran

Appellant : Kotdwar Steels Ltd. and ors.

Respondent : C.C.E.

Judgement :

1. Heard both sides and perused the record. Duty demand is on account of denial of the appellant's claim for exemption under Notification No.50/03 dt.10.6.03.

2. The appellant's claim was that production capacity was increased from 4 MT to 5.8 MT and this satisfied the requirement of substantial expansion (25%). The appellant had also produced certificates from the General Manager of District Industries Centre as well as certificate from Shri S.C. Agarwal, Chartered Engineer in support of the claims. It had also bills relating to purchase of equipment for expansion of the capacity.

i) That as stipulated in the Board's circular No. 772/5/2004-CX dt.21.1.04, they had not installed additional machinery furnace and they claimed to have upgraded the capacity of said furnace by adding certain electric parts.

ii) That as per the definition given by the Hon'ble Tribunal in the case of Travancore Titanium Product v. CC. The substantial expansion claimed by the party is not on such a scale and such a nature as would be comparable to the new unit.

iii) That the party have not bought and brought certain items (as per para 1.5 above) in the factory but they have attempted to prove it's import to their factory through Trade Tax Forms No. 31 which were not found entered in the statutory records of Trade Tax Check Post.

iv) That the party neither enhanced it's electrical power load nor they upgraded the same by installing any transformer.

v) In addition to above, discrepancies in the certificate issued by the Chartered Engineer, General Manager of DCI, Kotdwar have been pointed out.

As far as the defence of the party of not under taking the required substantive expansion in terms of Tribunal's decision in the case of Travancore Ttanium Product v. CC and Board's Circular No. 772/5/2004-CX dt.21.1.04, I am convinced that notification's requirement is only to increase the installed capacity by not less than 25% and no other definition given by other statute can be made applicable to exemption Notification No. 50/2003-CE. Further the Board's circular cannot influence or replace the words of the notification. The words "so long as additional installation of plant and machinery results into increase of the installed capacity" in the said circular makes it clear that even under this circular, it is the increase in installed capacity of the unit that is accorded primacy.

4.3 Certificate of the G.M., D.I.C., Kotdwar issued on 16.2.04 clearly reveal that the same has been issued on the basis of assessment of Chartered Engineer and Chartered Accountant. Wordings of the certificate indicate that the capacity of pre-expanded and post expanded installed capacity of the unit has not been verified by them. It is also incomprehensible that how the certificate issued on 26.2.04 can rely the assessment of Chartered Engineer made on 26.4.04 is at a later stage. Further the Chartered Accountant is not competent to assessee the installed capacity of the unit whether before expansion and after expansion. Under these circumstances the certificate of D.I.C. can not be relied as authentic to prove the enhancement of installed capacity of unit by not less than 25%.

4.4. In the certificate dt.26.4.04 (read with amendment) of the Chartered Engineer Shri S.C. Agarwal it is mentioned that he visited M/s. Kotdwar Steel Ltd., Jasodharpur Indl. Area, Akotdwar on 26.4.04. In the certificate he has mentioned that he observed that (i) capacity of plant as on 2^nd Aug'03 was 4 MT per heat) ii) Additions/Modification in plant and machinery as effective from 3^rd Aug'03 capacity of Plant is increased to 5.2 MT per heat. Doubt raised in the show cause notice has not been replied by the party as to how the Ld. Chartered Engineer was able to check the installed capacity of the unit as on 2^nd Aug'03 when he visited the unit after so called modification & addition, similarly how he could be able to check the installed capacity of unit as on 3.8.03, on his visit on 26.4.04. Further he has not given any basis of ascertaining the unit's capacity mentioned in the certificate. Further, a certificate dt.16.5.03 said to have been issued by the said Chartered Engineer, submitted by the party on 6.9.06. In this certificate it is mentioned that Shri S.C. Agarwal, the said Chartered Engineer visited the unit of the party on 15.5.03 and there in it is certified that the plant capacity as per machines installed is 4 MT per heat. This certificate further adds to the doubt that in the certificate dt.26.4.04 of the said Chartered Engineer it is not mentioned that he visited the unit of the party on 15.5.03 and also that what was the requirement of the party to get the installed capacity certified even before issue of exemption notification 50/2003-CE dt.10.6.03. The whole exercise does not seem beyond doubt.

Under above circumstances, it is felt that the said certificates have been issued without verification and scientific calculation of the installed capacity and attempt has been made to certify the capacity as per party's requirement to make them entitled for the benefit of the notification and hence, these certificates cannot be relied upon.

The revenue had also taken the assistance of Chartered Engineer Shri D.K. Jain.

4. Shri Jain is present in the Court to be of assistance in understanding the issue. Shri Jain has stated, based on the formula relating to capacity of production, that the revised capacity is 5.8 M.T. Thus, clearly capacity expansion has taken place. The capacity expansion also remains certified by the General Manager of the

District Inds. Centre.

5. In view of what is noted above, the finding of the Commissioner that the required capacity expansion has not taken place, is not sustainable.

6. Stay applications are allowed. Recovery proceeding is stayed till the disposal of the appeals.