

Kakda Rolling Mills Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-16-2007

Reported in : (2007)(118)ECC409

Judge : R Abichandani

Appellant : Kakda Rolling Mills

Respondent : Cce

Judgement :

1. The appellant challenges the order of the Commissioner dated 17.3.2005, holding that the furnace installed in the factory of the appellant is "pusher type" of furnace.
2. The main grievance of the appellant voiced through its authorized representative is that, the Commissioner has relied on a report of the Assistant Commissioner without supplying a copy thereof to the appellant and without giving any opportunity to the appeal for dealing with it.
3. It appears from the record that the Commissioner was concerned with the two issues, namely, whether the furnace installed in the appellant's factory was "pusher type" or "batch type" and whether the abatement claim by the appellant was allowable. It appears that earlier the Tribunal made an order on 9.5.2000, upholding the Commissioner's order dated 8.7.1999. That order was set aside by the Hon'ble High Court of Madhya Pradesh in writ petition No. 6519 of 2001 on

6.8.200, and the matter was remanded to the Commissioner for taking a fresh decision after hearing the appellant. The Commissioner has thereafter relying on the findings of the Assistant Commissioner on physical verification held that the furnace of the appellant was of "pusher type". Admittedly, no copy of the said report of the Assistant Commissioner was given to the appellant. Even now, neither the appellant nor the learned authorized representative for the department has any access to that copy.

4. It appears from paragraph 16 of the impugned order that the Assistant Commissioner was asked to conduct physical verification and he had visited the appellant on 4.9.1999 for that purpose and later submitted his report dated 8.6.1999 to the Commissioner that the furnace is of "pusher type". The appellant had absolutely no opportunity to deal with the reasons for which the furnace was held to be of "pusher type" by the Assistant Commissioner in his report. There has, therefore, been a gross violation of the principle of natural justice that requires an adequate opportunity of hearing to be given to the affected party. The appellant was adversely affected by the report of the Assistant Commissioner and was, therefore, required to be given an opportunity to deal with it. The impugned order to the extent that it holds that the furnace installed in the appellant's factory was "pusher type" and not "batch type" is, therefore, hereby set aside and the matter is remanded to the Commissioner for a fresh decision on this aspect after supplying a copy of the report of the Assistant Commissioner to the appellant and after considering the material on record and hearing the parties. The appeal is, accordingly, allowed by way of remand.

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