

***In The Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad***

Appeal No.E/1496/2010-DB

[Arising out of OIO-41/COMMR/2010 dated 31.08.2010 passed by the CCE- Ahmedabad-iii]

Appeal No.E/609/2011-DB

[Arising out of OIO-51-56/COMMR/2010 dated 14.12.2010 passed by the CCE- Ahmedabad-iii]

M/s Maheshwar Steel Rolling Mill

Appellant

Vs

C.S.T., Service Tax-Ahmedabad-iii

Respondent

Represented by:

For Appellant: Mr. K.C. Rathod (Consultant)

For Respondent: Mr. T. K. Sikdar (AR)

CORAM:

HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Date of Hearing:19.12.2018

Date of decision:02.01.2019

Final Order No. A/ 10028-10029 /2019

Per: Ramesh Nair

The brief facts of the case are that the Commissioner of Central Excise-Ahmedabad-III had passed an order No. 1/2009-10/Commr/2009 dated 30.07.2009 for fixation of annual production capacity (APC for short) under Section 3A of Central Excise Act, 1944, whereby the appellants APC was fixed at 1086.169 MT for the period from 01.10.1998 to 31.03.1999. The appellant were aggrieved by the fact that the re-fixation of APC had been done w.e.f. 01.10.1998 instead of 10.04.1998. According to them they had applied to the department for change in parameter 'd' from 197mm to 'below 160', vide their letter dated 09.03.1998 and they had changed the said parameter on 10.04.1998 and started paying duty on that basis from that date. It was the grievance of the appellant that the Commissioner should have

therefore extended the benefit of revised APC from 10.04.1998 instead of paying it from 01.10.1998 onwards. On their appeal, the Hon'ble CESTAT vide order No. A/807/WZB/AHD/2010 dated 21.06.2010 remanded the matter to the Commissioner for reconsideration of the issue after hearing the party concerned and deciding whether the APC should be re-fixed from 10.04.1998 or not as requested by them. The adjudicating authority by the impugned order rejected the request of the appellant for revision of annual production capacity w.e.f. 10.04.1998, therefore, the present appeal.

2. Sh. K. C. Rathod, Ld. Consultant, appearing on behalf of the appellant submits that the adjudicating authority denied the request for revision of annual production capacity only on the ground that there is no evidence on record or produced by the appellant that the change was actually affected on 10.04.1998. He submits that the appellant have intimated the change of machineries vide their letter dated 09.03.1998 and which was responded by the department vide letter dated 15.04.1998, therefore, observation of the Commissioner that there is no evidence is incorrect.

3. Shri. T.K. Sikdar, Ld. Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that the very vital evidence i.e. letter dated 09.03.1998 submitted by the appellant and the same was responded by the department vide dated 15.04.1998 which is placed at Annexure-J in the present appeal was not considered by the Commissioner. Moreover, the letter dated 15.04.1998 issued by the Deputy Commissioner of Central Excise-Ahmedabad-II was not

considered by the Commissioner which is a vital evidence regarding change of annual production capacity. Since the Commissioner had no occasion to deal with the department's letter dated 15.04.1998, the order passed by the Commissioner is not correct and legal. Therefore, the matter needs to be remanded. Accordingly, we set aside the impugned order and remand the matter to the Adjudicating Authority for reconsideration of the request of the appellant for revising the APC in the light of assessee's letter dated 09.03.1998 and department's letter dated 15.04.1998. The appeal is allowed by way of remand to the adjudicating authority.

(Pronounced in the open court on 02.01.2019)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

Neha