CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 29/12/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70096/2015 dated 20/11/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	E/1423/2007	BHARAT STEEL ROLLING MILLS(UNIT-I) MEERUT ROAD, MUZAFFARNAGAR(UP)-251003
	Name and Address of Respondent	CCE ,MEERUT I EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR MEERUT250005

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s): SH AALOK ARORA,ADV
82-MISSION COMPOUND
SAHARANPUR(UP)

4 Bar Association, CESTAT, Delhi
5 Director Publications, Customs, Excise. I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi -- 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

Old Red Building , 38 M.G. Marg, Civil Lines, Allahabad

Date of hearing & pronouncement : 20.11.2015

Central Excise Appeal No.1423 of 2007-EX (DB)

Arising out of the order in -original No.03/Comm/Mrt-1/2007 dated 29.1.2007 passed by the Commissioner of Central Excise, Meerut 1 (U.P.).

For approval and signature:

Hon'ble Mr. Anil Choudhary, Judicial Member
Hon'ble Mr. C.J. Mathew, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Bharat Steel Rolling Mills (Unit -I) .. Appellant
Muzaffarnagar

Vs.

C.C.E., Meerut I .... Respondent

Appearance:

Present Shri Alok Arora, Advocate for appellant
Present Shri Ajay Kumar , Joint Commissioner (A.R) for the respondent/Revenue

Coram: Hon'ble Mr. Anil Choudhary, Judicial Member
Hon'ble Mr. C.J. Mathew, Technical member

Final Order No. 70096/2015

Per Anil Choudhary :

The appellant is in appeal against order-in-original dated 29.1.2007 passed by the ld. Commissioner, Central Excise, Meerut I, refusing the payment of duty under normal scheme and confirming the duty under the Compounded Levy Scheme for the period June 1998 to November, 1998.

2. This is the second round of litigation.

3. The brief facts of the case are that the appellant being Rolling Mills applied/opted payment of tax under the Compounded Levy Scheme by filing declaration dated 13.8.1997 opting to pay duty under Rule 96ZP (3) read with Section 3A of the Central Excise Act, 1944 for the financial year 1997 – 98. Thereafter, annual capacity of production was determined and the appellant was paying duty accordingly. From order-in-original pursuant to show cause notice it appeared to Revenue on examination of the records, during the period 1.6.98 to 30.11.98, Central Excise duty was paid Rs.1 lakh only against the duty liability of Rs.40,16,400/- being the duty @ Rs.6,69,400/- per month under Rule 96ZP (3) and as such the appellant has short paid duty of Rs.39,16,400/-. It is further noticed in para 8 of the impugned order that duty liability was revised with effect from 1.6.98 at Rs.4,44,475/- per month. Further the case of the appellant is that they never opted to pay duty under Compounded Levy Scheme for the financial year 1998-99. At the same time, they also applied for payment of duty on actual production basis some time in March 1999. Vide order-in-original dated 29.1.2007, the ld. Commissioner confirmed the duty liability

of Rs.25,66,850/- along with equal amount of penalty under Rule 96 ZP of the Central Excise Rules, 1944 and interest. Being aggrieved the appellant approached the Tribunal in Appeal No.E/1350/2002 wherein vide Final Order dated 20.2.2006 this Tribunal observed that "................*Although in the appeal petition, they have not specifically challenged the rejection of their option by the Commissioner, however, it is a matter of fcat whether they have opted for payment of duty under rule 96ZP(3) for the financial year 1998 – 99 or not. This fact cannot be determined by us as no letter has been discussed under any of the orders produced before us from where it can be inferred whether the appellants had opted for payment of duty under Rule 96 ZP(3) or under Section 3A(4) of the Central Excise Act for the year 1998 – 99. Therefore, this fact has to be determined by the Commissioner only. The ld. Advocate appearing for the appellants has stated before us that they have already paid duty as demanded in the impugned order and they will not ask for the refund of the duty already paid till the issue is finally decided by the Commissioner.*

The impugned order is accordingly set aside and the matter is remanded to the Commissioner for a fresh decision in accordance with law after affording an opportunity of hearing to the appellants.

The appeal stands disposed of by way of remand".

4. Pursuant to remand by this Tribunal the present impugned order-in-original has been passed. Ld. Commissioner has again confirmed the duty and penalty under CLS observing that the appellant vide their letter dated 18.12.98 requested for re-

determination of the duty liability under Rule 96ZP(3) on account of change in the machinery in one line i.e. Line 'B'. By necessary implication his request for re-determination shows that the appellant continued their option to pay duty under Rule 96 ZP(3) for the year 1998-99 also. Being aggrieved, the appellant is now before this Tribunal.

5. Heard the ld. Counsel for the appellant and the ld. A.R. for Revenue.

6. Ld. Counsel for the appellant states that there being no specific option made by the appellant to pay duty for the year 1998-99 under the Compounded Levy Scheme, also appreciated by this Tribunal in its earlier order dated 20.2.2006. Ld. Commissioner erred in deducing by necessary implication that appellant opted to pay duty under CLS. The said finding is perverse and is sought to be set aside. Ld. Counsel further states that proceeding under compounded Levy Scheme have abated with effect from 11/5/2001, when Section 3A was omitted, without saving clause and as such the proceeding in the appellant's case also stood abated and no tax could be demanded by the present impugned order-in-original under CLS. Further the appellant relies on the ruling of the Hon'ble Gujarat High Court in the case of Krishna Processors vs. UOI – 2012 (280) ELT 186 wherein the question before High Court was - whether in view of omission of Rule 96ZQ with effect from 1.3.2001 and omission of Section 3A with effect from 11.5.2001, the adjudicating authority thereafter could have initiated action for breach thereof by issuance of show cause notice and could have

continued proceedings, initiated, without conclusion thereto. The Hon'ble High Court held that no proceedings could have been initiated under the omitted Rule 96ZQ after omission of Section 3A with effect from 11.5.2001 in the absence of saving clause. The High Court further held that proceedings which were pending as on 11.5.2001 even if initiated prior to omission of Rules, would thereafter automatically lapse and no orders could have been passed if they were not concluded at the time of omission of Section 3A. Ld. Counsel also points out that the judgment of Hon'ble High court in Krishna Processors has been followed in several decisions by this Tribunal including Alwar Processors Pvt. Ltd. by a coordinate Bench of this Tribunal reported in 2014 (308) ELT 720 (Tri-Del.).

7. Ld. A.R. for Revenue relies on the impugned order. He also relies on the ruling of the Hon'ble Supreme Court in the case of UOI vs. Supreme Steels and General Mills in Civil Appeal Nos.52-54 and other appeals of 1998 decided by the order dated 15.10.2001 reported at 2001 (133) ELT 513 (SC) wherein it has been held that once the option is given in one financial year to pay duty under compounded levy scheme, the assessee cannot change the option to "actual production basis". Ld. A.R. also relies on the ruling of Hon'ble Supreme Court judgment in the case of Venus Castings (P) Ltd. – 2000 (117) ELT 273 (SC) wherein the Apex Court has held that composition schemes are not unknown and when such scheme is availed of by the assessee it is not at all permissible for him to turn around and ask for regular assessment.

8. Having considered the rival contentions we find that in the appeals before Supreme Court, the matter was during currency of the compounded levy scheme and deletion of the scheme with effect from 11.5.2001 without saving clause, resulting in abatement was not in consideration by the Hon'ble Court. Thus the issue being different we hold that rulings relied upon by the ld. A.R. are not applicable in the present case. Further we hold that under the facts and circumstances, the appellant had not made/expressed option for paying tax for the financial year 1998-99 under the compounded levy scheme. As such, no tax can be demanded under the provisions of Section 3A read with Rule 96ZP(3). We accordingly set aside the impugned order on the issue of abatement also. We hold in favour of the appellant that as proceedings were pending on 11.5.2001, the proceedings stood abated, following the rulings of Hon'ble Gujarat High Court in the case of Krishna Processors. The appeal is allowed. The appellant is entitled to consequential relief, if any, in accordance with law.

Dictated and pronounced in the open Court

(Anil Choudhary)
Judicial Member

(C.J. Mathew)
Technical Member

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सत्यापित प्रति / Certified True Copy
12.1.16

सहायक रजिस्ट्रार / Asstt. Registrar
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001