FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 26/07/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70704/2017-EX[DB] dated 10/01/2017

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
1	E/424/2006	**RHL PROFILES LTD.** City Center 4th Floor 63/2 The Mall Kanpur
		Name and Address of Respondent
2		-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.

Copy To
3Advocate(s) / Consultant(s):

NISHANT MISHRA AND SUDARSHAN SINGH ADVOCATES B2-3/4-31, SAROJANI APARTMENTS, SAROJANI NAIDU MARG, ALLAHABAD-211001

4 Bar Association, CESTAT, Allahabad

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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/424/2006-EX[DB]

(Arising out of Order-in-Original No. 06/Commissioner/Tech/2005 dated 14/10/200 passed by Commissioner of Central Excise & Customs Kanpur)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
and
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the 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 Department Authorities?	Yes

M/s RHL Profiles Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Kanpur **Respondent**

Appearance:

Shri Nishant Mishra, Advocate for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision: 10/01/2017
FINAL ORDER NO...70704/2017......

सीमा शुल्क उत्पाद शुल्क एवं सेवा कर अपीलीय अधिकरण CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per: Anil Choudhary

This appeal has been preferred by the manufacturers-RHL Profiles Ltd., being aggrieved with the Order-in-Original dated 14/10/2005, whereby it has been held by the ld. Commissioner, Kanpur that the appellant is required to pay duty under the compounded levy scheme under Section 3A of the Act read with Rule 96ZP(3)of Central Excise Rules, 1944.

2. The brief facts of the case are that Section 3A of the Act, inserted with effect from 14/05/1997 provides for levy of tax under the compounded levy scheme. Accordingly, Notification No. 31/97 – CE dated 1st August, 1997 was issued under the powers conferred under Section 3A(1) of the Act with regard to the goods manufactured by the appellant under Tariff Heading No. 7213.90, 7214.90, 7216.10 & 7216.90 of the schedule to Central Excise Tariff Act, among other goods, manufactured or produced in a Hot Re-rolling Steel Mill. The Notification also provided that the notified goods will fall under compounded levy scheme with effect from 1st August, 1997 and not prior thereto. Notification No. 32/97–CE(NT) prescribes for determination of Annual capacity of production under Hot Re-rolling Steel Mills Rules, 1997. Notification No. 33/97–CE vide which Rule 96ZP was introduced in the Central Excise Rules, 1944 along with Rule 96ZO or Rule 96ZP provides for procedure to be followed by the manufacturer of hot rerolling products. Rule 96ZP(4) specifically provided – in case a manufacturer wishes to avail

of discharging his duty liability in terms of Sub-rule 3, he shall inform the Commissioner of Central Excise, with a copy to the Assistant Commissioner of Central Excise, in the following pro forma:-

"We ________(name of the factory), located at______ (address) hereby wish to avail of the scheme described in Sub-rule 3 of Rule 96 ZP, for full and final discharge of our duty liability for the manufacture of hot rerolling products on non-alloy steel under Section 3A of the Central Excise Act, 1944 (1 of 1944)."

Dated________

Sd________
Name & Designation
(with stamp)

3. Further Notification No. 48/97 provided that the rate of duty shall be Rs.400 per metric ton to be concluded on the basis of annual capacity of production determined under the Hot Re-rolling Steel Mills (Annual Capacity Determination) Rules, 1997 and declaration therein. Further providing that this scheme is not applicable for goods manufactured prior to 1st August, 1997.

4. The scheme was, as aforementioned, amended and substituted by the following notifications as follows:

Sr. No.	**Notification**	**Amendment**
1	Notification No. 43/97-CE dated 30 August, 1997)	(A) – Pg. 39
2	Notification No. 45/97-CE dated 30 August, 1997)	These rules will be called the Hot Re-rolling Steel Mills Annual Capacity Determination (Amendment) Rules, 1997. They shall come into force on the first day of September, 1997. In Sub-rule 3 of Rule 3 the following sub rule shall be substituted. The parameters for determination of the

		annual capacity of production was modified and also change was made in number of utilized hours with respect to the furnace.
4	Notification No. 56/97-CE dated 30 August, 1997)	Earlier Notification No. 48/97-CE was amended providing any goods manufactured or produced prior to first September 97 and cleared on or after the date the compounded levy scheme will not apply further Explanation – (B), (D) were substituted & Explanation – (E) was added
5	Notification No. 44/97-CE dated 30 August, 1997)	Of amended Rule 96ZP by providing in Sub-rule 1, in Clause 1, for the word August, wherever it occurs, the word September shall be substituted and further Sub-rule 3 of Rule ZP(3) was substituted.

5. The issue in this appeal is whether the option given earlier in the month of August by the appellant assessee remains valid and good for the amended and/or substituted compounded levy scheme with effect from 1st September, 1997.

6. This Tribunal vide earlier order, in dispute between the parties in Appeal No. E/2508/2001-NB dated 20/02/2002 being Final Order No. A/265/2002/NB-D was pleased to set aside the order dated 31/07/2001 passed by Commissioner Central Excise, Kanpur. The question before the Tribunal was – "whether the appellant assessee had opted for determination of the capacity of their rolling mill in terms of Rule 96ZP(3) or not". Taking notice of the ruling of Hon'ble Supreme Court when it is pointed that it was absolutely optional for the manufacturer to opt for payment of excise duty in terms of Sub-rule 3 of Rule 96Z0 on the basis of total furnace capacity installed, as provided therein. Further notice was taken of the observations made by the Hon'ble Supreme

Court in the case of Supreme Steel & Others reported at 2001 (133) E.L.T. 513 (S.C.) – that the manufacturer cannot opt twice during one financial year first choosing to pay in accordance with Sub-rule 3 of Rule 96ZO and thereafter to switch over to actual production basis under Section 3A(4) of the Act, in case it is less than the duty payable under Sub-rule 3 of Rule 96ZO. This Tribunal passed the following operative order: –

"We have heard the rival submissions. We have also produced the case law and the evidence on record. The issue has been finally decided by the Apex Court in the case of Supreme Steel cited above. It will be necessary to examine the present case in the light of the decision of the Apex Court. We, therefore, remand the case to the Commissioner concerned to examine the case of the appellant in the light of the finding of the Apex Court in the case of Supreme Steel. Reasonable opportunity of personal hearing may be given to the appellant to present their case in their defence."

7. Subsequently in the remand proceedings vide the impugned order, the ld. Commissioner was pleased to hold that the option given in the month of August, although undated, an enquiry on the said option was made on 26/08/1997 and subsequently the duty was determined based on the Annual capacity of production on 20/04/1998 and thereafter the duty was subsequently finally determined as the capacity is finally determined on 17/02/1998. As the

said option was never specifically withdrawn ld. Commissioner further observed that the appellant vide letters dated 30/11/1998, 01/01/1999 & 26/02/1999 requested for permission for modification in parameters of Mill No. 1. The appellant also submitted the information in prescribed proforma on 22/03/1999 and requested for permission to change the parameters of Mill No. 1. The appellant have never contended before Tribunal that they had opted for payment of duty on actual production under Rule 96ZP(1). However, I find vide letter dated 21/11/1997 the party had submitted that in view of Delhi High Court order dated 28/10/1997 they would pay duty of excise on the basis of actual production and actual clearance availing full modvat credit with effect from 1st August, 1997. Further observing that the appellant vide letter dated 29/02/2000 had submitted a chart showing production/clearance/duty deposited during September, 1997 to January, 2000. It is evident from this chart that the party was not paying duty on the basis of Rs.300/- PMT (which should have been the duty payable under Rule 96ZP(1), but the payment was in lump sum. In any case the party had not filed its option as per rules for their non-payment of duty on the basis of actual production/clearance also, it is clear that the party had not opted for payment of duty under Rule 96ZP(1).

8. The ld. counsel appearing for the appellant, Mr. Nishant Mishra have taken us through the scheme as originally

pronounced for compounded levy on 1st August, 1997 and substituted and or amended scheme with effect from 1st September, 1997 as already noticed hereinabove. He, further, urges that the essential ingredient for levy by way of compounded levy scheme under Section 3A of the Act are – (i) goods should be notified, (ii) rate of duty should be notified & (iii) determination and collection procedure should be notified. He, further urges that the schemes stood amended substituted with the notifications dated 30 August, 1997 made effective with effect from 01/09/1997. He, further, states that it is admitted fact that the scheme as originally announced vide notifications dated 01/08/1997 was not acted upon and it was only the substituted new scheme with effect from 01/09/1997, which had been acted upon. He, further, states that as per the admitted facts on record the appellant-assessee never gave any option to pay duty under the compounded levy scheme on or after 01/09/1997. He, further, urges that in view of the new scheme with effect from 01/09/1997 the earlier option given had become redundant and/or stale and could not be acted upon. He, further, urges that in view of the material changes brought about in the terms and conditions of the scheme vide notifications dated 30 August, 1997 with effect from 01/09/1997, the acceptance given under the old scheme, if any, was no longer effective and valid. He, further, urges that the compounded levy scheme is in the nature of a contract. In view of the substituted offer of the government vide notification dated 30/08/1997, earlier option given cannot be automatically made applicable to the amended scheme, which is a new scheme with effect from 01/09/1997. He, further, states that the appellant-assessee had not made specific requests that the new compounded levy scheme is not applicable in the case vide letters dated 21/11/1997, 09/05/1998 etc. Further the appellant had made specific plea in the writ petition before Hon'ble Delhi High Court filed in the month of September/October, 1997 wherein they have expressly averred that they shall pay duty on the basis of actual production and also avail Cenvat credit. In view of the facts and circumstances, there is practically no acceptance given by the appellant-assessee for paying duty under the compounded levy scheme and as such the order of the ld. Commissioner is erroneous, demanding duty under the compounded levy scheme. Accordingly he prays for setting aside the impugned order with appropriate relief.

8. Heard ld. D. R. for Revenue who supports the findings of the ld. Commissioner in the impugned order.

9. Having considered the rival contentions, we find that the compounded levy scheme as announced on 1st August, 1997 stood amended and substituted by various notifications with effect from 01/09/1997. We, further, notice that the scheme as originally announced on 01/08/1997 was never acted upon by the Revenue and the amended and/or new

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scheme of compounded levy on the products manufactured by the appellant was implemented and/or made effective only with effect from 01/09/1997. We also note that the option have to made as specified in Rule 96ZP(4) of the rules with reference to the provisions of Rule 96 ZP(3). Admittedly, Rule 96ZP(3) stood substituted with effect from 01/09/1997. Accordingly, the option given under the original Rule 96ZP(3), if any becomes redundant and stale on substitution of Sub-rule (3) of Rule 96ZP. Admittedly, there is no fresh option given as provided in Sub-rule (4) of Rule 96ZP in terms of the substituted Rule 96ZP(3) on or after 30/08/1997. We, further, find that the so-called option given in the month of August, 1997 is also defective and incomplete as the said option have been given in terms of Trade Notice No. 93/97 which was in respect of Notification No. 30/97, which is not applicable to the products or goods manufactured by the appellant. We, further, find that the option instead of being specifically given separately and or categorically, has been made part of the proforma for declaration for determination of Annual capacity of production. Further there is no date given in the said declaration and neither it is specifically signed as required under Rule 96ZP(4) of Central Excise Rules, 1944. We, further, find that the appellant have never acted upon in terms of the said declaration, which is found otherwise redundant and stale in terms of the amended provisions as from the very beginning, soon after the implementation of the compounded levy scheme with effect from 01/09/1997, the appellant have opted to pay categorically on the basis of actual production under Section 3 of the Act which is evident from the averments before the Hon'ble Delhi High Court in their writ petition and also evident from their letter dated 21/11/1997 filed before the ld. Commissioner. Accordingly, we hold that the said declaration(filed prior to 30.08.1997) had become redundant and stale and was not the specific declaration as required under Rule 96ZP(4) read with Rule 96ZP(3) (as substituted). Accordingly, we hold that the appellant is entitled to pay duty under the normal scheme of Section 3 and under the provisions of Section 3A(4) on actual production basis. The appellant will be entitled to consequential benefits of adjustment of duty etc. if any paid in excess in accordance with law. We, further, direct the Adjudicating Authority to determine the duty on the basis of actual production taking into account the returns filed by the appellant and allow adjustment of duty already deposited. We also direct the appellant to appear before the Adjudicating Authority with a copy of this order and seek the determination of duty in terms of this order.

(Dictated and pronounced in Court)

-Sd/-	**-Sd/-**
(ANIL G. SHAKKARWAR)	**(ANIL CHOUDHARY)**
Member (TECHNICAL)	**Member(JUDICIAL)**

Ansari

प्रमाणित प्रति/Certified True Copy
23/08/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001