Customs, Excise & Service Tax Appellate Tribunal

SCO 147-148, SECTOR-17-C, CHANDIGARH-160017

~~~~~

Appeal No. E/148/2009 & E/2421/2010

(Arising out of OIA- 06/COMMR/PKL/2008 DATED 17.10.2008, OIA- 243/CE/D-II/2010 DATED 09.06.2010 passed by the Commissioner (Appeals) of Central Excise-PANCHKULA, Commissioner (Appeals) of Central Excise-Delhi-III)

PSG STEELS PVT. LTD. : Appellant (s)

Vs

C.C.E. & S.T.-PANCHKULA
C.C.E.-DELHI-III : Respondent (s)

Represented by:
For Appellant (s) : Shri Prem Garg, Authorized Representative
For Respondent (s): Shri Tarun Kumar, AR

CORAM :
Mr. Ashok Jindal, Hon'ble Member (Judicial)
Mr. Anil G. Shakkarwar, Hon'ble Member (Technical)

Date of Hearing/Decision: 30.08.2018

ORDER No. A/63100-63101 / 2018

Per : Mr. Ashok Jindal

By way of these appeals, the appellants are challenged in the impugned order wherein the duty liability has been confirmed for the period September 1997 to March 1998 and April 1998 to February 1999 under the Compounded Levy Scheme.

2. The facts of the case are that the appellants are engaged in the manufacture of notified goods during the period i.e. March 1998. Their annual capacity of production was determined earlier by the competent authority under the said scheme. The said order was challenged before this Tribunal and this Tribunal accepted the version of the appellants that they were liable to pay duty on actual production basis in terms of sub-
~~~~~

Section 4 to Section 3A of the Central Excise Act, 1944 and this Tribunal remanded the matter back for redetermination of the duty liability. After the remand, the adjudicating authority again determined the duty liability in terms of Section 3A (2) of the Act and did not comply with the direction of this Tribunal. The said order was again challenged before this Tribunal and this Tribunal vide order dated 11.08.2005 again remanded the matter back to the adjudicating authority. In remand proceedings, the impugned order has been passed. Against that order, the appellants are before us.

3. The appellant appeared in person and submits that the impugned order has not been passed as per the direction of this Tribunal, therefore, the impugned orders are to be set-aside.

4. Heard the parties.

5. Considering the fact that initially when the matter was remanded back to the adjudicating authority, this Tribunal has observed as under:-

> "7. We have carefully considered the submissions made by both the sides and perused the records. Sub-Section 2 of Section 3A empowers the Authority to determine the annual capacity of production, or such factor or tractors relevant to the annual capacity of production and such annual capacity of production shall be deemed to be the annual production of such goods by such factory. In view of the Scheme of the Act, it appears that sub-Section 2 of Section 3A is acting as a provisional assessment. On determination in terms of sub-Section 2 of the Section 3A if the assessee is not satisfied with such determination, he may make a claim under sub-Section 4 of Section 3A that actual production is less than the determination of annual capacity. Taking into consideration of the evidence produced by the assessee, the commissioner is required to pass a suitable order after providing an opportunity to the assessee. In these circumstances, we find that the assessee has made a claim in terms of sub-Section 4 to Section 3A for such re-assessment and there is no finding by the adjudicating authority whether such reassessment has been done in terms of sub-Section 4 to Section 3A. In view of this deficiency, we are remanding these three matters to the Jurisdictional Commissioner to redetermine the duty payable by the assesses with reference to the actual production as

> specified in sub-Section 4 and to pass an appropriate order after giving an opportunity to the appellant in all these cases."

and thereafter again matter was remanded back to the adjudicating authority vide order dated 11.08.2005 with the following observations:-

> "3. After the remand, we find that the adjudication authority has not determined the actual production of the appellants during the period in dispute. That authority has again repeated its earlier view that the appellants were liable to pay duty in terms of Section 3A(2). The authority has obviously failed to comply with the direction of the Tribunal in letter and split. It could not go back and reiterate its own earlier order which was set aside by the Tribunal. Under these circumstances, we have no option but to set aside the impugned order with a specific direction that the duty liability of the appellants for the period in dispute should be quantified in terms of the direction given by the Tribunal(reproduced above) in its earlier remand order dated 29.06.1998, after hearing the appellants who will also be at liberty to raise the all other factual/legal pleas available to them under the law.
>
> 4. Consequently, the impugned order is set aside and the case is remanded to the adjudicating authority for fresh decision in the light of the above directions. The appeal of the appellants accordingly stands disposed of in the above terms."

The said order was challenged before the Hon'ble High Court and the Hon'ble High Court vide its order dated 04.07.2008 directed the adjudicating authority to take a fresh decision in light of the impugned remand order within a period of three months after providing an opportunity of hearing to the assessee and the assessee was also directed to appear before the adjudicating authority on July 28, 2008. Against the order of the Hon'ble High Court, the Review petition was filed by the department and the said review petition was dismissed on 17.10.2008. We further take a note of the fact that in compliance with the direction of the Hon'ble High Court, the appellant filed a reply and submissions before the adjudicating authority on 10.09.2008 and 29.09.2008 but without considering the submission made by the appellant, the impugned order has been passed which is in contravention of the principles of natural justice. Therefore, we set-aside the impugned order and direct the adjudicating authority to pass the order to fix production of capacity as directed by this Tribunal vide order dated 29.06.1998. It is pertinent to mention here that this is a last chance given to the adjudicating authority to pass an appropriate order in accordance with law after affording an opportunity of hearing to the appellants.

6. In these terms, the impugned orders are set-aside and the appeals are allowed by way of remand.

(Dictated & pronounced in the Court)

(Anil G. Shakkarwar)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

G.Y.