IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No. E/393/2012

(Arising out of Order-in-Original No. 2/2012 (Commissioner (Ex.Pol.) dated 22.5.2012 passed by the Commissioner of Central Excise, Salem)

M/s. Jai Hind Wire Rod Mills Ltd. Appellant

Vs.

CCE, Salem Respondent

Appearance

Shri M.A. Mudimannan, Advocate for the Appellant
Shri R. Subramaniam, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **02.05.2018**

Final Order No. **41400 / 2018**

Per Bench

Brief facts are that the appellants are engaged in the manufacture of ingots, billets and non-alloy steel product under Chapter 72 of CETA, 1985. During the period from 1.9.1997 to 31.3.2000, compounded levy scheme was in force with regard to steel products and duty was to be discharged based on Annual Capacity of Production (ACP) fixed by the

Commissioner of Central Excise. The appellant had installed two furnaces with capacity of 3 MTs each in the factory. The ACP was fixed by the Commissioner and the duty liability was discharged at the rate of Rs. 10 lakhs per month. During the period from 20.4.1998 to 31.7.1998, one of the furnaces installed in the factory was closed and was not functional. While discharging the duty, the appellant filed six abatement claims including the abatement claim for Rs.13,76,881/- for the period of closure from 20.4.1998 to 13.7.1998. The Commissioner disallowed the claim of Rs.13,76,881/- and also another claim of Rs.2,66,666/-. The claim of Rs.13,76,881/- was disallowed on the ground that the assessee produced the goods in one furnace even though there was no production in the other furnace and that therefore the factory cannot be considered as fully closed for the period from 20.4.1998 to 13.7.1998. Aggrieved by the order passed by the Commissioner, the appellant filed W.P. No.22656/2001 before the Hon'ble High Court of Madras and vide order dated 16.9.2010,the Hon'ble High Court set aside the order passed by the Commissioner in respect of rejecting the abatement claim for both Rs.2,66,666/- and Rs.13,76,881/- and remanding the matter for fresh consideration. The claim of abatement of Rs.2,66,666/- was rejected on the ground that the duty was not paid by the appellant in advance. Thereafter, in denovo adjudication, the Commissioner vide order impugned herein allowed the abatement of Rs.2,66,666/- but disallowed the claim of abatement of Rs.13,76,881/-. Aggrieved the appellant is now before the Tribunal.

2. On behalf of the appellant, ld. counsel Shri M.A. Mudimannan submitted that the grounds for rejection of the abatement was that the appellant was not entitled to the benefit of calculation of duty on pro-rata basis for the period in terms of second proviso to erstwhile Rule 96ZO(3) of erstwhile Central Excise Rules, 1944. He argued that only one of the furnaces were functional during the period from 20.4.1998 to 13.7.1998 and therefore the appellant was eligible for abatement on pro-rate basis. That the said issue has been decided by the Hon'ble High Court vide order dated 16.9.2010 in W.P. No. 22656/2001 in the case of Chamundi Steel Castings India Ltd. following the said decision, the Commissioner in the case of Chamundi Steel Castings India Ltd. had granted abatement for an earlier period upto 31.12.1998 against which the department filed appeal before the Tribunal as Appeal No. E/513/2011 which was dismissed. In Appeal No. E/130/2009 filed by Chamundi Steel Castings (India) Ltd., vide Final Order No. 42364 & 42365/2017 dated 26.9.2017, the Tribunal following the decision of the Hon'ble

High Court in the case of Chamundi Steel Castings India Ltd. held that they are eligible for pro-rata abatement.

3. The ld. AR Shri R.Subramaniam reiterated the findingsi n the impugned order.

4. Heard both sides.

5. The issue is whether the appellant is eligible for abatement on pro-rata basis when only one of the furnaces were closed. The jurisdictional High Court in the case of Chamundi Steel Castings India Ltd. had considered the very same issue. The relevant portion of the order is reproduced as under:-

> *"9.2 The very same issue was considered in the appellant's own case by Hon'ble High Court for the earlier period, wherein the Hon'ble High Court observed as under:-*
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> *6. There is not dispute with regard to levy of excise duty based on Annual Capacity of Production. Admittedly, the petitioner Unit has got two furnaces with capacity of 3 MTs each, and as such, the excise duty payable per month is Rs.10,00,000/- and for each furnace the petitioner is liable to pay Rs.5,00,000/-. A perusal of Rule 96ZO (3) would make it very clear that if the total furnace capacity is 3 MTs, the duty payable is Rs.5,00,000/- per month and if the capacity of the furnace installed is more than or less than 3 MTs or if there is any change in total capacity, then the manufacturer shall pay the amount calculated on pro-rata basis. Rule 96ZO(3) of the Central Excise Rules, 1944 reads as follows:-*
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> *(3) Notwithstanding anything contained also in these rules, if a manufacturer having a total furnace capcity of 3 MTs installed in his factory so desires, he may, from the first day of September, 1997 to 31st day of March, 1998 or any other financial year, as the case may be, pay a sum of rupees five lakhs per month in two equal instalments, the first instalment latest by 15th day of each month, and the second instalment latest by the last day of each month, and the amount so paid shall be deemed to be full and final discharge of his duty liability for the period from the 1st day of September, 1997 to the 31st day of March, 1998, or any other financial year, as the case may be, subject to the condition that the manufacturer shall not avail of the benefit, if any, under sub-*

> *section (4) of the section 3A of the Central Excise Act, 1944 (1 of 1944):*
>
> *Provided that for the month of September, 1997 the Commissioner may allow a manufacturer to pay the sum of Rupees Five Lakhs by the 30th day of September, 1997;*
>
> *Provided further that if the capacity of the furnaces installed in a factory is more than or less than 3 MTs, or where is any change in the total capacity, the manufacturer shall pay the amount, calculated pro-rata:*
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> *Prima facie, it appears that calculation can be made as per pro-rata basis as per the above rule. At the same time, this court cannot ignore the contention of the respondent that the products manufactured by the petitioners are evasion prone commodity and the name is notified under section 3A of the Central Excise Act, 1944 to safeguard the interest of Revenue. The Commissioner is required to decide the matter afresh in respect of claim No.1 viz., Abatement for the period from 20.04.1998 to 31.07.1998."*

6. The Tribunal in the above stated final order followed the said decision to set aside the order rejecting the abatement. Following, the same we are of the view that the rejection of abatement is unjustified.

7. In the result, we hold that the appellant is eligible for abatement for the period from 20.4.1998 to 13.7.1998 as claimed to the tune of Rs.13,76,881/-. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**) (**Sulekha Beevi C.S.**)
Member (Technical) Member (Judicial)

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