# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

Regional Bench – Court No. III

**Excise Appeal No.40715 of 2013**

(Arising out of Order-in-Original (Denovo) No.11/2012 (C.Ex) dated 27.12.2012 passed by the Commissioner of Central Excise, Salem)

**M/s. Palani Andavar Steel Rolling Mills : Appellant**
SF No.153/2-A2 Sankari Main Road,
Neikarapatty
Salem 636 010

**VERSUS**

**The Commissioner of Central Excise : Respondent**
No.1, Foulkes Compound
Anai Medu,
Salem 636 005.

**APPEARANCE:**

Shri M.N. Bharathi, Advocate
For the Appellant

Shri P. Arul C. Durai Raj, Superintendent (AR)
For the Respondent

**CORAM : HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)**
**HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER(TECHNICAL)**

**FINAL ORDER NO. 40293 / 2020**

DATE OF HEARING: 10.02.2020

DATE OF DECISION: 10.02.2020

**PER : SULEKHA BEEVI C.S**

Brief facts of the case are that the appellants are registered with Central Excise department. They were engaged in manufacture of various hot rerolled products. During the material period, the appellant was working under Annual Capacity of Production scheme under Section 3A of Central Excise Act, 1944. In terms of Rule 3 of allied rules of Hot Re-rolling Steel Mills Annual Capacity Determination Rules 1997, the annual capacity production of the appellant was determined as 6239.194 MTs in respect of rerollable products. Since the appellants had availed option under sub-rule (3) of Rule 96ZP of Central Excise Rules, 1944, they are required to pay sum equivalent to one-twelfth of the amount calculated at the rate of Rs.300/- per month multiplied by the annual capacity in Metric Tonnes, before 10$^{th}$ of the month. The amount so paid was deemed to be in full and final discharge of their duty liability for the said month. During the period 1.4.1998 to 31.3.2000, the assessee failed to pay duty liability for the said period and show cause notice was issued to them demanding the duty from April 1998 to March 1999 and for the period April 1999 to March 2000 along with interest and for imposing penalty. After due process of law, the original authority confirmed the demand to the tune of Rs.4,58,519/- under Rule 96ZP (3) of Central Excise Rules, 1999. No interest and penalty was imposed. Aggrieved by such order appellant filed appeal before Tribunal and vide Final Order No.1302/2008 dt. 18.11.2008, the matter was remanded to the adjudicating authority for fresh consideration. Though several personal hearings were given to the appellants, appellant sought for adjournment. The adjudicating authority in the de novo proceeding disposed of the matter on the available records. As per the order impugned herein, the adjudicating authority set aside the demand for the period from 18.6.1998 to 31.3.2000. However, he confirmed the demand along with interest and imposed penalty for the period 1.4.1998 to 17.6.1998. Aggrieved, appellant is now before the Tribunal.

2. Ld. Counsel Shri M.N. Bharathi, appearing for the appellant submitted that upto 31.3.1998 appellants have paid duty. On 18.06.1998, they informed the department that they have stopped production from 11.01.1998. They requested for abatement from 1.4.1998 till March 2000. As per the provisions of the Act / Rules, the original authority dropped demand for the period from 18.6.1998 till March 2000, after taking note of the fact that appellant has intimated the department with regard to non-production of goods, only on 18.6.1998. For the period 01.04.1998 to 17.06.1998 the demand was confirmed on the ground that appellant had not intimated the department before stopping production / closing of the factory. He adverted to para-13 of the OIO dt.10.09.2001 to contend that department had verified the genuineness of stoppage of production and disconnection of electricity. Since the fact that the factory has been closed for the impugned period has been verified by department appellant ought to have been given benefit of abatement. He relied upon the decision of the Hon'ble Madras High Court in the case of *Kalai Magal Alloys Steel Pvt. Ltd. – 2014 (303) ELT 44 (Mad.)* to argue that on similar set of facts the Hon'ble jurisdictional High Court had held that even though intimation was given to the

department on a date subsequent to stoppage of production, since there is evidence of stoppage of production for the period, the benefit of abatement should be given to the assessee. The said decision was confirmed by the Hon'ble Supreme Court as reported in 2015 (321) ELT A52 (SC). wherein the Hon'ble Supreme Court dismissed the appeal filed by the department.

3. Ld. A.R Shri P. Arul C. Durai Raj supported the findings in the impugned order.

4. On perusal of records, we find that in para-13 of OIO dt. 10.09.2001, the Commissioner has discussed as under :

> "The genuineness of assessee's version regarding stoppage of production and disconnection of E.B. power supply was verified by the field officers. In the absence of any provision in Rule 96ZP (3) to consider abatement of duty, I have no other option except to demand duty. At this juncture, I would consider relevant to quote the observation of Hon'ble Supreme Court in the case of M/s.Venus Coatings (P) Ltd. reported in 2000 (117) ELT 273 (SC). However, considering the circumstances, I would like to restrict the demand for the period from 1.4.1998 to 17.6.1998. In my opinion, the proceedings could have been avoided if the assessee had intimated the fact of stoppage of production on the very same day. As the assessee had not put forth any other points, I do not intend to go any further in the issue."

Thus, it is evident that there was stoppage of production in the factory prior to 18.6.1998 even though the intimation of stoppage of production was given only on 18.06.1998. The commissioner has also observed that the proceedings could have been avoided if the appellant had intimated the department prior to 1.4.1998. the

Hon'ble jurisdictional High Court on similar set of facts in *Kalai Magal Alloys Steel Pvt. Ltd.* (supra) has observed as under :

> "**11.** Coming to the next contention that the manufacturing activities were closed down from 1-4-1998, the learned Standing Counsel appearing for the respondents 2 and 3, submitted that the assessee is guilty of not informing the department about the stopping of the production and only in July, 1998, they sent a letter to the Superintendent of Central Excise, Pappireddipatty, stating that they proposed to commence operations in August, 1998. Furthermore, it is submitted by the learned Standing Counsel that these contentions were never raised before the adjudicating authority and therefore, the assessee cannot be permitted to canvass the same before this Court.
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> **12.** As already stated, the amount of duty payable for the period from April, 1998 to March, 1999 is Rs. 26,38,800/-. It is specific contention of the assessee that they stopped production activities from 1-4-1998. When the assessee filed an appeal before the Tribunal against the order-in-original, the department had given written instructions to the departmental representative who appeared before the Tribunal. In the said instructions dated 2-6-2003, there is a reference to the Range Officer's report. A reading of the said report shows that the appellant has stopped their production on and from 1-4-1998 and the Unit is defunct since then. This has been further reiterated in the Range Officer's report, stating that they have not reopened their Unit thereafter (2003) and the Unit has incurred an accumulated loss of Rs. 4,45,97,581/- as on 31-3-2002 as per the balance sheet filed with the Income Tax Department. There is no challenge to the Range Officer's report or there is any contention raised on behalf of the department, that the finding of fact as recorded in the said report, is either false or incorrect. From a perusal of the order-in-original, it is seen that the Original Authority has recorded a finding that HT power supply was disconnected with effect from 12-6-1998; but, however, rejected the contention by observing that based on the disconnection of power supply, they cannot presume that the assessee has stopped production since the assessee has not intimated the department. Learned Standing Counsel produced a copy of the letter of the assessee dated 27-7-1998, written to the Superintendent of Central Excise, Pappireddipatty. In the said letter, the assessee has specifically stated that they have stopped production from 1-4-1998. These factual statements made by the assessee, and the report of the Range Officer having not been denied, we accept the contention of the assessee that there were no production activities on and after 1-4-1998. In fact, the Range Officer has also written that the Unit was not reopened till June 2003. In the light of the above uncontroverted facts, we deem it appropriate that these facts should be taken into consideration by this Court, otherwise, it may lead to miscarriage of justice, more so, when these facts are borne out by records of the department and not produced by the assessee for the first time before this Court. Accordingly, we hold that the demand for payment of duty for the period from April, 1998 to March, 1999 to the tune of Rs. 26,38,800/- is not sustainable in law and the order of the Tribunal in that regard is set aside."

The said decision has been affirmed by the Hon'ble Supreme Court as reported in 2015 (321) ELT A52 (SC). Taking note of the fact that there is stoppage of production during the period 1.4.1998 to 17.6.1998, we are of the considered view that demand of duty, interest or penalty for the disputed period cannot sustain and the same is required to be set aside, which we hereby do. Impugned order is set aside. Appeal is allowed with consequential relief, if any,

(Dictated and pronounced in open court)

**(SULEKHA BEEVI C.S.)**
**MEMBER (JUDICIAL)**

**(ANIL G. SHAKKARWAR)**
**MEMBER (TECHNICAL)**

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