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

E/00200/2002

[arising out of Order-in-Original No.1/2002/COMMISSIONER, dated 15.01.2002 passed by the Commissioner of Central Excise, Coimbatore]]

M/s.JAI HIND WIRE ROD MILLS LTD. APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE, COIMBATORE RESPONDENT

Appearance:

For the Appellant Shri M.A. Mudimannaa, Adv.
For the Respondent Shri S. Govindarajan, AC (AR)

CORAM:

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

Date of hearing/decision 28-08-2017

FINAL ORDER NO. 41853/2017

Per Bench:

The appellant is engaged in the manufacture of MS Ingots and Billets of non-alloy steel in their factory at Salem. During the period from 01.09.2007 to 31.03.2000, Compounded Levy Scheme was in force with regard to steel products and duty has to be discharged based on the Annual Capacity of Production (ACP) fixed by the Commissioner of Central Excise. The appellant had installed two furnaces with capacity of 3 MTs each. The ACP was fixed and the duty liability determined at Rs.10,00,000/- per month. The appellant had stopped production during the following periods, during which both the furnaces were not functioning and claimed the abatement of duty on pro-rate basis before the Commissioner of Central Excise, Coimbatore. The details of period of closure are as under:-

Sl. No.	Period of Closure	No. of Days	Amt. claimed (in Rs.)	Amt. eligible (in Rs.)
01	14.04.1999 to 28.04.1999 (06 A.M. to 10 00 A.M.)	14 days & 4 hrs.	5,06,556/-	4,72,222.30
02	04.09.1999 to 08.09.1999 (22 00 P.M. to 10 30 A.M.)	3 days & 13 hrs.	1,50,417/-	Nil
03	22.10.1999 to 29.10.1999 (07 00 to 09 00 A.M.)	7 days & 2 hrs.	2,73,022/-	2,28,494.70
04	13.01.2000 to 28.01.2000 (06 00 A.M. to 09 00 A.M.)	15 days & 3 hrs.	5,39,689/-	4,87,903.30

1.1 The claim of item no.4 for the period from 13.01.2000 to 28.01.2000 for the amount of Rs.4,97,903/- was granted by the Commissioner vide Order-in-Original No.01/2000/Commissioner, dated 15.02.2002. The claim of the item no.1 for Rs.5,05,556/- and item no.3 for Rs.2,73,022/- is rejected by the Commissioner in his Order-in-Original on the ground that the appellant had not paid the duty liability in advance as required under 96ZO of the Central Excise Rules, 1944. The claim of the item no.2 for Rs.1,50,417/- is rejected on the ground that the stoppage period is less than 7 days in terms of Rules 96ZO of Central Excise Rules, 1944. Hence this appeal.

2. The learned counsel for appellant Shri Mudimannan submitted that appellant is not pressing the claim shown in Sl.No.2 in the table above, where the closure of factory is for 3 days and 13 hrs. Further, that for the period show in Sl.No.1 and 3 of the table above, the appellant has claimed for Rs.5,05,556/- and Rs.2,73,022 respectively, the Commissioner has reduced the amount eligible to Rs.4,72,222.30 and Rs.2,28,494.70. He submitted that appellant

prays for limiting the claim to the amount arrived by the Commissioner as the amount eligible, and is not contesting the amount over and above, the amount arrived by the Commissioner in respect of period of closure for Sl. No.1 and 3 in the table. The Commissioner, rejected the claim holding that appellant had not paid the duty liability in advance as required under Rule 96ZO of Central Excise Rules, 1944. He relied upon the judgment of Hon'ble of Hon'ble High Court of Madras in the appellant's own case, dated 16.09.2010 in W.P. No.22656/2001 where the Hon'ble High Court has held the issue in favour of the appellant referring to Board Circular No.485/51/99-Cx., dated 15.09.1999.

3. The learned Authorised Representative Shri S. Govindarajan reiterated the findings in the impugned order. He submitted that as per Rule 96ZO, the appellant has to pay the duty in advance.

4. Heard both sides.

5. The relevant law laid in Rule 96ZO proviso reads as under:-

> "provided further that if the capacity of the furnaces installed in a factory is more than 3 MTs or there is any change in the total capacity, the manufacturer shall pay the amount, calculated pro rata."

6. The appellant has submitted that he is not pressing the claim shown in Sl.No.2 for the period 04.09.1999 to 08.09.1999. It is also submitted that appellant does not dispute the amount arrived by the Commissioner as eligible amount for abatement. The reason for rejection of abatement for the period show in Sl.No.1 and 3 is that appellant did not pay the duty in advance as provided in proviso 96ZO. The issue has been considered by the Hon'ble jurisdictional High Court in the appellant's own case in W.P.22656/2001, which reads as under:-

Customs, Excise & Service Tax Appellate Tribunal

The second claim of abatement for the period from 15.09.1998 to 23.09.1998, was rejected on the basis that duty was not paid in advance. Mr. Jayachandran learned counsel for the petitioner produced a Circular No.485/51/99-Cx., dated 15.09.1999 [Form F.No.201/02/99-Cx.6) issued by the Ministry of Finance (Department of Revenue), Central Board of Excise & Customs, which in para 3 reads as follows:-

> "3. Accordingly, the Board has decided that the Commissioner should decide first whether the processor was otherwise eligible for abatement or not? In case, he is eligible and he had not paid the duty, the abatement should be granted without asking him to pay duty first or where he had paid the duty, he should be reimbursed of the amount of duty paid, in terms of the order of abatement issued by the Commissioner."

7. Following the above decision of Hon'ble High Court, we find that the rejection of abatement is unjustified. The impugned order is modified to the extent of allowing the abatement for Sl.No.1 and 3 show in the Table for the period 14.04.1999 to 28.04.1999 and 22.10.1999 to 29.10.1999 for an amount of Rs.4,72,222.30 and Rs.2,28,494.70 respectively. The remaining part of the impugned order is not disturbed/interfered. The appeal is partly allowed in the above terms with consequential relief, if any.

(Dictated and pronounced in open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

Sulekha Beevi

(SULEKHA BEEVI C.S)
MEMBER (JUDICIAL

ksr
29-08-2016

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