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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/3125/2004

Date 12/11/2007

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S SURENDRA STEEL ROLLING & GENERAL
INDUSTRIAL ESTATE
MALERKOTLA (PUNJAB)
148023

M/S SURENDRA STEEL ROLLING & GENERAL
INDUSTRIAL ESTATE

Appellant

C.C.E. LUDHIANA


Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 562/07-EX. dated 04-10-07
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. LUDHIANA
F BLOCK, RISHI NAGAR, LUDHIANA
2. Adv. / Consult
MR.R. SANTHANAM
C-3/210, JANAK PURI, NEW DELHI - 110 058.
3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
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Assistant Registrar
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
NORTH ZONAL BENCH AT NEW DELHI**

APPEAL No. E/3125/04 NB (C)

(Arising out of Order-in-Original No. 54/Ldh/04 dated 4.6.2004 passed by
Commissioner of Central Excise, Ludhiana)

For approval and signature:

Hon'ble Ms. Jyoti Balasundaram (Vice President)
and
Hon'ble Mr. K.K. Agarwal, Member (Technical)

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- | | | | |
|----|---|---|------|
| 1. | Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | : | No |
| 2. | Whether it should 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 Departmental authorities? | : | Yes |
-

Surendra Steel Rolling & General Mills

Appellant

Vs.

Commissioner of Central Excise, Ludhiana

Respondent

Appearance:

Shri R. Santhanam, Advocate for appellant
Shri V.K. Agarwal, DR

CORAM:

Hon'ble Ms. Jyoti Balasundaram, Vice President
and
Hon'ble Mr. K.K. Agarwal, Member (Technical)

Date of Decision: 4.10.2007

Per: Ms. Jyoti Balasundaram, Vice President
ORDER NO..... 562/2007EX

Per: Ms. Jyoti Balasundaram, Vice President

The brief facts of the case are that the appellant herein are operating Hot Steel Re-rolling Mill unit at Malerkotla and are engaged in manufacture of Hot-rolled products of non-alloy steel which were chargeable to duty in terms of Section 3A of the Central Excise Act, 1944 read with Notification no. 31/97-CE (NT) dated 01/08/1997 as amended, according to the annual production capacity thereof. Based on the parameters declared by the appellants, vide order dated 06/11/1997, the Commissioner of Central Excise Chandigarh fixed the production capacity of their Hot Re-rolling mills at 8490.815 MT per annum, provisionally under Rule 5 of the Capacity Determination Rules, 1997 and on the basis of production of the unit during the year 1996-97, whereas under Rule 3(3) of the said Rules the capacity as per declared parameters came to 5978.715 MT. Vide their letter dated 12/03/98, the appellants informed the department that rolling mill of 305 mm was closed on 15.1.1998 and that only mill of 204 mm remained operational. By letter dated 25.3.1998, the appellants filed declaration under 96ZP of the Central Excise Rules, 1944, requesting for fixation of Rule 3(3) of the Annual Production Capacity Rules. Again vide their letter dated 23.11.1998, they requested for fixation of capacity of their 204 mm mill with effect from 1.4.1998.

2. The Commissioner, Chandigarh re-determined the annual capacity of production as 8490.815 MT under Rule 5 provisionally, based on the production of the unit during the year 1996-97. However, as per the

revised parameters, the Annual Production capacity was 3106.460 MT. Aggrieved with the orders of re-determination of capacity of production, the appellants filed an appeal before the Tribunal which vide its final order No. A/76/2000-NB dated 3.2.2000 directed the Commissioner to finalise the annual production. In the meantime, they also requested Commissioner of Central Excise, under cover of letters dated 25.11.99, 10.1.2000, 14.2.2000 and 16.7.2003 to finalise the provisionally assessed capacity of their Re-rolling mills. By the present impugned order, the Commissioner decided the issue by determining the capacity of production of 204 mm mill for the period 1.4.98 onwards as 5559.810 MT under Rule 5, as the Capacity Determination Rules, as per the formula laid down under Rule 3(3). He determined the capacity of production for the period 1.1.97 to 31.3.98 during which period both the 305 mm mill and 204 mm mill were working alternatively, as 8130.130 MT. The appellants challenge both the fixation for the period 1.1.97 to 31.3.98 as well as the fixation of the capacity for the period subsequent to 1.4.98.

3. We have heard both sides. As regards the determination of capacity for the period 1.1.97 to 31.3.98, in the absence of any dispute that 305 mm mill was operational till 31.3.98 and that during the period 1.1.97 to 15.1.98 both the mills were working alternatively and during the period 1.1.97 to 15.1.98 the determination of production capacity was on the basis of the actual production during the period 1996-97, we see no error in the Commissioner's order, determining the actual capacity as 8130.130 MT, as per Rule 5 of the Capacity Determination Rules. However, we see force in the submission of the appellants that in the light of the Larger Bench

decision of the Tribunal in the case of M/s. Sawan Mal Shibumal Steel Rolling Mills vs. CCE, Chandigarh – I as reported in 2001 (42) RLT 75 (CEGAT-LB), the actual production for the period 1996-97 cannot be adopted for the period from 1.4.98 onwards for the reason that there has been change in the machinery with the closure of the 305 mm mill from 15.1.98. It has been held in the Larger Bench decision that Rule 5 of the Annual Capacity Determination Rules which provides that “In case, the annual capacity determined by the formula in sub-rule (3) of rule 3 in respect of a mill, is less than the actual production of the mill during the financial year 1996-97, then the annual capacity so determined shall be deemed to be equal to the actual production of the mill during the financial year 1996-97” will be relevant and applicable to cases, where there is no change in the annual capacity of production or the annual capacity of production is augmented on account of change in machinery of production. The Larger Bench has held that Rule 5 will not have any application when the change in machinery leads to reduction in annual capacity of production when the same is computed according to the parameters mentioned in Rule 3 of the Hot Re-rolling Steel Mills (Annual Capacity Determination) Rules, 1997. There is no evidence on record that the change in the machinery by dismantling of the 305 mm mill has resulted in augmentation. Therefore, following the ratio of the Larger Bench decision, we set aside the determination of capacity of production for the period from 1.4.98 and hold that the annual capacity for the period from 1.4.98 of the 204 mm mill which continues to be functional shall be 3106.460 MT which is the capacity worked out under Rule 3 of the above Rules.

4. The appeal is thus partly allowed, as stated above.

(K.K. Agarwal)
Member (Technical)

(Ms. Jyoti Balasundaram)
Vice President

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