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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/6261/2004&E/CO/57/2005 Date 11/04/2008

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

To :
M/S ORISSA SPONGE IRON LTD
PALASPANGA,KEONJHAR (ORISSA) 758031

M/S ORISSA SPONGE IRON LTD Appellant

Vs

C.C.E.BHUBANESHWAR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1411/08 **Excise** dated 31-3-08

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.BHUBANESHWAR II
RAJASWA VIHAR ORISSA
751004
2. Adv. / Consult SH. RAVI RAGHVAN, ADV.,
B-6/10, S.J. ENCLAVE
N. DELHI-29
3. D.R.
4. ~~JCDR~~.
5. Bar association. CESTAT, New Delhi
6. M/s. Deeparchi Publications. M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases. B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications. I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

Excise Appeal No.6261/04 with E/CO/57/05

[Arising out of Order-in-Original No.CCE/BBSR-II/No.33-Commissioner/04 dt.6.10.04 passed by the Commissioner of Central Excise, Bhubaneswar-II)

For approval and signature:
Hob'ble Mr. S.S.KANG, VICE PRESIDENT
Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3.	Whether their Lordships wish to see the fair copy of the order?	:	Yes
4.	Whether order is to be circulated to the Department Authorities:	:	No

M/s. Orissa Sponge Iron Ltd. Appellant

Versus

CCE, Bhubaneswar-II Respondent

Appearance

Sh. Ravi Raghvan, Adv. For Appellant

Sh. V.K.Agarwal, Authorised Departmental Representative(DR)For Respondent

Coram: Hon'ble Mr. S.S.KANG, VICE PRESIDEN
Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

Date of decision: 31.3.08
FINAL Order No. 141/08-EX

Per Rakesh Kumar:

This is an appeal against Order-in-Original No.33/Commissioner/04 dt.6.10.04 passed by Commissioner of Central Excise and Customs, Bhubaneswar-II by which the Commissioner, denying the benefit of exemption Notification No.13/2000-CE dt.1.3.2000 to the appellant for the period from 2000-2001 to 2002-03, confirmed duty demand of Rs.62,14,313/- against them under proviso to Section 11A(1) of Central Excise Act alongwith interest on this duty at the applicable rate as per the provisions of Section 11AB of the Act and besides this also imposed penalty of equal amount on the appellant under Section 11AC of the Act. Notification No.13/2000-CE exempts the excisable goods specified in Chapter 72 and 73, manufactured in and cleared from an integrated steel plant and intended to be sold at a place other than the said integrated steel plant, from so much of the duty of excise as is in excess of the duty leviable on such goods, as if they are sold and delivered to a buyer in the course of wholesale trade at the integrated steel plant. As per the definition of the 'integrated steel plant' as given in the explanation to the notification, it means a manufacturer or a producer who, starting from the stage of iron ore, manufactures or produces within the same premises, the excisable goods specified in Chapter 72 or Chapter 73. In other words in respect of the Chapter 72 or Chapter 73 excisable goods, which are produced in an integrated steel plant, as defined this notification, duty is required to be paid on the value of the goods at the factory gate, even if often clearance from the factory, the goods have been sold from the depots. The appellants have been denied this exemption notification on the ground that during the period of dispute they were not an integrated steel plant, as they had two separate central excise registration certificates - One registration certificate issued to Orissa Sponge Iron Ltd. for sponge iron and second registration certificate issued in the name of 'Osil Steel Works' for billets. There is no dispute about the fact that both the units – the sponge iron unit and the billet unit are located in the same premises within the same compound wall with common entry and exist and both are owned by the same company i.e. M/s Orissa Songe Iron Ltd. There is also no dispute about the fact that in May'04, the appellant applied to the Jurisdictional Central Excise Supdt. for a common registration certificate after surrendering the registration certificate in the name of Osil Steel Works and the Jurisdictional Central Excise Supdt. Vide his letter dt.20.5.94 informed that the Asstt. Commissioner has accepted the surrender of registration certificate issued in the name of Osil Steel Works and has allotted a common registration for both the products. There is also no dispute about the fact that w.e.f. 1.6.04, there is one common registration certificate and the appellant's factory is being treated as an integrated steel plant and the exemption under Notification No.13/2000-CE is being allowed. The dispute is only for the period from 2000-01 to 2002-03 for which, according to the Department, in view of two separate registration certificates, the appellants can not be treated as an integrated steel plant.

2. Heard both the sides. On behalf of the appellants, it has been emphasized that they are an integrated steel plant as both the units – the unit for manufacture of sponge iron from iron ore and the unit for the manufacture of billets from sponge iron are situated in a common premises having a common boundary wall and there are common entry or exist gates for the two units. Not only this, there is common work force and a single registration under the Factories Act and the sponge iron manufactured is captively consumed for the manufacture of billets and the other steel products. It was emphasized that as per the explanation given in the Notification No.13/2000-CE, an integrated steel plant means a manufacturer or producer who starting from the stage of iron ore manufactures or produces excisable goods specified in Chapter 72 or 73 within the same premises and the appellants are squarely covered by this definition. Judgment of the Hon'ble Supreme Court in the case of CCE, Meerut vs Dhampur Sugar Mills Ltd reported in 2007(216)ELT.A-23(SC) was cited wherein it was held that a number of different plants manufacturing different excisable goods in the same premises would constitute one factory and their separate registration under Rule 174 of Central Excise Rules would not mean that they are different factories. It was also pleaded that prior to March'2000 i.e. during the period from Sept'97 to March'2000 when compounded levy system for iron steel products was the vogue and duty was

required to be paid under Section 3A, the appellants were discharging duty under Section 3 of Central Excise Act read with Section 4 by paying duty on ad valorem basis, as the Department was treating them as integrated steel plant and hence not eligible for operation under Section 3A of the Act. If for the purpose of Section 3A, the appellants were being treated as integrated steel plant, they have to be treated as integrated steel plant for the Notification No.13/2000-CE also. It was also pleaded on behalf of the appellant that during the period of dispute, Section 4 had been amended and during that period, the place of removal in terms of Section 4(3)(c) only covered a factory or any other place or premises for production or manufacture of excisable goods and warehouse or any other place wherein excisable goods are permitted to be deposited without payment of duty. Another plea of the appellants is that the major portion of the demand is time barred since all the facts relating to payment of duty on the stock transferred goods on the basis of factory fate price were in the knowledge of the department as the same had been clearly mentioned in the monthly RT.12 returns/ER.I returns and hence there is no question of alleging suppression of fact for invoking extended period of limitation.

2.1. On behalf of the Department, Ld. Departmental Representative pleaded that the appellants during the period of dispute cannot be treated as integrated steel plant as there were two separate Central Excise Registration certificates, one for the sponge iron and the other for billets, and the registration certificates were in different names. It is also pleaded that the billets are manufactured from sponge iron not from iron ore, in a plant for which there was a separate central excise registration and, therefore, the same cannot be treated as manufactured in an integrated steel plant. The same plea has been made in the memorandum of cross objection filed by the respondent.

3. In this case, there is no dispute about the fact that the plant manufacturing sponge iron from iron ore and the plant manufacturing billets from sponge iron are situated in a common premises having a common boundary wall, the work force is common and for both the plants, there is one single registration under the Factories Act. There is common enterance and exist for the two plants situated on one piece of land within a common boundary wall. It is also not disputed that both the plants are owned by the same company – the appellant. Even though in the registration certificate earlier issued for billets, the assessee's name was mentioned as 'Osil Steel Works', it is not the Department's case that Osil Steel Works has existence separate from the appellants. As per the law laid down by the Hon'ble Supreme Court in the case of CCE, Meerut vs Dharampur Sugar Mills(supra), a number of different plants manufacturing different excisable goods, located in the same premises would constitute one factory only inspite of separate registration for different products under Central Excise Rules. We are of the view that this judgment is squarely applicable to the

facts of this case. Therefore, both the plants –the plant manufacturing sponge iron from iron ore and the plant manufacturing billets from sponge iron have to be treated as one single factory and hence the appellants' factory has to be treated as an integrated steel plant" within the meaning of this expression as defined in the Explanation to the Notification No.13/2000-CE. Moreover during the period from Sept'97 to March'2000 for the purpose of compounded levy scheme for payment of duty on billets under Section 3A, the plant was being treated by the Department as an integrated steel plant and the appellant had been asked to pay duty under Section 3 of Central Excise Act read with Section 4 on ad valorem basis. Therefore, there is no justification for treating the appellant's factory as other than integrated steel plant for the subsequent period for the purpose of Notification No.13/2000-CE. Therefore, the Order-in-Original passed by the Commissioner denying the benefit of Notification No.13/2000-CE to the appellant during the period from 2000-01 to 2002-03 and on this basis demanding the differential duty alongwith interest and imposing personal penalty is not sustainable and the same is set aside. The appeal is accordingly allowed. The Memorandum of Cross objection filed by the respondent is also rejected..

(Rakesh Kumar)
Member Technical

D/- 10.4.08

(S.S.Kang)
Vice President

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