

TELEGRAM : CEGCANAL

Website : www.cestat.gov.in

REGISTERED / AD

Email : delhi@cestat.gov.in

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

EXCISE APPEAL BRANCH

Appeal No. E/60 /2007-63 /2007

Date 03/06/2008

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

To :
M/S UTTARANCHAL IRON & ISPAT LTD.
PLOT NO. 3-4, UPSIDC INDUSTRIAL AREA,
JASHODHARPUR, KOTDWARA, DISTT. PAURI.
M/S UTTARANCHAL IRON & ISPAT LTD.

C.C.E. MEERUT I

Appellant

Vs

Respondent

I am directed to transmit herewith a certified copy of Final order No.315-318/2008

Excise dated 30-5-08

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. MEERUT I

EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT
250005

2. Adv. / Consult

MR. V. LAXMIKUMARAN

B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, Marg, 46, Saket, New Delhi 110017

7. M/s Centax Publications (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)

P.T.O.

1 SH. SANJEEV KUMAR

M/S UTTARANCHAL IRON & ISPAT LTD., PLOT NO. 3-4, UPSIDC INDUSTRIAL AREA, JASHODHARPUR,
KOTDWARA, DISTT. PAURI

2 SH. ASHOK KUMAR

M/S UTTARANCHAL IRON & ISPAT LTD., PLOT NO. 3-4, UPSIDC INDUSTRIAL AREA, JASHODHARPUR,
KOTDWARA, DISTT. PAURI

3 MR. QAMRUZAMAN RANA

M/S UTTARANCHAL IRON & ISPAT LTD., PLOT NO 3-4, UPSIDC INDUSTRIAL AREA, JASHODHARPUR,
KOTDWARA, DISTT PAURI

**IN THE CUSTOMS, EXCISE & SERVICE
TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM,
NEW DELHI**

COURT – II

EXCISE APPEAL NO. 60 to 63/2007-Ex

[Arising out of Order-in-Original No. 75-90/Commr/Meerut-I/2006 dated 28.9.2006 passed by the Commissioner, Central Excise, Meerut-I, Meerut]

For approval and signature:

Hon'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 Departmental authorities?	No

M/s. Uttaranchal Iron & Ispat Ltd.,
Shri Sanjeev Kumar, Director,
Shri Ashok Kumar, Director,
Shri Qamru Zaman Rana

Appellants

Vs.

CCE, Meerut

Respondent

Appearance:

Shri Ravi Raghavan, Advocate for the appellants,
Shri A.N. Sharma, Jt. CDR, Departmental Representative,
for the Revenue,

Coram:

Hon'ble Mr. S.S. Kang, Vice President
 Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 8th April, 2008

FINAL ORDER NO. 315-318/08-EX. **dated** _____

Per S.S. Kang:

Heard both sides.

2. Appellants filed these appeals against the impugned order whereby demand is confirmed and penalties are imposed after denying the benefit of Notification No. 50/2003-CE dated 10.6.2003.

3. Appellants are engaged in the manufacture of M.S. Bars and claimed the benefit of notification No. 50/2003-CE. Notification No. 50/2003-CE dated 10.6.2003 prescribe following conditions for availment of benefit of exemption contained in the notification:-

“2. The exemption contained in this notification shall apply only to the following kind of units, namely:-

- (i) new industrial units which have commenced commercial production on or after the 7th day of January, 2003, but not later than the 31st day of March, 2007;
- (ii) industrial units existing before the 7th day of January, 2003, but which have undertaken substantial expansion by way of increase in installed capacity by not less than twenty-five per cent on or after the 7th day of January, 2003, but have commenced commercial production from such expanded capacity, not later than the 31st day of March, 2007.”

The appellants claimed the benefit of notification under condition (ii) on the ground that the appellants had undertaken substantial expansion by

way of increase in installed capacity by not less than 25% on or after 7.1.2003. Benefit of notification was denied on the ground that the appellants had not undertaken substantial expansion as the installed capacity of existing unit should be the result of installation of additional plant and machinery. Any increase in installation capacity by means other than installation of additional plant and machinery would not qualify for the benefit of exemption under substantial expansion.

3. Contention of the appellants is that they produced evidence to show that they have expanded capacity of their unit by more than 25%. The appellants produced the opinion of Chartered Engineer M/s. Rajiv Jain Associates in respect of capacity before expansion. A completion certificate of expansion project by Chartered Engineer was also produced. Annual capacity assessment report after expansion and inspection report of Chartered Engineer was also produced to show that installed capacity has been increased more than 25%. The appellants also produced purchase bills in respect of procurement of capital goods which are installed to increase the annual capacity. The appellants have increased length of their furnace from 70 rft. To 120 rft. Power of electric motor of Roughing Stand has been increased from 460 KW to 1250 KW and the gear box reduction ratio has been increased from 1 to 1.4. Other auxiliary motors were also replaced. ACB of 1600 AMP and 2500 AMP were also replaced with that of higher capacity. The Contention of the appellants is that the capacity of their furnace was

1. determined by the Commissioner of Central Excise by 21913 MTs, When the appellants were paying duty under Section 3A of the Central Excise Act (Compounded Levy Scheme) and with the increase in length in furnace and other changes such in the gear box and installation of motor of higher power, as per the formula under which annual capacity was fixed by the Commissioner (Appeals), the annual capacity comes to 30012 MTs, which is more than 25% increase in capacity of production as determined prior to increase in the length of furnace and installation of new capital goods.

4. Contention of the appellants is that the plant was inspected by Chartered Engineer at the request made by Dy. Commissioner, Central Excise and the Chartered Engineer appointed by the Revenue submitted the report dated 10.9.2004 accepted the changes made by the appellants in respect of furnace and other machinery. The Chartered Engineer, however, pointed out that increase in the capacity is not due to installation of any additional plant and machinery but, if at all by modification of existing machinery. The appellants relied upon the Board's Circular No. 772/5/2004-CX dated 21.1.2004 whereby Board has clarified, on the term ⁽of substantial expansion in the area based notification. The circular clarified that the scope of substantial expansion, as it relates to applicability of notification, also includes additional investment in the plant and machinery for modernization or improving quality of existing products ^{and} unless it leads to increase in

installed capacity of 25% or more ^{it} would not tantamount to substantial expansion. The contention is that the appellants invested Rs. 85 lakhs for expansion of the plant and as per Board's Circular as ^{their} annual capacity has been increased which is more than 25%, by increase in length of furnace and by replacing main drive motor of 460 KW with 1250 KW motor and by installing other capital goods. In these circumstances, contention is that as the appellants had undertaken substantial expansion by way of increase in their annual capacity more than 25%, therefore, denial of benefit of notification is not sustainable.

5. Revenue relied upon the finding arrived at by the adjudicating authority to submit that as per Chartered Engineer's certificate produced by the appellants modification/ up-gradation has been done in piece meal only in the parts of existing unit which does not cover substantial expansion by way of installing additional machinery. Contention is that as only old plant and machinery has been upgraded by way of replacement to increase capacity of plant and machinery and no additional plant and machinery has been installed to increase the capacity, therefore, benefit of notification was rightly denied.

6. In this case the question is that whether the appellants increased the installed capacity by not less than 25%.

7. The appellants produced evidence that length of their furnace ^{is} increase from 70 rft to 120 rft. The main motor drive of 460 KW was replaced with 1250 KW and other auxiliary motor was also replaced.

I

Gear box of mill has been replaced. The Revenue obtained the opinion of Chartered Engineer which is part of show cause notice as relied upon document No. 13. In his opinion the Chartered Engineer admitted the changes or installation of new plant and machinery and in conclusion part the Chartered Engineer opined that increase in capacity is not due to additional plant and machinery but by modification of existing machinery. We find that the C.B.E.C. vide Circular No. 772/5/-4-CX dated 21.1.2004 clarified the scope of substantial expansion in respect of notification in question and as per the Circular additional investment in plant and machinery for modernization or for improvement of quality of existing product unless it leads to increase in capacity of 25% would not tantamount to substantial expansion. As per this clarification modernization or for improving the quality of existing plant will also come under substantial expansion, if it leads to increase in installed capacity by 25% or more. The opinion of Chartered Engineer obtained by the Revenue admitted the increase in capacity by modification of the existing plant and machinery. The appellants produced the invoices showing purchase of new capital goods which were before the lower authorities also.

8. Case of the Revenue is that the capacity was increase by modification/up-gradation in piece meal in the parts of existing plant. We find that there is nothing in the notification to suggest that there should be an increase in each and every unit of the plant. Condition of

the notification is overall increase of 25% capacity of production. As we find that as per opinion obtained by the Revenue from Chartered Engineer annual capacity production has been enhanced more than 25% and as per Circular dated 21.1.2004 even modernization or improving quality of existing product which leads to increase in installed capacity of 25% or more would cover scope of substantial expansion, hence, the impugned order is set aside and appeals are allowed.

(Pronounced on 30.5.08)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 26th May, 2008
RK