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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/193 /2007,2353-2354/07 Date 08/08/2008

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

To :
M/S PLATO INDUSTRIES LTD

PLOT NO 4, SECTOR-3, INDUSTRIAL AREA,
PARWANOO, DISTT- SOLAN
M/S PLATO INDUSTRIES LTD Appellant

Vs

C.C.E.CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 577-579/08-EX **Excise** dated 5-8-08

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.CHANDIGARH

PLOT NO 19, SECTOR 17-C, CHANDIGARH.
2. Adv. / Consult
MR.JOY KUMAR

FLAT NO 261/1,SEC 45-A,CHANDIGARH.

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 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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 193, 2353-54 of 2007

[Arising out of Order-in-Appeal No. 1055/CE/CHD/2006 dated 27.10.06 passed by Commissioner of Central Excise, (Appeals II), Chandigarh and Order-in-Original No. 51-52/Central Excise/CHD/2007 dated 29.5.2007 passed by Commissioner of Central Excise, Chandigarh.]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, 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

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M/s. Plato Industries Ltd. — Appellants

Vs.

Commissioner of Central Excise
Chandigarh — Respondent

Appearance:
Shri Jay Kumar, Advocate for the Appellants
Shri Virender Chand, Advocate for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing : 16.7.2008
Date of decision : 7-8-2008

FINAL **ORDER NO. 577-579/08-EX**

Per M. Veeraiyan (for the Bench):

1.1 Appeal No. E/193/2007 is by M/s. Plato Industries Ltd. against the order of the Commissioner (Appeals) No. 1055/CE/CHD/2006 dated 27.10.06 relating to the period July, 2004 to November, 2005.

1.2 Appeals No. E/2353-54/2007 are also by M/s. Plato Industries Ltd. against the order of the Commissioner No. 51-52/Central Excise/CHD/2007 dated 29.5.06 relating to the period December, 2005 to September 2006.

1.3 As a common issue is involved, they are being dealt with by a common order.

2. Heard both the sides.

3. Relevant facts, in brief, are as follows:

a) The appellant is a manufacturer of HDPE pipes and ducts falling under Chapter 39 of the Central Excise Tariff Act, 1985.

b) They opted for availing the benefit of exemption under Notification No. 50/2003-CE dated 10.6.03 with effect from 5.7.04 claiming that they have undertaken substantial expansion to their installed capacity.

c) In the case relating to Appeal No. 193/2007, the original authority vide his order dated 20.10.06 held that the increase in the installed capacity is not more than 25% than of the earlier installed capacity of the unit as it stood on 7.1.03 and that they are not entitled to the area based exemption under Notification No. 49-50/2003-CE dated 10.6.03. Commissioner (Appeals) vide his order dated 27.10.06 concurred with the findings of the original authority.

d) In the case relating to Appeal Nos. 2353-54/2007, Commissioner vide his order dated 29.5.07 confirmed demand of duty of Rs.2,82,36,129/- relating to the period July, 2004 to November, 2005 and demand of Rs.1,48,51,791/- relating to the period December, 2005 to September 2006; he ordered recovery of interest in terms of section 11B of the Act; he also imposed penalty of Rs.4,30,87,920/- on the appellant-company under section 11AC.

4.1 The learned advocate submitted that there was no discrepancy in the installed capacity as on 7.1.03. In the application dated 6.1.03 filed with the District Industries Centre, they had indicated the extruders No. I to VI (acquired and installed over the years starting from the year 1992-93 to 1998-99) were not in working condition and that only extruder No. VII was in working condition. They had installed machineries after 6.1.03 leading to additional capacity of 30MT per shift per month. The original installed capacity taking into account the 6 extruders which were not in working condition would be 3,440 MT per annum and the addition would be 1080 MT [30MT per shift x 3 (shifts) x 12 (months)]. This expansion of 1080 MT on the erstwhile installed capacity of 3040 MT is more than 25%.

4.2 He submitted that inasmuch as six of the extruders were not in working condition, they declared to the District Industries Centre the installed capacity as on 6.1.03 as 1080 MT only. If this was taken as the initial installed capacity, because of addition of 1080MT, they have increased the installed capacity by 100%.

4.3 In either of the above situations, they have fulfilled the condition for substantial expansion. There was no mis-declaration either in the balance sheet or in the application/reports submitted to the Distt. Industries Centre. Therefore, it was submitted that they were eligible for exemption and the demand of the duty and imposition of penalty by the Commissioner were not justified.

5. Learned DR reiterates the findings of the Commissioner (Appeals) as well as findings of the Commissioner in relation to demand of duty.

6.1. We have carefully considered the submissions from both the sides. The findings of the Commissioner (Appeals) on the basic issue relating to eligibility of exemption is reproduced below:

> "I have carefully examined the case records including the Appellants submissions made in writing and at the time of personal hearing and observe that the main issue to be decided whether the Appellant has made substantial expansion of their plant and machinery to the extent of 25% or more which is the basic requirement for availing area based exemption under Notification NO. 49-50/03-CE dated 10.3.03 as stood as 7.1.03. In this regard I observe that as per the audited balance sheets of the Appellant for the financial year 2001-02, 2002-03 and 2003-04, the installed capacity of the plant was 3440 MT per annum. Further, a perusal of the application form for obtaining approval for undertaking substantial expansion filed by the Appellant with the Distt. Industries Centre, Solan shows that installed capacity of the plant and machinery as certified by the Chartered Accountant and the Chartered Engineer is 1188 MT per annum for the year 2000-01 and

2001-02 and 1080 MT per annum during the financial year 2002-03 and 2003-04 whereas in their application to General Manager, DIC, Solan the Appellant have claimed the increase in their installed capacity from 360 MT to 720 MT per annum after carrying out the requisite expansion which has been subsequently approved by the General Manager, DIC, Solan vide his letter dated 29.5.04.

In view of the above, it appears that the installed capacity has not been increased but actually lowered from 3440 MT to 720 MT. IN terms of Board Circular No. 772/5/04-CX dated 21.1.04 it has been clarified that the installed capacity of the existing unit be increased by not less than 25% should be the result of installation of additional plant and machinery only and no other means would qualify for the benefit of exemption under substantial exemption.

Since the Appellant have failed to produce conclusive evidence regarding expansion of their existing installed capacity by installation of new plant and machinery, I agree with the findings of the Adjudicating Authority that the appellant has declared different installed capacities of their unit to suit their own end."

6.2. The confirmation of demands of duty by the Commissioner in pursuance of two show cause notices was founded on the decision to deny the exemption as mentioned above.

7. The alleged discrepancy between the figures in the application to the District Industrial Centre and the balance sheet appears to be reconciled by the explanation offered by learned advocate. If his submission that there was increase in the installed capacity to the tune of 1080 MT during the period after 1.6.03 was factually correct, then irrespective of whether the base installed capacity was taken as 3040 MT or 1080 MT, there is an increase of more than 25% of the installed capacity qualifying for the exemption notification No. 50/03. This factual position requires to be verified.

8. Therefore, we deem it proper to set aside the order of the original authority dated 20-10-06 and the impugned order of the Commissioner (Appeals) 27.10.06 and also the order of the Commissioner dated 29.5.2007. To avoid multiplicity of proceedings we remand the matter to the jurisdictional Commissioner of Customs & Central Excise to verify the correctness of the claim of additional capacity to the tune of 1080 MT; to extend the exemption if additional capacity as claimed is found to be factually correct; to deny the exemption, if additional capacity as claimed is found to be factually incorrect. The commissioner shall take the decision after granting reasonable opportunity of hearing.

9. All the appeals are allowed by way of remand on the above terms.

(Pronounced in the open Court on 7/8/08)

(Archana Wadhwa)
Member (Judicial)

(M. Veeraiyan)
Member(Technical)

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