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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/3475/2004 - EX[DB]   Date 22/01/2009

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

To :
STEEL AUTHORITY OF INDIA LTD.
ROOM NO-118, ISPAT BHAWAN, BHILAI STEEL
PLANT, BHILAI (C.G.)
490001

STEEL AUTHORITY OF INDIA LTD. Appellant
Vs
C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 59/2009-**EX[DB]** dated 15-1-09

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. RAIPUR
   DHAMTARI ROAD, TIKRAPARA, RAIPUR
2. Adv. / Consult SH. B.L. NARASIMHAN, ADV.
   B-6/10, S.J. ENCLAVE
   N. DELHI - 29
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 - 3
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
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
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Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Appeal No. 3475 of 2004-Ex.

(Arising out of Order-in-Appeal No. 93/RPR-II/2004 dated 29.3.2004 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur)

Steel Authority of India Ltd. Appellant

Vs.

CCE, Raipur Respondent

Appeared for Appellant : Shri B.L. Narasimhan, Advocate
Appeared for Respondent : Shri K.K. Goyal, Jt. CDR

Date of Hearing: 13.1.2009

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER
HON'BLE MR. RAKESH KUMAR, TECHNICAL MEMBER

FINAL Order No. 59/09-Ex dated............

Per D.N. Panda:

Ld. Counsel Shri B.L. Narasimhan argues that benefit was denied to the appellant on the basis of Notification No. 65/95-CE dated 16.3.95. He submits that when the same appellate authority could take decision that the goods in question were manufactured in a workshop within the factory of appellant itself in order-in-appeal No. 68/RPR/II/2003 dated 29.4.2003 and appeal case No. 75/RPR/II/2003 dated 30.4.2003 how this appellant can be denied similar such benefit for the period under appeal before this forum. He further relies on the order of adjudication No. Com/RPR/38-

41/Denovo/2007 dated 24.8.2007 which is passed four years after the impugned order granting relief to the appellant. His submission is that when a workshop is situated in the factory itself which is an integrated steel plant, the goods manufactured in the integrated steel plant and used for repair and maintenance of the factory does not disentitle the appellant to respective benefit of Notification No. 65/95-CE dated 16.3.95. He further submits that in absence of a finding that the goods meant for repair and maintenance were not manufactured in a workshop, the appellant should succeed in the present appeal.

2. Ld. Jt. CDR submits that unless the appellant brings out its case categorically to the fold of Notification No. 65/95-CE dated 16.3.95, the appellant is disentitled to the benefit thereof. He relies on the Five-Member Bench decision of the Tribunal in the case of **Tisco Ltd. Vs. CCE** reported in 2000 (118) ELT 104 and submits that Revenue's contention therein was that the notification is clear stating that the exemption is available in respect of production in a workshop within a factory. Therefore, if the production is not carried out separately in a workshop situated within a factory the exemption would not be available. The present appellant is squarely covered by the contentions of Revenue in the Larger Bench decision made in Tisco Ltd. case (supra). In view of the Larger Bench decision being confirmed by the apex Court against appeal of Tisco as reported as 2001 (128) ELT A-67 (SC), this appellant has

no footing today to claim benefit of the Notification No. 65/95-CE dated 16.3.95.

3. Repelling the argument of Jt. CDR, Shri Narasimhan submits that there is no quarrel with the legal position. But when the Revenue authorities have themselves made categorical finding in the orders preceding the impugned order and also in the order of adjudication succeeding the impugned order and the finding therein remains untouched, the appellant is entitled to the benefit.

4. Heard both sides and perused the record.

5. We have gone through para-III of the order in appeal which has laid down grounds of show-cause notice as under:

"The show cause notice was issued on the following grounds :-

(a) The "other case articles of Iron & Steel" are semi-finished and finished articles having the essential character of finished machine parts or as a blank for machine parts by the application of Rule 2(a) of the rules of interpretation to the schedule to the CETA, 1985 and the same will be more appropriately classifiable under relevant sub-heading of chapter heading 84, 85, 86 and 87 with appropriate rate of duty.

(b) The appellant have not disclosed the names of the machines with which or for which these goods were manufactured.

(c) The "other cast articles of Iron & Steel" have been manufactured in the foundry and pattern shop of the appellant which is a regular manufacturing shop/factory and not a workshop as stipulated in the said notification and also that the said goods so manufactured have not been used for repair and maintenance of machines installed in the factory premises of the appellant.

(d) The cast articles of Iron & Steel are not capital goods under Rule 57Q of the Central Excise Rules, 1944 and the same have not been used as capital goods within their factory of production."

6. We are of the view that when the show-cause notice brought categorical charge as to place of manufacture, the appellate authority has failed to make finding on such categorical factual aspect to examine applicability of the Notification. We have seen the issue framed by the ld. Commissioner (Appeals) in para-5 of the impugned order. The issue is as to applicability of Notification No. 65/95 dated 16.3.95 in respect of the goods viz. Bed for Sand Pump, Track Plate for Furnace, Platform for Ingot Mould, bloom, shell bloom, billets, slabs, Bars, Defective bloom/billets/slabs. When such issue was framed, the ld. appellate authority below without looking to the very basis of the show-cause notice which required an answer as to whether the goods covered by the issue were manufactured in a workshop situated within a factory should have been examined and brought on record categorically. Factual finding as to whether there was a workshop within the factory and whether the manufacture was done in that workshop and whether the manufactured goods were used in repair activity is essential to test to fulfill the requirement of the Notification. Unless a categorical finding is made as to place of manufacture and that place whether can be called as workshop and that too within the factory, the applicability of Notification becomes impossible to be considered. Therefore, we expect the ld. Commissioner (Appeals) to look into the decision in Tisco's case reported in 2000 (118) ELT 104 and also the

contentions of Revenue in that case appearing in para-5 of the decision of the Tribunal and examine whether the goods in question which was covered by para-5 of his order were manufactured in a workshop within the factory. So also we expect the ld. Commissioner to come to the conclusion whether the end use of the goods has also met the test of the notification. If the authority makes such an exercise the whole controversy can be resolved. We also make it clear that the notification having sought to grant relief to the appellant, the authority should grant fair opportunity of hearing to both the sides and pass a speaking and reasoned order.

7. In the result the matter is remitted to ld. appellate authority below, setting aside the impugned order.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RM