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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/380 /2009 - EX[DB] Date 19/05/2009
E/S/397/2009-EX

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

To :
M/S HARYANA ROLLING MILLS
71, LIGHT, INDUSTRIAL AREA, BHILAI,
CHATTISGARH

M/S HARYANA ROLLING MILLS — Appellant

Vs

C.C.E. RAIPUR — STAY ORDER NO. 437/2009-EX — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 332/2009-**EX[DB]** dated 04-5-09 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
   CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
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Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 380 of 2009 with
Excise Stay Application No. 397 of 2009

(Arising out of Order-in-Original No. 07 & 08/Sec 3A/COMMR/2008 dated 19.11.2008 passed by the Commissioner of Customs & Central Excise, Raipur).

DATE OF HEARING : 04.05.2009
DATE OF DECISION : 04.05.2009

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT
HON'BLE MR. M. VEERAIYAN, 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 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

M/s Haryana Rolling Mills .... **Appellant**
(Rep by Sh. Ravi Raghvan, Adv.)

VERSUS

CCE, Raipur .... **Respondent**
(Rep. by Sh. S.N. Srivastava, DR)

CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT
HON'BLE MR. M. VEERAIYAN, MEMBER (TECHNICAL)

STAY **ORAL ORDER NO.** 437/09-EX
FINAL ORDER NO 332/09-EX

PER M. VEERAIYAN :

1. After hearing both sides for a while on the stay petition, we felt that the appeal could be finally disposed of on a short point and accordingly we waive the pre-deposit of dues as per the impugned order and proceed to decide the appeal finally.

2. 1. M/s Shiv Shakti Steels was having a manufacturing unit manufacturing Hot Rolled Products of Non-Alloy Steel covered by the Compounded Levy Scheme notified under Section 3A of the Central Excise Act, 1944. The Officers of Central Excise visited the unit on 28.03.1998 and verified the various parameters, which had relevance for determination of annual capacity. The said unit closed down on 31-3-98.

2.2. The premises in which M/s Shiv Shakti Steels was having the manufacturing unit were taken over by M/s Haryana Rolling Mills, the present appellant, and as per the records they vide their letter dated 03.12.1998 declared the willingness to avail the Scheme under Rule 96ZP(3) and claimed to have changed the configuration of the machinery after taking over the unit and declared the value of various parameters and other information of the mill, which is as under :

S.NO.	PARTICULARS OF PARAMETERS	ABBREVIATED NAME OF PARAMETERS	VALUE OF PARAMETERS
1.	Nominal centre distance of the pinions in the pinion stand in mm	"d"	"155" mm
2.	Nominal revolution per minute (RPM) of the drive	"n"	"960"
3.	Reduction ration of gear box/pulley system	"I"	"0.35"
4.	Low speed mill	"e"	"0.30"
5.	Weight in Kg per metre of the re-rolled product	"w"	"0.150"
6.	No. of utilized hours	-	"2400"

3. In March, 1999, based on the information furnished by the appellant vide letter dated 03.12.1998, the provisional duty liability was

arrived at Rs. 26,238/- per month and communicated to the appellant. The Commissioner vide impugned order dated 19.11.2008 has finalized the annual capacity and fixed the duty liability at Rs. 83,550/- per month from 20.09.1997. He also finalized the provisional order dated 03.03.1999 by raising the liability at Rs. 83,550/- from 04.12.1998.

4. M/s Shiv Shakti Steels are not in appeal before us. M/s Haryana Steel Rolling Mills, the present appellant, is challenging the order of the Commissioner.

5. Learned advocate for the appellants submits that, the Commissioner has fixed the annual capacity and the duty liability based on the parameters applicable to M/s Shiv Shakti Steels, which was in operation in the said premises upto 31.03.1998 and the same was finalized based on the verification conducted by the Officers on the date of visit i.e 28.03.1998. The Commissioner has not got any verification done in respect of parameters declared by the new assessee, namely, the appellant and disregarded the parameters furnished by 03.12.1998. He assailed the order of the Commissioner which merely adopted the parameters of the erstwhile unit without taking into account the development subsequently.

6. Learned DR submits that as per Rule 4(2) of Hot Re-Rolling Mills Annual Capacity Determination Rules, 1997, in case a manufacturer proposes to make any change or any part thereof, they are required to intimate about the proposed change to the Commissioner of Central Excise at least one month in advance of such proposed change and the present appellant has failed to comply with the said provision and they ought to have taken the written permission of the Commissioner to change the parameters. Therefore, he supports the order of the Commissioner.

7. We have carefully considered the submissions from both sides. In this case, we are not considering the change of parameters by a

manufacturer. There is a change of manufacturer itself. The Department is not disputing that the premises in which M/s Shiv Shakti Steels was having the manufacturing unit were taken over by M/s Haryana Rolling Mills, the present appellant, and that they vide their letter dated 03.12.1998 informed the changed parameters. It is also seen that an order of provisional determination was issued in March 1999. Even if the manufacturer is required to give intimation about the changes at least one month in advance, it is on record that on 03.12.1998 the new unit, namely, appellant has given necessary intimation. Nothing prevented the Commissioner from getting the claims of appellant verified at the earliest. Since intimation has been given on 03.12.1998 by the appellant, it is not forth coming as to whether any verification was done and if it was done, the out come of such verification. With out conducting such verification and disclosing to outcome to the appellant, the adoption of the parameters of the earlier unit is not proper.

8. Therefore, we deem it proper to set aside the order of the Commissioner insofar as the same relates to the present appellant and remand the matter for fresh consideration with reference to their application dated 3-12-98 and taking into account the submissions that might be filed by the appellant. We keep all issues open.

9. The appeal is allowed by way of remand. Stay petition is also disposed of.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(M. VEERAIYAN)
MEMBER (TECHNICAL)

Golay