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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/5672/2004-5673/2004 - EX[DB] Date 13/07/2009

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

To :
M/S SINGLA STEELS PVT.LTD.
V. & P.O.DAUN,TEHSIL KHARAR,DISTT.ROPAR.

M/S SINGLA STEELS PVT.LTD. Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 458-459/2009- **EX[DB]** dated 01-7-09 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. CHANDIGARH
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2. Adv. / Consult
   MR.KAMALJEET SINGH
   J-144, PATEL NAGAR -I,GHAZIABAD.

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.
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16 Office Copy
17 Guard file
18. HON'BLE PRESIDENT
19. SHRI RAVINDER PAL,
M/S SINGLA STEELS PVT.LTD.
V.& P.O.DAUN,TEHSIL KHARA,DISTT.,ROPAR

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

(i) Excise Appeal No. 5672 of 2004

(Arising out of Order-in-Original No. 67/CE/2004 dated 10.09.2004 passed by the Commissioner of Central Excise, Chandigarh).

DATE OF HEARING : 01.07.2009
DATE OF DECISION : 01.07.2009

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 ?	Yes
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 Singla Steels Pvt. Ltd. .... **Appellants**
(Request for adjournment)

VERSUS

CCE, Chandigarh .... **Respondent**
(Rep. by Sh. K.P. Singh, DR)

AND

(ii) Excise Appeal No. 5673 of 2004

(Arising out of Order-in-Original No. 67/CE/2004 dated 10.09.2004 passed by the Commissioner of Central Excise, Chandigarh).

Shri Ravinder Pal .... **Appellant**
(Request for adjournment)

VERSUS

CCE, Chandigarh .... **Respondent**
(Rep. by Sh. K.P. Singh, DR)

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

Final **ORAL ORDER NO.** 458-459/09-Ex.

PER M. VEERAIYAN :

Since common question of law and facts arises in both the appeals, they were heard together and are being disposed of by this common order.

2. There is a letter dated 30.06.2009 from the learned advocate for the appellants, drawing our attention to the order of the Hon'ble High Court of Madras in the case of **Shri Vigneshwara Steels Ltd. vs CESTAT,** 2007-TIOL-573-HC-MAD-CX, by which the proceedings under Section 3A and Rule 96 ZP have been stayed and requesting for adjourning the proceedings in the present appeals. Learned DR strongly opposes the move for adjournment and draws our attention to the judgment of the Hon'ble High Court of Punjab & Haryana (the jurisdictional High Court so far as the appellants are concerned), in the matter of **Shree Bhagwati Steel Rolling Mills vs Commissioner of Central Excise, Chandigarh, 2007 (207) ELT 58 (P&H),** wherein, taking into account the provisions of Section 38A which was added to the Central Excise Act, 1944 by Section 131 of the Finance Act, 2001, it has been held that, the omission of Section 3A does not wipe out the liability of the assessee during the relevant period.

3. We find that the request for adjournment has been made in spite of the fact that by order dated 23.06.2006 an application for early hearing was granted and thereafter the matter was adjourned on nine occasions on one ground or the other and that moreover the appeals relate to the year 2004 and that the order of the Hon'ble High Court of Madras is an interim order and there is a final decision of the jurisdictional High Court. Therefore, we decline the request for adjournment and proceed to dispose of the appeals finally.

4. The relevant facts are that, the appellants company, a manufacturer of non-alloy steel ingots, opted for Compounded Levy Scheme w.e.f. 1st September, 1997 declaring that they had installed crucibles of capacities of 2MT and 2.5MT and accordingly their annual capacity of production was determined by the Commissioner as 14400 MT. However, when the officers of Central Excise visited on the night of 13.07.1999 and 14.07.1999 and commenced investigation, it came to light that they were having four crucibles of capacities of 2MT, 2.5MT, 3MT and 4MT; that all of them were in working conditions; that they have been installed prior to 01.09.1997 and that those crucibles were being periodically serviced for maintenance by the engineers. The officers also recovered log sheets relating to production of alloy steels and log sheets relating to electricity consumption. The use of the higher capacity crucibles has been admitted by several of the employees. The quantum of production and the quantum of electricity consumption also supported the use of higher capacity crucibles. It was, however, claimed that the higher capacity crucibles were ~~that~~ kept only as stand by and they were used sparingly when other crucibles could

not be used. It was also claimed that the higher production was achieved by slight modification of the crucibles of 2MT and 2.5MT capacity by increasing the diameter of the crucibles and by increasing the upper and lower levels of crucibles and reducing the thickness of the lining material used.

5. The Commissioner, in pursuance of the show cause notice, held that, the capacity has to be determined based on crucibles of 3MT and 4MT, and accordingly enhanced the capacity to 22400MT from 14400MT and confirmed demand of differential duty of Rs. 92 lacs along with interest and imposed equal penalty of Rs. 92 lacs. He has also ordered confiscation of non-alloy steel ingots and allowed the same on payment of redemption fine. He has also ordered confiscation of two crucibles of 3MT and 4MT, but allowed the same on payment of redemption fine.

6. Learned DR submits that the crucibles of capacities of 3MT and 4MT were also installed prior to 01.09.1997 and they were being regularly maintained. The appellants have deliberately declared only the crucibles with the capacity of 2MT and 2.5MT. The factual position came to the knowledge of the Department subsequent to investigation conducted on specific information. The statements of several employees who were incharge of running of the factory and were maintaining records confirmed use of the crucibles of higher capacity. The log sheets of production clearly indicated higher production corresponding to crucibles of 3MT and 4MT. The evidence of maintenance engineer also supports the use of crucibles of higher capacity. The claim that the crucibles of higher capacity were kept as

stand by is only an afterthought. He also submits that Shri Ravinder Pal, Director, has manipulated the records and also instructed to declare lesser quantity to the visiting officers of the Central Excise and, therefore, his involvement in the manipulation is evident and, therefore, he seeks upholding the penalty on Shri Ravinder Pal also.

7. We have carefully considered the submissions of the learned DR and perused the relevant records. The existence of four furnaces of capacity 2MT, 2.5MT, 3MT and 4MT at the time of visit of the Central Excise Officers is not in dispute. The fact of installation of four crucibles before 01.09.1997 is clearly established by the evidence of the maintenance engineer. It is true that an assessee working under Compounded Levy Scheme can keep spare crucibles. However, it was required that they have to give necessary intimation about the availability of spares and also before they use such crucibles. The claim of the appellants that crucibles of 3MT and 4MT were kept as stand by appears to be not acceptable. Further, the quantum of production as per log sheets and quantum of electricity consumed also corresponds to use of crucibles of higher capacity. The submissions that they improvise the crucibles of 2MT and 2.5MT capacity to give higher production also cannot be accepted. It does not stand to reason that the company having capacity of higher capacity crucibles of 3MT and 4MT needs to take improvised methods to enhance the capacity of crucibles of 2MT and 2.5MT to enable higher production. The evidence is thus overwhelmingly supports the decision of the Commissioner to enhance the annual production of capacity based on 3MT and 4MT capacity crucibles. Therefore, we hold that the

enhancement of annual capacity and consequently the demand of differential duty is fully justified.

8. The reliance placed by the appellants on the interim order of the Hon'ble High Court of Madras in the case of **Shri Vigneshwara Steels Ltd.** (supra) is misplaced. The decision of the Hon'ble High Court of Punjab & Haryana in the case of **Shree Bhagwati Steel Rolling Mills** (supra) upholding the demand of duty under Section 3A after its omission from the statute book is relevant. We reproduce the relevant portion of the decision of the Hon'ble High Court of Punjab & Haryana as follows :

> **"20. We, however, need not go into the question in further detail as we find that vide Section 131 of the Finance Act 2001, Section 38A was added to the Central Excise Act, 1944, to the following effect :-**
>
> > **"38A. Effect of amendments, etc., of rules, notifications or orders.- Where any rule, notification or order made or issued under this Act or any notification or order issued under such rule, is amended, repealed, superseded or rescinded, then, unless a different intention appears, such amendment, repeal, supersession or rescinding shall not-**
> >
> > **(a) revive anything not in force or existing at the time at which the amendment, repeal, supersession or rescinding takes effect; or**
> >
> > **(b) affect the previous operation of any rule, notification or order so amended, repealed, superseded or rescinded or anything duly done or suffered thereunder; or**
> >
> > **(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any rule, notification or order so amended, repealed, superseded or rescinded; or**

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under or in violation of any rule, notification or order so amended, repealed, superseded or rescinded; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the rule, notification or order, as the case may be, had not been amended, repealed, superseded or rescinded."

21. Thus, even by omission of Section 3A, liability of the assessee thereunder was not wiped out."

9. This issue has also been considered by the Larger Bench of the Tribunal in the case of **Surana Metals & Steels (I) Ltd. vs Commissioner of Central Excise, Chennai,** 2007 (216) ELT 24 (T-LB), wherein it has been held as follows :

"9. For the forgoing reasons, we answer the issues referred to the Larger Bench as under :

(a) The provisions of Section 38A of the Central Excise Act, 1944, inserted by Section 131 of the Finance Act, 2001, are applicable in respect of the obligations and liabilities incurred under Rules 96ZO and 96ZP before they were omitted by Rule 7 of the Central Excise (Third Amendment) Rules, 2001, notwithstanding the omission of Section 3A w.e.f. 11-5-2001 by the Finance Act, 2001.

(b) This issue does not survive in view of our answer to the above issue, at (a)."

10. Regarding the role of Shri Ravinder Pal, Director, we find that the Commissioner has given detailed findings in para 57 of her

order. We agree that he was incharge of the company and looking after the day-to-day affairs of the company and has intentionally suppressed the material information from the Department by not disclosing the installation and use of crucibles of higher capacity and, therefore, the penalty imposed on him is also justified.

11. In view of the above, we uphold the order of the Commissioner (Appeals) and reject the appeals of the appellants.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(M. VEERAIYAN)
MEMBER (TECHNICAL)

Golay