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

Date 24/09/2009

Appeal No. E/2135/2007 – SM[BR]

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

To :
M/S RIGHT STEEL & ALLOYS P LTD
SH-10, SHASTRI NAGAR, GHAZIABAD.

Appellant

M/S RIGHT STEEL & ALLOYS P LTD

Vs
Respondent

C.C.E. MEERUT I

I am directed to transmit herewith a certified copy of **Final order No.** 1163 / 2009 –SM[BR] dated 8.9.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
C.C.E. MEERUT I
EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult
MR.RAJESH CHHIBBER
FA/9, NEW KAVI NAGAR, GHAZIABAD
3 S.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
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Excise Appeal No.E/2135/07-SM

[Arising out of Order-in-Original No. 1-2, Commr./MRT-I/2007 dated 06.02.2007 passed by the Commissioner, Central Excise, Meerut-I].

Date of Hearing:08.09.2009
Date of decision: 08.09.2009

Right Steel & Alloys ...Appellant

Vs.

CCE, Meerut-I ... Respondent

Present for the Appellant :Shri. Rajesh Chhibber, Advocate
Present for the Respondent:Shri S. Gautam, DR

CORAM:HON'BLE MR. RAKESH KUMAR, TECHNICAL MEMBER

Final **ORDER NO.** 1163/2009-SM(BR) **DATED:08.09.2009**

PER: RAKESH KUMAR

The appellants are manufacturer of MS ingots and billets from scraps. During the year 1997 they opted for annual capacity production based assessment of duty under section 3 A of Central Excise Act 1944, which was allowed by the Commissioner and annual capacity was fixed vide Commissioner's order No.17/IFU 97 dated 04.09.97. However they opted to move out of annual capacity based assessment for the years 1998-99 and 1999-2000 and during all these years they addressed letters to the Jurisdictional Assistant Commissioner. First letter dated 05.04.98 was addressed to Asstt. Commissioner, Central Excise, Dehradun informing that they shall pay excise duty on actual production of ingots instead of duty based on annual production capacity under Rule 96ZO (3) and subsequently on 12th April, 1999 they addressed similar letter again to the Assistant Commissioner. However, their request was rejected and differential duty demands were raised for 1998-99 & 1999-2000. One such demand for amount of Rs.3,43,313/- for the period from 10.05.99 to 5.7.99 was confirmed vide Deputy Commissioner's order No.48/2004 dated 31.03.04 and appeal against this order was dismissed by CCE (Appeals) vide Order-in-Appeal No.50-CE/MRT-I/04 dated 31.03.2004. Appeal against this order was filed before the Tribunal and Tribunal vide final order No.1977/05-SM (BR) dated 27.10.2005 set aside the demand and remanded the matter to the Jurisdictional Commissioner to consider their request for moving out of Compounded Levy Scheme for 1998-99 and 1999-2000 on merits. In pursuance of the Tribunal's order, the matter was adjudicated denovo by the Commissioner vide order in original No.01-02/Commr./Meerut-I/2007 dated 29.01.07 by which the Commissioner again rejected the appellant's option for payment of duty during the years 1998-99 and 1999-2000 based on actual production. The reason for rejecting the appellant's request, as given by the Commissioner's order, is that the appellant has not informed the Commissioner that their actual production was lower than annual production. The Commissioner held that the appellant has not produced any evidence to prove that their actual production was lower than ACP fixed by the Commissioner and that in the absence of data showing that their actual production is lower than annual production, it is not possible to consider the redetermination of their actual production and determination of the amount of duty payable on actual production. It is against this order that the present appeal has been filed.

2. Heard both the sides.

3. Shri Rajesh Chhibber, the ld. Counsel for the appellant pleaded that the ground on which the appellant's request for moving out of Compounded Levy Scheme has been rejected is not correct, that during 1998-99 and 1999-2000 the appellant had been paying duty on actual production basis and filing RT 12 returns which would be available in the Jurisdictional Range Office, that the appellant are not in a position to furnish the data for the reason that this unit was taken over by the UP State Finance Corporation in 2000 and the appellant ~~were~~ do not have access to its record, that since the RT 12 returns being filed by the appellant during the years 1998-99 and 1999-2000 are available in the Range Office, it is possible for the Commissioner to get the required information from the Range Office and consider their request for moving out of the compounded levy scheme for the years 1998-99 and 1999-2000. Shri Chhibber, therefore, pleaded for remand of this matter for reconsideration of their request for moving out of compounded levy scheme, based on the data which has been furnished by the appellant in their RT 12 returns to Jurisdictional Range office, during the years 1998 99 and 1999-2000.

4. Shri S.Gautam, the learned DR, pleaded that the matter is very old and that he has no objection to remand of this matter provided the appellant fully cooperate and denovo adjudication is completed in a time bound manner.

5. I have carefully considered the submissions from both the sides. There is no dispute about the fact that during the year 1997-98 the appellant had opted for paying duty on annual production capacity basis under rule 96ZO(3), but for the years 1998-99 & 1999-2000 during each of these years they had addressed letters to the Jurisdictional Assistant Commissioner for moving out of the production capacity based compounded levy scheme and permitting payment of duty on actual production. But these requests were rejected, first, on the ground that the letters were addressed to the Assistant Commissioner and not to the Commissioner and subsequently in the impugned order in original dated 29.1.07 by the Commissioner on the ground that the appellant has not furnished the data regarding their production during the years 1998-99 and 1999-2000. This is not a valid reason for rejecting payment of duty on actual production as there is no dispute about the fact that during these periods, the appellants were discharging duty liability on actual production basis and were submitting monthly RT 12 returns to the Jurisdictional Range Office and the Department can very well access the data regarding production from the Range Office. In view of this, the impugned order is set aside and the matter is remanded to the Commissioner for denovo adjudication after obtaining the data regarding production during the years 1998-99 and 1999-

2000 and there after decide the appellant's request for moving out of the Compounded Levy Scheme on merit. Since the matter is very old, the Commissioner is directed to complete the adjudication proceedings within a period of 3 (three) months from the date of issue of this order.

[Dictated & Pronounced in the open Court].

(RAKESH KUMAR)
TECHNICAL MEMBER

Anita