TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. E/4927/2004 – SM[BR] Date 17/11/2009

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

To :
AJMERA STEELS PVT. LTD.
74, A-I, SECTOR-A, INDL. AREA, RATLAM (M.P.)

AJMERA STEELS PVT. LTD. Appellant

Vs

C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1423 / 2009 –SM[BR] dated 11.11.2009 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. INDORE
   P.B.-10, MANIK BAGH PALACE, INDORE (M.P.)
2. Adv. / Consult SHRI RAMESH NAIR ADV.
   "LAKSHMI VIHAR" AG-192, SCHME NO. 54, VIJAY NAGAR
   INDORE.

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)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-III

Date of hearing/decision: 11.11.2009

Excise Appeal No. 4927 of 2004-SM

[Arising out of order-in-Appeal No. 311-CE/IND/APPLS-II/2003 dated 25.6.2007 passed by the Commissioner (Appeals), Central Excise & Customs, Indore]

For approval and signature:

Hon'ble Shri M. Veeraiyan, Technical Member

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 Ajmera Steels Pvt. Ltd. Appellant

Vs.

CCE, Indore Respondent

Appearance:
Appeared for the Appellant – Shri R.S. Dinkar, Advocate
Appeared for the Respondent- Shri Sansar Chand, DR

Coram: Hon'ble Shri M. Veeraiyan, Technical Member

Order No. 1423/2009 SM (BR)

Per: M. Veeraiyan:

This is an Appeal against the order of the Commissioner (Appeals) No. 311-CE/IND/APPLS-II/2003 dated 25.6.2003.

2. Heard both sides.

3. The relevant facts, in brief, are that the Appellant is a manufacturer of M.S twisted bars and angles which came under Compounded Levy Scheme with effect from 1.9.97 in terms of Notification No. 31/97-CE(NT) dated 1.8.97 as amended by Notification No. 43/97-CE dated 30.8.97. The Appellant by letter dated 1.9.97 and subsequent letter dated 8.9.97 informed the jurisdictional Assistant Commissioner that they were not in a position to commence production and machinery was being sent to workshop in Punjab for modification. After necessary modification the machinery was brought back and they filed declaration dated 10.10.97 informing that they will be commencing production from 12.10.97. Commissioner in pursuance of the declaration dated 10.10.97 vide communication dated 23.10.97 has fixed the annual capacity of production at 3021/- MT. The dispute relates to whether the Appellant is required to pay duty for the period from 1.9.97 to 11.10.97. The Appellant claimed that they were not producing any goods during the period after duly intimating to the Department and, therefore, they are not liable to pay any duty. The original Authority, however, confirmed the demand of Rs.1,01,390/- which has been upheld by the Commissioner (Appeals).

4. Ld. Advocate for the Appellant drew my attention to the above facts with reference to the documents referred above and submits that there is no dispute that the Appellant was not engaged in production during the period from 1.9.97 to 11.10.97. Under these circumstances, no liability arises. Alternatively, he claims that in view of the undisputed facts that the unit was not manufacturing,

the abatement envisaged in terms of proviso to Section 3A (3) of the Central Excise Act should be extended.

5. He also relies on the decision of the Tribunal in the case of **Agarwal Iron & Steel Industries Vs. Commissioner of Central Excise, Kol.II** reported in 2007 (217) ELT 156 and decision in the case of **Pooja Steel & Agriculture Industry Vs. Commissioner of C. Ex., Ahmedabad** reported in 2004 (177) ELT 624.

6. Ld. SDR reiterating the findings of the Commissioner (Appeals) submits that there is no provision for any abatement even before production capacity is fixed. He also submits that the Appellant automatically comes into the Compounded Levy Scheme with effect from 1.9.97 and in the absence of fulfilling the conditions for abatement, they are not eligible to get the benefit and, therefore, he seeks upholding the order of Commissioner (Appeals). He also submits that the decision in the case of **Agarwal Iron & Steel Industries** relates to surrender of registration certificate, by the factory closed due to labour strike and that the decision in the case of **Pooja Steel & Agriculture** relates to changing of production capacity due to change in parameters and the facts of the said case are not applicable to the facts of the present case.

7. I have carefully considered the submissions of both the sides and perused the records. It is not disputed that the Appellant has duly intimated about the closure of the factory from 1.9.97 and sending the machinery for modification to workshop in Punjab. The original Authority and Commissioner (Appeals) have recorded these submissions and without disputing the same merely concluded that

they are not eligible for the benefit of abatement provided under proviso to Section 3A(3) of Central Excise Act. It is a clear case of not commencing the production from 1.9.97 when the Compounded Levy Scheme came into force in respect of the products manufactured by the Appellant. In such a case, to fasten duty liability for a period when the Appellant was not engaged in production after due intimation to the Department is not warranted. If a new unit were to come into existence from 12.10.97, admittedly, the assessee was required to pay duty only from 12.10.97. As a unit which was functioning prior to 1.9.97 the production capacity may be determined by the method prescribed. However, I do not find any justification whatsoever to fasten liability for the period from 1.9.97 to 11.10.97. Even if it is held that the Appellant came under the scheme from 1.9.97, it is a clear case, where the benefit of abatement provided under proviso to Section 3A(3) is to be extended as the unit was not manufacturing after due intimation to the Department.

8. In view of the above, the Appeal is allowed with consequential relief as per law.

(Dictated & pronounced in open Court)

(M. VEERAIYAN)
TECHNICAL MEMBER

RM