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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/567 /2005 - EX[DB] Date 28/04/2010

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

To :
C.C.E.CHANDIGARH
C.R.BUILDING SECTOR 17-C,CHANDIGARH

C.C.E.CHANDIGARH Appellant

Vs

M/S V.K.ARGO & ALLIED INDUSTRIES Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 212 **2010 EX[DB]** dated 13-4-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

**Copy to :**

1. Respondent
   M/S V.K.ARGO & ALLIED INDUSTRIES
   MANDI GOBINDGARH
2. Adv. / Consult

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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13 Office Copy
14 Guard file
15. Hon'ble President

Assistant Registrar
(Excise Appeal Branch)

16. Tax India Online.Com (P) Ltd.
Unit No.1, 2nd Floor, Vasant Aracade, Nelson Mandela Road,
Vasant Kunj, New Delhi-70

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**
**Principal Bench, New Delhi**

**COURT NO. I**

**DATE OF HEARING : 13/04/2010.**
**DATE OF DECISION : 13/04/2010.**

**Excise Appeal No. 567 of 2005**

[Arising out of the Order-in-Appeal No. 708/CE/CHD/2004 dated 9/11/2004 passed by The Commissioner (Appeals), Central Excise, Chandigarh.]

For Approval and signature :

**Hon'ble Justice R.M.S. Khandeparkar, President**
**Hon'ble Shri Rakesh Kumar, 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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | : No |
| 3. | Whether their Lordships wish to see the fair copy of the order? | : Seen |
| 4. | Whether order is to be circulated to the Department Authorities? | : Yes |

CCE, Chandigarh — Appellants

Versus

M/s V.K. Agro & Allied Industries — Respondent

**Appearance**

Shri V. Choudhary, Authorized Representative (DR) – for the Appellants.

None – for the Respondent.

CORAM : **Hon'ble Justice R.M.S. Khandeparkar, President**
**Hon'ble Shri Rakesh Kumar, Member (Technical)**

FINAL Order No. 212/10-08 Dated : ___________

**Per. Justice R.M.S. Khandeparkar :-**

Heard the learned DR for the appellants. None appeared for the respondent.

2. This appeal arises from an order dated 9th November 2004 passed by the Commissioner (Appeals), Chandigarh whereby the Commissioner (Appeals) has set aside the order passed by the Adjudicating Authority and has dropped the proceedings. The Adjudicating Authority by his order dated 7th April 2004 confirmed the demand of Rs. 5,62,681/- under Rule 96ZP (3) (i) of the Central Excise Rules against the respondent alongwith interest @ 18% p.a. while appropriating an amount of Rs. 1,20,575/- which had been already paid by the respondent and further imposing penalty of Rs. 4,42,106/-.

3. The respondent is the manufacturer of hot rolled non-alloy steel products classifiable under Chapter 72 of the Central Excise Tariff Act, 1985. The respondent filed a declaration under sub-rule (1) of Rule 3 of the Hot Re-rolling Steel Mills Annual Capacity Determination Rules, 1997 and the Commissioner, Chandigarh determined the annual capacity of production of the rolling mills of the respondent as 3215.320 M.T. per annum under order dated 9th of February 1998. Accordingly, the annual duty liability for the respondent was @ Rs. 300/- per M.T. totalling to Rs. 9,64,596/- and monthly duty liability to the tune of Rs. 80,383/-,

which the respondent was required to discharge by $10^{th}$ of each month and the differential amount, if any, by $31^{st}$ March 1998 alongwith interest @ 18% per annum.

4. Pursuant to the scrutiny of RT-12 returns, which was filed by the respondent for the period from September 1997 to March 1998, it was revealed that the respondent had failed to pay the duty, which they were required to pay in terms of Rule 96 ZP (3) of the said rules to the tune of Rs. 5,62,681/-. Under letter dated $15^{th}$ September 1997, the respondent was requested by the Superintendent, Central Excise to pay the said amount alongwith interest @ 18%, the respondent, however, failed to pay the same. The show cause notice dated $25^{th}$ September 1998 came to be issued to respondent calling upon them to show cause as to why the said differential amount of duty should not be recovered alongwith the interest and why the penalty should not be imposed.

5. In response to the show cause notice, the respondent under their reply submitted that their factory was closed w.e.f. $23^{rd}$ January 1998 and no goods were produced thereafter. It was the further contention on behalf of the respondent that their factory was permanently closed from $1^{st}$ April 1998 and an intimation in that regard was sent to the Superintendent. The respondent under their letter dated $16^{th}$ September 1999 had requested the Commissioner to calculate the production as per proviso to Section 3A (2). It was further informed that the factory was taken over by PFC in 1999 and the respondent had deposited

a sum of Rs. 1,20,575/- under challan dated 30th March 1998 towards the duty liability for the period from October 1997 to January 1998 treating the furnace as 'batch type'. It was the further contention of the respondent that they are covered under compounded levy scheme w.e.f. 1st September 1997 and they had filed a declaration declaring the furnace as 'batch type' but the Commissioner under his order dated 9th February 1998 determined the capacity of the furnace as 3215.320 M.T. per annum in terms of proviso to Rule 4 of the said rules pending verification of the type of furnace while holding that the type of furnace as 'pusher type', without considering the declaration made by the respondent. Under their letter 25th September 1998, the respondent had requested the Commissioner to verify the furnace and to determine the annual capacity. It was further the contention on behalf of the respondent that a perusal of Section 3A (2) proviso and Rule 4 of the said rules would reveal that the duty would be leviable only on proportionate basis for that part of the year during which the production was in operation or the rolling mill was working and the demand was not sustainable in relation to the rest of the period.

6. The Additional Commissioner, Chandigarh after hearing the parties held that the Commissioner on verification of correctness of the declaration filed by the respondent had fixed the duty liability after determining the annual capacity of production by utilisation of the furnace as declared by the respondent and the same was not challenged by the respondent besides that the

declaration was in relation to furnace as pusher type, held that the respondent had failed to disclose any justifiable cause for rejection of the demand made against the respondent by the Department and hence confirmed the demand as stated above. In the appeal filed against the same by the respondent, the Commissioner (Appeals), Chandigarh held that the Adjudicating Authority erred in holding that the declaration was in respect of furnace as pusher type when in fact it was as batch type and, therefore, set aside the order passed by the Adjudicating Authority and dropped the demand.

7. The learned DR while assailing the impugned order stated that the Commissioner (Appeals) erred in holding that the Department had not verified the declaration filed by the party and that the declaration was in relation to furnace as batch type and not as pusher type. Attention was drawn in that regard to the copy of declaration, which was filed by the respondent and duly verified by them on 5th November 1997 before the Competent Authority, while contending that the declaration clearly refers to the type of furnace as pusher type. According to the learned DR since the impugned order rests only on this sole ground and that being contrary to the materials on record, the impugned order is liable to be set aside.

8. On perusal of the copy of the declaration, which was required to be filed by the respondent under Rule 96 ZP (4) of Central Excise Rules, 1994 and Rule 3 (i) of Hot Re-rolling Steel Mills Annual Capacity Determination Rules, 1997 in terms of

Notification No. 32/97 as amended by Notification No. 45/97 dated 30th of August 1997 as was applicable from 1st September 1997. The respondent in the said declaration had categorically stated that type of furnace to be "pusher" and said declaration was duly verified and the same is also apparent from the notings below the declaration. The Commissioner (Appeals) does not appear to have considered this document from the records and only on submissions had arrived at the finding that the declaration filed by the respondent discloses furnace as batch type. The finding is clearly contrary to the materials on record and hence cannot be sustained. Once the said finding is set aside, the entire order also would be liable to be set aside as the said order is based solely on the basis of the said finding.

9. In the facts and circumstances of the case and for the reasons stated above, the impugned order cannot be sustained and accordingly hereby set aside and the order of the Adjudicating Authority is restored.

10. The appeal accordingly succeeds and is disposed of in the above terms.

**(Justice R.M.S. Khandeparkar)**
**President**

**(Rakesh Kumar)**
**Member (Technical)**

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