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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/80 /2010 - EX[DB] WITH E/S/68/2010 Date 09/08/2010

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

To :
M/S. ANAND RE-ROLLING MILL
RING ROAD NO.2, SODONGARI, RAIPUR (C.G.)

M/S. ANAND RE-ROLLING MILL Appellant

Vs

C.C.E. RAIPUR STAY ORDER NO.506/2010-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 537/ **2010 EX[DB]** dated 16-7-10 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.SUSHIL KUMAR,CA
   C-1-A-51, SURYA VIHAR, JUNWANI, BHILAI (CG)
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. 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. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file
16. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.I

E/Stay No.68/10-Ex

(Arising out of order in original No. 52/Sec 3A/Commr/09 dated 12.10.09 passed by the Commissioner of Central Excise, Raipur)

M/s Anand Re-rolling Mill — Appellants

Vs

CCE, Raipur — Respondent

Appeared for the Appellant: Shri Sunil Kumar, C.A.
Appeared for the Respondent: Shri A. Khan, DR

Coram: **Hon'ble Mr. Justice R.M.S. Khandeparkar, President**
Hon'ble Mr. Rakesh Kumar, Technical Member

Date of Hearing: 16.7.2010

STAY ORAL ORDER 50 6A/10-EX.

Per: Justice R.M.S. Khandeparkar:

Heard the learned Chartered Accountant for the Appellants and learned DR for the Respondent.

2. Since we propose to dispose of the appeal itself, we direct the registry to place the appeal for hearing forthwith. Application accordingly stands disposed of.

(JUSTICE R.M. S. KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
TECHNICAL MEMBER

MPS*

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.I

E/Appeal No.80/10-Ex

(Arising out of order in original No. 52/Sec 3A/Commr/09 dated 12.10.09 passed by the Commissioner of Central Excise,Raipur)

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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? No

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 Anand Re-rolling Mill — Appellants

Vs

CCE, Raipur — Respondent

Appeared for the Appellant: Shri Sunil Kumar, C.A.
Appeared for the Respondent: Shri A. Khan, DR

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

Date of Hearing: 16.7.2010

FINAL ORAL ORDER 537/10-EX

Per: Justice R.M.S. Khandeparkar:

Heard the learned Chartered Accountant for the Appellants and learned DR for the Respondent.

2. This appeal is taken up for hearing in terms of an order passed today in Stay Application No. 68/10-Ex.

3. This appeal arises out of the order dated 12.10.09 passed by the Commissioner, Raipur. By the impugned order, the learned Commissioner has finalized the Annual Capacity of the appellants Mill for the year 1997-98 at 3057 MT and fixed the duty liability at Rs.76,425/- per month under Rule 96-ZP(3) of the Central Excise Rules, 1944. There is no grievance made about fixation of such annual capacity or duty liability. The grievance of the appellants is that no such liability should have been fixed for the period subsequent to April 1998. As long as back December 1997, the appellants had informed the concerned authority that they had closed the mill and they were not carrying out any production activity. Besides the Department itself on inspection of the factory from 13th March, 1998 had found that all the machinery was in a dismantled state. As far as the fact of closure of the factory is concerned, the same is not disputed in as much as, that the impugned order itself states:-

"7.3 – The assessee vide their letter dated 18.12.1997 stated that they have closed their mill from 'this month'".

"7.6 – Verification of the mill was conducted by the Central Excise Officers on 30.3.1998 before Shri Om Prakash Goenka, Proprietor. On verification, the mill was found in semi-dismantled condition." Apparently, as they were informed by the Appellants, the production from the mill had stopped much prior to the expiry of the financial year 1997-98. Even the mill was found dismantled on

30.3.98. The impugned order nowhere discloses that the appellants had attempted to reconstruct the mill or to re-start the production. The only contention which was sought to be convassed on behalf of the respondent is that there was no specific intimation given by the appellants that they were opting out the scheme. The very fact that the appellants had informed that they had closed down their factory and no production was being carried out and the said fact was verified by the Department and it was found that the mill was dismantled, that itself discloses that before expiry of the period 1997-98, the appellants had opted out of the scheme. That being so, the appellants should not have been asked to pay the duty for the period commencing from April, 1998.

4. The reliance placed by the learned Commissioner in the decision of the Apex Court in the matter of CCE Vs. Venus Castings (P) Ltd reported in 2000 (117) ELT 273 (SC) is thoroughly misplaced. In fact the decision supports the case of the appellants. Para 10 of the decision reads as under:

"The Schemes contained in Section 3A(4) of the Act and Rule 96-ZO(3) or Rule 96-ZP(3) of the Excise Rules are two alternative procedures to be adopted at the option of the assessee. Thus the two procedures do not clash with each other. If the assessee opts for procedure under Rule 96-ZO(1) he may opt out of the procedure under Rule 96-ZO(3) for a subsequent period and seek the determination of annual capacity of production. An assessee cannot have a hybrid procedure of combining the procedure under Rule 96-ZO(1) to which Section 3A(4) of the Act is attracted. The claim by the respondents is a hybrid procedure of taking advantage of the payment of lumpsum on the basis of total furnace capacity and not on the basis of actual capacity of production. Such a procedure

cannot be adopted at all, for the two procedures are alternative schemes of payment of tax."

5. For the reasons stated above, the Appeal is allowed. The impugned order so far as it relates to the duty liability for the period from April 1998 to March, 2000 is hereby quashed and set aside. The appeal is disposed of in above terms.

(JUSTICE R.M. S. KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
TECHNICAL MEMBER

MPS*