

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

Appeal No. E/495 /2007-500 /2007 - EX[DB] &
E/801-806/2007-EX

Date 18/05/2010

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

To :
M/S RANA CASTINGS LTD.
JASHODHARPUR INDL. AREA, KOTDWAR,
DEHRADUN
M/S RANA CASTINGS LTD.

Appellant

Vs
Respondent

C.C.E. MEERUT-I

2010 EX[DB] dated 14-5-10

I am directed to transmit herewith a certified copy of Final order No. 344-355/
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. MEERUT-I

EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR MEERUT

2. Adv. / Consult

MR. V. LAKSHMI KUMARAN

B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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 Publications 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. MR. JAKIR RANA DIRECTOR OF M/S RANA CASTINGS LTD.
JOASHODHARPUR INDL. AREA, KOTDWAR, DEHRADUN

17. MR. KAMRUZAMA RANA DIRECTOR OF M/S RANA CASTINGS
JASHODHARPUR INDL. AREA, KOTDWAR, DEHRADUN

18. MR. NOOR SALEEM RANA DIRECTOR OF M/S RANA CASTINGS
JASHODHAPUR INDL. AREA, KOTDWAR, DEHRADUN

19. MR. KADIR RANA DIRECTOR OF M/S RANA CASTINGS LTD.
JASHODHARPUR INDL. AREA, KOTDWAR, DEHRADUN

20. MR. QAMRUZAMAN DIRECTOR OF M/S RANA CASTINGS LTD.
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**CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram,
NEW DELHI
COURT No. I**

CENTRAL EXCISE APPEAL NO. 495 TO 500 OF 2007

[Arising out of Order-in-Appeal No. 260-265-CE/MRT-I/2006 dated 30.11.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut-I, Meerut]

CENRAL EXCISE APPEAL NO. 801 TO 806 OF 2007

[Arising out of Order-in-Original No. 136-137/Commr/Mrt-I dated 11.12.2006 passed by the Commissioner, Customs & Central Excise, Meerut-I, Meerut]

Dated of hearing/decision: 26th March, 2010

For approval and signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President;
Hon'ble Mr. 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?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	

- 1) M/s. Rana Casting Ltd.,
- 2) Shri Qamruzaman, Director
- 3) Shri Kamruzama Rana, Director
- 4) Shri Jakir Rana, Director
- 5) Shri Kadir Rana, Director
- 6) Shri Noor Saleem Rana, Director

Appellants

Vs.

CCE, Meerut

Respondent

Appearance:

Shri A.R. Madhav Rao, Advocate for the appellants;
Shri Sunil Kumar, Authorised Representative (SDR) for the Revenue

Coram:

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

FINAL **ORDER NO. 344-355/10-20** dated *14/5/2010*

Per RAKESH KUMAR:

The facts leading to these appeals are, in brief, as under:-

1.1 M/s. Rana Castings Ltd., Jashodharpur Industrial Area, Kotdwar, Dehradun (hereinafter referred to as "the appellant company") have a factory manufacturing M.S. Ingots chargeable to Central Excise duty under heading 7206.90 of the Central Excise Tariff. Shri Qamruzaman, Shri Kamruzama Rana, Shri Jakir Rana, Shri Kadir Rana, and Shri Noor Saleem Rana are directors of the appellant company. The appellant company was availing duty exemption under notification No. 50/2003-CE dated 1.6.2003 known as "Hill area exemption for Uttranchal and Himachal Pradesh". This exemption is available to the new industrial units set up in the industrial area specified in this notification which have commenced commercial production on or after 7th day of January, 2003, but not later than 31st March, 2010 and industrial units existing prior to 7.1.2003 in the specified areas but which have undertaken substantial expansion by way of increase in the installed capacity by not less than 25% on or after 7th day of January, 2003, but have commenced

production from such expanded capacity not later than 31st day of March, 2010. The appellant company was availing this exemption by claiming to be in the second category i.e. units existing prior to 7.1.2003 which have undertaken substantial expansion by way of at least 25% increase in installed capacity on or after 7.1.2003. The ^{Appellants,} vide their letter dated 3.7.2003 had intimated to the jurisdictional Dy. Commissioner of Central Excise that they were going to increase the installed capacity of their furnace from 4 M.T. to 6 M.T. and vide their letter date d4.9.2003 they intimated that the expansion work has been completed and capacity of their furnace has increased from 4 M.T. to 6 M.T. The appellants in this regard also submitted certificate of Tehsildar, Kotdwar mentioning Khasra number of the plot on which unit is situated, order dated 27.3.1998 issued by the Commissioner of Central Excise, Meerut-I fixing their Annual Capacity of Production for the year 1997-98 as 12,800 M.T., photocopy of purchase bills in respect of procurement of goods for expansion of the unit's capacity, certificate dated 31.8.2003 issued by M/s. Rana Industrial Electronic System, Ahmedabad regarding commissioning of 6 Tonnes Steel Melting Furnace and some other documents. The Department, however, was of the view that in the absence of definition of "substantial expansion" in the exemption notification, it should be understood in the sense as elaborated by the Tribunal in its judgment in the case of M/s. Travancore Titanium Products vs. C.C., reported in 2002 (148) ELT 640 (Tri.) wherein the Tribunal, while examining the scope of the term "substantial expansion

of an existing unit” in the context of imports of plant and machinery under ‘Project Import Scheme’ under heading 84.66 of the Customs Tariff, had observed that mere capacity expansion and modernization of a plant is not covered under the project import scheme and “substantial expansion of an existing unit” means substantial addition of machinery and not merely by substantial expansion of production of a unit. The department, therefore, was of the view that since the appellant company has simply replaced old furnace of 4 M.T. capacity with a new furnace of 6 M.T. capacity and there are no additions in the plant and machinery, the same cannot be considered as substantial expansion. It is on this basis that 8 show cause notices dated 27.10.2004, 8.11.2004, 11.1.2005, 14.2.2005, 15.3.2005, 30.3.2005, 18.5.2005 and 8.7.2005 were issued for the period from October, 2003 to July, 2004 for total duty demand of Rs. 1,03,81,578/- along with interest and two show cause notices dated 16.11.2005 and 8.3.2006 were issued for the period, from November 2004 to January 2006 for total duty demand of Rs. 2,13,58,256/- along with interest. All the show cause notices, in addition to demand of duty along with interest, also proposed imposition of penalty on the appellant company under Rule 25(1) of Central Excise Rules, 2002 read with Section 11AC and penalty on its Directors under Rule 26 of the Central Excise Rules, 2002.

1.2 The first group of 8 show cause notices for the period October, 2003 to July, 2004 was adjudicated by the Jt. Commissioner vide a common order-in-original No. 04-11/JOINT COMMISSIONER/M-I/01

dated 30.01.2006 by which the entire duty demand of rs. 1,03,81,578/- was confirmed along with interest at the applicable rate as per provision of Section 11AB of the Central Excise Act and besides this, penalty of Rs. 1,03,81,578/- was imposed on the appellant company and, a penalty of Rs. 10 lakh was imposed under Rule 26 of Central Excise Rules, 2002 on each of the five Directors. The appellant company as well as its five Directors filed appeal to the Commissioner (Appeals) against this order of the Jt. Commissioner and the Commissioner (Appeals) vide Order-in-Appeal No. 260-265/CE/MRT-I/06 dated 30.11.2006 upheld the duty demand and the interest but reduced the penalty on the Directors from Rs. 10 lakhs each to Rs. 1 lakh each. The Commissioner (Appeals), however, held that the appellant company would be eligible for Cenvat Credit of duty on the inputs/capital goods. It is against this order of the Commissioner (Appeals) that six appeals bearing No. E/495 to 500/07 have been filed before the Tribunal.

1.3 The other two show cause notices for duty demand of Rs. 2,13,58,256/- for November, 2004 to January, 2006 period were adjudicated by the Commissioner of Customs & Central Excise, Meerut vide Order-in-Original No. 136-137/COMMR/MRT-I/06 dated 30.11.2006 by which the Commissioner denied the duty exemption and confirmed the entire duty demand along with interest. Besides this, the Commissioner imposed penalty of rs. 2,13,55,246/- on the appellant company under Rule 25(1) of Central Excise Rules, 2002 read with Section 11AC of Central Excise Act, 1944, and imposed penalty

of Rs. 5 lakhs on each of the five Directors of the appellant company under Rule 26 of the Central Excise Rules, 2002. Against this order of the Commissioner six appeals bearing No. E/801 to 806 of 2007 have been filed.

2. Heard both sides.

2.1 Shri A.R. Madhav Rao, the learned Counsel representing the appellants, pleaded that the only basis of denying the benefit of exemption notification No. 50/03-CE to the appellants is that they have not undertaken substantial expansion in the sense it has been explained by the Tribunal in its judgment in the case of M/s. Travancore Titanium Products (supra) in the context of import of plant and machinery under project import scheme for substantial expansion that there should be expansion of the unit and not mere the expansion of installed capacity; that adopting the meaning of the term "substantial expansion" with regard to the imports under project import scheme under tariff item 84.66 of the old Customs Tariff ^{for} ~~to~~ the exemption notification No. 50/03-CE is totally wrong as the scope of this term is ^{explained} in the notification itself; that the exemption notification itself defines the term "substantial expansion" as increase in installed capacity by not less than 25%; that in view of this, giving any other meaning to the term "substantial expansion" is totally wrong; that the Board's Circular No. 772/5/04-CX dated 21.1.2004 clarified that substantial expansion in installed capacity by not less than 25% must be by way of installation of additional plant and machinery; that the appellants have satisfied this condition inasmuch

as they have increased the capacity of furnace by replacing the old furnace of 4 M.T. capacity with a new furnace of 6 M.T. capacity; that the Tribunal in the case of *Uttranchal Iron & Ispat Ltd. vs. CCE, Meerut*, reported in 2008 (229) ELT 253 (Tri.-Del.) has held that there is nothing in the notification No. 50/03-CE to suggest that there should be increase in each and every unit of the plant and that condition of the notification would be satisfied, if there is at least 25% increase in the installed capacity and that in view of this, the impugned orders are not correct.

2.2 Shri Sunil Kumar, learned D.R., defended the impugned order by reiterating the findings of the Commissioner/Commissioner (Appeals) and emphasized that the purpose of the exemption notification was to attract investment to the hill areas, that the substantial expansion of 25% or more in installed capacity should be by installation of additional plant and machinery, that Tribunal's order in the case of *Travancore Titanium Products Ltd. (supra)*, relied upon in the impugned order has been upheld by Hon'ble Supreme Court vide judgment reported in 2003 (154) ELT A-175 (SC) and that in this case, since the increase in installed capacity has been achieved merely by replacing the old furnace with a new furnace with higher capacity, the condition of "substantial expansion by way of at least 25% increase in installed capacity" has not been satisfied.

3. We have carefully considered the submissions from both sides and perused the record. The only point of dispute in this case is as to whether the appellant company had undertaken "substantial expansion" by way of increase in installed capacity by not less than 25% on or after 7.1.2003 as

per the condition of the exemption notification. Para 2 of the exemption notification No. 50/03-CE which is relevant for this case is reproduced below:-

“2. The exemption contained in this notification shall apply to any of the following kinds of units, namely:-

(a) new industrial units set up in areas mentioned in Annexure-II and Annexure-III, which have commenced commercial production on or after 7th day of January, 2003, but not later than the 31st day of March, 2007;

(b) industrial units existing before the 7th day of January, 2003 in areas mentioned in Annexure-II, but which have undertaken substantial expansion by way of increase in installed capacity by not less than twenty-five percent on or after the 7th day of January, 2003, but have commenced commercial production from such expanded capacity, not later than the 31st day of March, 2007.”

3.1 The expression – “substantial expansion” has not been defined in the notification. However, the words – “Substantial expansion by way of increase in installed capacity by not less than 25%”, used in the notification with regard to existing industrial units indicate^{as} that in order to qualify for exemption, there must be some expansion or addition to plant and machinery, which is substantial and which has resulted in at least 25% increase in installed capacity. Increase in installed capacity by 25% or more merely by improving the efficiency or making minor changes in machinery by an existing industrial unit cannot be treated as “substantial expansion by way of increase in installed capacity by not less than 25%”, for the purpose of this notification^{as} by treating it so,

the words "substantial expansion would become redundant. Therefore, for qualifying for exemption, there must be some expansion/addition of plant and machinery and this expansion/addition must be ^{such} that it has resulted in at least 25% increase in the installed capacity. Same view has been expressed by the Board in its circular No. 772/5/04-CX dated 21.1.2004, which is reproduced below:-

"Area based exemptions from Central Excise duty are currently available under various notifications as follows:-

(a) for North Eastern States under notification No. 32/99-CE and 33/99-CE both dated 8.7.1999;

(b) for Jammu & Kashmir under notification No. 56/2007-CE and 57/2002-CE both dated 14.11.2002;

(c) for Himachal Pradesh and Uttranchal under notification NO. 49/03-CE and 50/03-CE both dated 10.6.2003.

2. The exemption contained in these notifications is applicable either to the new industrial units or units undertaking substantial expansion by way of increase in installed capacity by not less than 25%.

3. Board has received representations from various quarters seeking clarifications on the term – "Substantial expansion". With a view to ensure smooth implementation of exemption schemes, following guidelines are circulated to explain the scope of "Substantial expansion"

(a) Increase in installed capacity of an existing unit by not less than 25% should be the result of installation of additional plant and machinery. Any increase in installed capacity by means other than installation of additional plant and machinery would not qualify for benefit of exemption under "Substantial expansion."

(b) As substantial expansion is defined in terms of increase in installed capacity by 25% or more, value of investment in plant and machinery is not the criteria to define the substantial expansion. So long as additional installation of plant and machinery results into increase in installed capacity by not less than 25%, the quantum or value of investment in plant machinery is not very material in deciding the criteria of substantial expansion.

(c) There is no ^{bar on} use of secondhand machinery for undertaking substantial expansion so long as it enhances the existing installed capacity by not less than 25%. What is relevant is the increase in installed capacity by not less than 25% by way of additional installation of plant and machinery.

(d) The term substantial expansion is not defined in terms of original or depreciated value of plant and machinery. The only criteria to be satisfied is accretion in

installed capacity by at least 25% with additional plant and machinery.

(e) Additional investment in plant and machinery for modernization or for improving the quality of existing product, unless it leads to increase in installed capacity by 25% or more, would not tantamount to substantial expansion.”

4. The point of dispute in this case is whether the replacement of 4 MT capacity furnace with 6 MT capacity furnace which without any dispute, has resulted in 50% increase in installed capacity can be treated as “Substantial expansion by way of not less than 25% increase in installed capacity.” According to Department, substantial expansion implies addition of machinery on such a scale and of such a scale that would be comparable with setting up of a new unit and mere replacement of 4 MT furnace by 6 MT furnace can not be called substantial expansion. We do not agree with this view of the Department, as as discussed above, for the purpose of this exemption, the addition/expansion of machinery which results in at least 25% increase in installed capacity is enough and expansion or addition can be by the way of replacing existing machinery with machinery with higher production capacity. Just because instead of installing another furnace of 2 MT capacity to raise their total capacity to 6 MT, a new 6 MT capacity furnace is installed it cannot be said that there has been no expansion of their plant and machinery. Same view has been taken by the Tribunal in

the case of Charu Steels Ltd. vs. CCE, Meerut-I (Order No. 65-68/2010-
 EA dated 30.5.2008).

4.1 The Department relies on Tribunal's judgments in cases of National Newsprint & Paper Mills Ltd. vs. Collector of Customs, Mumbai, reported in 1987 (32) ELT 153 and Travancore Titanium Products vs. Collector of Customs, Cochin (supra). But both these judgments are in respect of scope of the words – "Substantial expansion" in heading 84.66 of the Customs Tariff which covered – "..... machinery etc... required for initial setting up of a unit, or substantial expansion of an existing unit." In the case of M/s. National Newsprint & Paper Mills Ltd. (supra), the production from existing machinery of the appellant was much below the installed capacity and they wanted to import certain machinery by taking the benefit of project import scheme under heading 84.66 for increasing their production and the Tribunal held that this would not amount to "Substantial expansion of an existing unit." In the case of Travancore Titanium Products (supra) the appellant imported machinery etc. for 450 tpd Sulphuric Acid plant which was to replace their 300 tpd Sulphuric Acid plant and sought project import scheme benefit under heading 84.66 and the Tribunal held that replacing 300 tpd plant is not "Substantial expansion of an existing unit, "as from the wordings of heading 84.66 it is clear that a new unit should be set up and that if there are two assembly lines, setting up of a third assembly line would be in the nature of – "a Substantial expansion of an existing unit." But since the wordings of heading 84.66 of the Customs Tariff and

of para 2(b) of the exemption notification No. 50/03-CE are different while in heading 84.66 of the Customs tariff the words used are “machinery for..... Substantial expansion of an existing unit”, the words used in the notification No. 50/03-CE are “industrial units existing before 7th day of January 2003.... but which have undertaken substantial expansion by way of increase in installed capacity by not less than 25%”, the above mentioned judgments of the Tribunal which are in respect of import of machinery as “project import” under heading 84.66 of the Customs Tariff are not applicable to this case. The impugned order which are based on the above mentioned judgments of the Tribunal in case of M/s. Travancore Titanic Products Ltd. (supra) and M/s. National Newsprint & Paper Mills Ltd. (supra) are not correct.

5. In view of the above discussion, the impugned orders, being not sustainable, are set aside. The appeals are allowed.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

RK