

GRAM : CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

Appeal No. E/1969/98-NB(SM) BENCH NB(SM)

Dated : 15/1/2001

CEGAT
NEW DELHI
To,

M/s J. R. M. Steels (P) Ltd.;

G.T. Road, Samalkha,

Distt. Panipat, Haryana.

In the matter of :

M/s J. R. M. Steels (P) Ltd.

Appellant

vs.

CCE New Delhi - II

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/59/2001/NB(SM)
Dated : 5-1-2001 passed by the Tribunal under Section 35-C(1) of Central Excise & Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to :

Asstt. Registrar

1. CCE New Delhi - II
2. CCE/EE/(Appeal) New Delhi
3. Chief Commissioner of Central Excise/Customs. New Delhi
4. Adv./Consult. Shri Naveen Mullick, Adv.;
B-388, Meera Bagh,
New Delhi - 63.
5. S.D.R
6. JCDR
7. Bar Association, CEGAT, New Delhi
8. Library, CEGAT, New Delhi
9. Director (Review), C.B.E.C. North Block, New Delhi
10. Guard File.
11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.
12. M/s Centax Publications (P) Ltd., 1512-E, Bishm Pitamah Marg, opp. Sachdeva P.T. College of Defence Colony, New Delhi-110003
13. M/s Lex Site Com. Ltd., Mumbai
14. Office Copy
15. M/s cen-cus publications.

Asstt. Registrar

**In the Custom, Excise & Gold (Control) Appellate Tribunal
New Delhi** NORTHERN BENCH (SM)

APPEAL NO. E/1969/98-NB(SM) OF 19 (.....)

ARISING OUT OF ORDER IN ~~ORIGINAL~~ APPEAL NO.

IV (16)89/Tech./D-III/97/2364 DATED 18.03.1998.

PASSED BY..... COMMISSIONER OF CENTRAL EXCISE.

NEW DELHI.

Date of decision..... 05.01.2001.....

M/s J.R.M.STEELS (P) LTD - APPELLANT (S)

Represented by Sh./Smt. NAVEEN MULLICK,

ADVOCATE.

VERSUS

CCE, NEW DELHI - RESPONDENT (S)

Represented by Sh./Smt. M.D.SINGH,

SDR.

CORAM:
SHRI P.G.CHACKO, MEMBER (JUDICIAL).

FINAL

To be referred to the Reporter or not?
ORDER NO. A/59/01/NB(S/M)

Per..... P.G.CHACKO:

The appellants are manufacturers of hot re-rolled non-alloy steel products, which are goods notified under Notification No.31/97-CE(NT) dated 01.08.1997 for the purpose of levy and collection of Central Excise duty as per the provisions of Section 3A of the Central Excise Act. The procedure for collection of duty was laid down under Notification No.32/97-CE(NT) dated 01.08.1997, which brought

into force on 01.08.1997 the Hot Re-rolling Steel Mills Annual Capacity Determination Rules, 1997 [in short, the ACD Rules]. The appellants applied to the Commissioner of Central Excise for determination of their Annual Capacity of Production [in short, ACP] by way of their application dated 08.09.1997, wherein they declared the parameters of their mill for the purpose of determination of ACP on the basis of the formula laid down under Rule 3 of the ACD Rules. These parameters included the pinion centre distance of 290 mm (d) and an RPM of 560 (n). On the basis of these parameters as declared by the appellants, the Commissioner, later on, determined the ACP at 18763.167 MTs w.e.f 01.09.1997 as per order dated 16.03.1998. Between 08.09.1997 and 16.03.1998, there occurred a spate of correspondence between the appellants and the Departmental authorities on certain change of parameters affecting the ACP. As early as on 24.09.1997, the appellants wrote to the Commissioner proposing to change (d) and (n) from 290 mm and 560 (RPM) to 198 mm and 800 RPM respectively. Copies of this intimation were also endorsed to the jurisdictional Assistant Commissioner and Superintendent. In their letter dated 24.09.1997, the appellants also pointed out that the proposed change of the two parameters was expected to be completed in a period of ten days. However, before expiry of the said period of ten days, the appellants completed the change of parameters. This was on 28.09.1997, according to the appellants. Later, on 10.10.1997, the appellants again wrote to the Commissioner intimating that they had already changed the two parameters as proposed and requesting that the ACP be re-determined accordingly. Copies of this intimation were also endorsed to the Assistant Commissioner and the Superintendent. On 29.10.1997, the Superintendent wrote to

the party calling for a certificate from Chartered Engineer certifying the correctness of the declaration submitted by them. It appears, the appellants responded to the Superintendent's requisition by furnishing a Chartered Engineer's certificate to the Superintendent under cover of letter dated 08.01.1998. The said certificate certified the parameters and further stated that the change of the two parameters viz. (d) and (n) had been effected on 28.09.1997. It was, obviously, after all these correspondences that the Commissioner determined the ACP w.e.f 01.09.1997 as per order dated 16.03.1998 on the basis of the original parameters declared by the party. Closely on the heels of this order, the Commissioner passed order dated 18.03.1998, which is under challenge in the present appeal. As per the impugned order, ld. Commissioner accepted the revised parameters declared by the party in their letters dated 24.09.1997 and 10.10.1997 and redetermined ACP at 8491.73 MTs, but he chose to give effect to the revised ACP only from 12.03.1998. The appellants are not aggrieved by the quantum of ACP as re-determined. Their grievance is with regard to the date (12.03.1998) determined by the Commissioner for giving effect to the revised ACP.

2. I have heard both sides after examining the available records.

3. Ld. Advocate, Shri Navin Mullick submits that the Commissioner accepted the submissions made by the party in their letters dated 24.09.1997 and 10.10.1997 and accordingly incorporated the changed parameters in the formula for re-determination of their ACP. However, though it was categorically represented by the appellants to the

Commissioner that they had changed the parameters w.e.f 28.09.1997 and though the Chartered Engineer's certificate was furnished in proof of the same, the Commissioner did not accept the said date [28.09.1997] as the date of change of parameters but chose to approve the change of parameters w.e.f 12.03.1998 under Rule 4(2) of the ACD Rules. Ld. Counsel further submits that the Commissioner did not state any reason whatsoever in the impugned order for having accepted the change of parameters only w.e.f 12.03.1998 instead of 28.09.1997. However, he fairly concedes that the impugned order contains mention of an earlier communication of the Commissioner dated 12.03.1998. Ld. Counsel has also placed on record a copy of the said communication as requisitioned by the Bench. Referring to the Commissioner's letter dated 12.03.1998, ld. Advocate submits that even this letter does not disclose any specific reason for adopting the date 12.03.1998 for giving effect to the revised parameters. Counsel argues that there was no justification for the Commissioner in not accepting 28.09.1997 as the date of change of the parameters inasmuch as he admitted to have received the party's letter dated 24.09.1997 proposing change of the parameters. According to ld. Counsel, the impugned order is not in accordance with the letter and spirit of Rule 4(2) of the ACD Rules. Ld. Counsel prays for setting aside the order and allowing the appeal.

4. Ld. SDR Shri M.D.Singh submits that Rule 4(2) of the ACD Rules mandates that a manufacturer covered by the ACD Rules must intimate to the Commissioner any proposal of change of parameters of his mill atleast one month in advance and obtain

the written approval of the Commissioner before making the change. In the instant case, the appellants allegedly changed the parameters (d) and (n) on 28.09.1997 after sending to the Commissioner letter dated 24.09.1997 proposing such change. The appellants proceeded to change the parameters without the necessary written approval of the Commissioner. Ld. SDR further submits that the Commissioner had not received the appellant's letter dated 10.10.1997. It was only the Assistant Commissioner who provided a copy of the said letter to the Commissioner some time in February 1998. Apparently, the Commissioner took cognizance of the letter dated 10.10.1997 only on 12.03.1998 and, according to ld. SDR, this was the reason why the Commissioner reckoned 12.03.1998 as the date of receipt of intimation from the appellants regarding the change of parameters. Under the provisions of Rule 4(2) of the ACD Rules, this was the only option available to the Commissioner and he exercised the same in accordance with the Rule. Ld. SDR, therefore, prays for rejecting this appeal.

4. I have carefully examined the rival submissions. The appellants, by letter dated 24.09.1997, proposed to change the two parameters viz. (d) and (n) of their mill. This letter was admittedly received by the Commissioner. The appellants effected the change of parameters, allegedly, on 28.09.1997 and sought to intimate the matter to the Commissioner by letter dated 10.10.1997. It appears that the letter dated 10.10.1997 sent by the appellants to the Commissioner was not received by the latter, though a copy of the letter sent by them to the Assistant Commissioner was received by the addressee. It further appears that it was from the Assistant Commissioner that the Commissioner obtained a copy of the letter. It was under cover of the Assistant Commissioner's letter dated 03.02.1998 that the letter dated 10.10.1997 of

the party was received by the Commissioner. Probably, the Commissioner received the papers only on 12.03.1998 and, therefore, he accepted the revised parameters w.e.f 12.03.1998. This is the position disclosed by the Commissioner's order dated 18.03.1998 read with his letter dated 12.03.1998 referred to in the order.

5. In view ^{of} the aforesaid facts and circumstances, the Commissioner should verify with the Assistant Commissioner of Central Excise, Sonapat and ascertain the date on which the Assistant Commissioner had received the letter dated 10.10.1997 of the party. Once that date is known, it would be reasonable for the Commissioner to reckon that date as the date of receipt of the appellant's letter dated 10.10.1997 at his end. The Commissioner will, then, proceed to re-determine the date of revised parameters and extend the benefit thereof to the party. This, he shall do after affording a reasonable opportunity of personal hearing to the party. It is made clear that the remanded proceedings will be limited to redetermination of the date of revised parameters with reference to the date of receipt of the appellant's letter dated 10.10.1997.

6. The impugned order stands set aside and appeal stands allowed by way of remand in the above terms.

(Dictated and pronounced in the open Court.)

(P.G.CHACKO)
MEMBER (JUDICIAL)

05.01.2001.

mk.