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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/2658/2009 – SM [BR]** Date **13/04/2011**

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

To :
M/S SHANTI STEEL ROLLING MILLS
134, RAMTE RAM ROAD, GHAZIABAD (U.P.)

M/S SHANTI STEEL ROLLING MILLS Appellant
Vs
C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No. 179 / 2011 –SM[BR]** **dated 24.3.2011**
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. MEERUT II
OPP. SAHEED PARK (NEAR
ASHOK KI LAT) DELHI ROAD,
MEERUT (UP)

2. Adv. / Consult
MR.RAJESH CHHIBBER
FA/9, NEW KAVI NAGAR, GHAZIABAD

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:24.03.11
Date of decision:24.03.11

Excise Appeal No.2658 of 2009-SM

[Arising out of Order-in-Appeal No.188-CE/APPL/MRT-II/09 dated 29.05.2009 of the Commissioner of Central Ecxise, Meerut]

M/s.Shanti Steel Rolling Mills — Appellant

Vs.

CCE, Meerut-II — Respondent

For approval and signature:

Hon'ble Shri Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.

2. Whether it should 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?

Appearance: Rep. by Shri Rajesh Chibber, Advocate for the appellants.
Rep. by Shri S.K. Bhaskar, DR for the respondent.

CORAM: **Hon'ble Shri Rakesh Kumar, Member (Technical)**

Final Order No....179/2011 SM......./Dated:24.03.2011

Per Rakesh Kumar

The appellants are re-rolling mill. The period of dispute in this appeal is from 4.7.98 to 23.12.98. During this period, the appellants were discharging duty liability under Compounded Levy Scheme based on the capacity of production. In case of the appellant, the Commissioner vide Order-in-Original dated 9/6/08 had fixed the capacity as 2675.75 M.T. per annum. However, since the appellant had not discharged the duty liability on this basis, the duty demand of Rs.2,19,976/- was confirmed against the appellant by the Assistant Commissioner. On appeal to the Commissioner (Appeals), the Commissioner (Appeals) vide impugned order-in-appeal upheld the Asstt. Commissioner's order on the ground that since the demand is based on the annual capacity of production fixed by the Commissioner and this ACP will remain so till the Tribunal takes the decision on the merits of the appeal filed against the Commissioner's order. It is against this order of the Commissioner (Appeals) that the present appeal has been filed.

2. Heard both the sides.

3. Shri Rajesh Chibber, Advocate, ld. Counsel for the appellant pleaded that the duty demand is based on the Commissioner's order dated 9.06.08

fixing the Annual Capacity of Production for the appellant as 2672.75 M.T. per annum; that the appellant had filed appeal before the Tribunal against the Commissioner (Appeals)'s order and the Tribunal vide Final Order No.803 of 2010-SM dated 16.07.2010 has allowed their appeal holding that the duty liability for the period from 31.11.98 to 31.3.99 shall be based on Annual Capacity of Production of 880.5 M.T. per annum; that in view of this, the capacity during the period of dispute should be 880.5 MT/annum and hence the duty demand is not sustainable.

4. Shri S.K. Bhaskar, ld. Departmental Representative, pleaded that the duty demand is based on the Commissioner's order dated 9.06.08 fixing the Annual Capacity of Production; that since the Tribunal vide Final Order No.803/2010 dated 16.07.2010 has modified the Commissioner's order holding that the Annual Capacity of Production would be 880.5 M.T. per annum, the matter has to be remanded to the original adjudicating authority for re-quantification of the duty demand based on the Tribunal's order mentioned above.

5. I have carefully considered the submissions from both the sides and perused the records. As is clear from the impugned order-in-appeal, the duty demand against the appellant is based on Annual Capacity of Production fixed by the Commissioner vide order dated 9.06.08. Since that

order of the Commissioner has been modified by the Tribunal's Order dated 16.07.2010 holding that the Annual Capacity of Production during the period of dispute would be 880.5 M.T. per annum, the impugned order is set aside and the matter is remanded to the original adjudicating authority for re-quantification of the duty demand in accordance with the Tribunal's Order dated 16.07.2010. The appeal stands disposed of as above.

(Rakesh Kumar)
Member (Technical)

Ckp.