

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA**

Excise Appeal No. 104/2008

(Arising out of Order-in-Appeal No. 66/CE (A)/GHY/07 dated 12.09.2007 passed by the Commissioner of Customs & Central Excise (Appeals), Guwahati)

Commr. of Central Excise-Tinsukia

Applicant (s)/Appellant (s)

Versus

M/s. Panitola Tea Estate

Respondent (s)

Appearance:

Shri K. Choudhury, Supdt. (A.R.) for the Appellant (s)

Sri P.K. Tarafdar, Advocate & Sri S. Dutta, Advocate for the Respondent (s)

CORAM:

SHRI P.K. CHOUDHARY, HON'BLE JUDICIAL MEMBER
SHRI V. PADMANABHAN, HON'BLE TECHNICAL MEMBER

Date of Hearing/Decision :- 06.12.2018

ORDER NO: FO/77322/2018

PER SHRI P.K. CHOUDHARY

The facts of the case in brief are that the Respondent herein M/s. Panitola Tea Estate submitted a claim of eligibility in terms of Notification No. 33/99-CE dated-08.07.1999 covering the period from 8/7/1999 to 28/2/2003. They claimed exemption from payment of Central Excise Duty (CED) paid through the account Current on clearance of their excisable product alongwith photocopies of the relevant documents. The Assessee was asked to resubmit the claim. Accordingly, the claim was re-submitted vide

letter dated 30th August, 2006 alongwith PLA, TR-6, Chartered Engineer's Reports, Bills etc. The Range Officer was asked to verify the claim of the assessee. M/s. Panitola Tea Estate claimed that the expansion in the installed capacity of the factory was completed on 15/3/1999 and the Commercial production with increased installed capacity commenced on 16/3/1999. The Range Officer vide his letter dated 28/9/2006 submitted his verification reports. The Assistant Commissioner, Central Excise, Tinsukia sanctioned refund of Rs.79,96,368/-. Subsequently, a show cause notice dated 18/5/2007 was issued alleging that the refund has been sanctioned erroneously. In the meantime, the Department also filed an appeal before the lower Appellate Authority which was rejected vide the impugned order dated 12/9/2007. Against the impugned order, Department is in appeal before the Tribunal.

2. The Ld. D.R. reiterates the grounds of appeal and submits that changes in working capacity would not lead to change in installed capacity of the factory and strongly argued that the installed capacity of the factory remained unchanged and hence the assessee was not eligible to the exemption for the purposes of Notification No. 32/99 dated-8/7/1999.

3. Ld. Advocate appearing on behalf of the respondent assessee made the Bench go through the orders of the Refund Sanctioning Authority and also the impugned order. It is their submission that there has been substantial increase in the various Sections of the Tea Estate such as Withering Section, CTC Section, Fermenting Section etc. Limiting capacity of Fermenting Section was 699.70 Kgs. per hour before expansion which was the installed capacity and post expansion capacity increased to 1040 Kgs. Per hour. It is also submitted that the Range Superintendent had mentioned in his verification report dated 28/9/2006 that there has been expansion in the factory during the period from 2/1/1998 to 15/3/1999 and on verification of the ground plant, he found that it tallied with the papers

regarding construction of Withering Trough, Expansion of Floor, Fermenting area of the factory.

4. Heard both sides and perused the appeal record.

5. We observe that the benefit under Notification No. 33/99-CE dated-8/7/1999 was available to the Industrial units existing as on 24/12/1997 which had actually undertaken substantial expansion of weight of increasing installed capacity by not less than 25% on or after 24/12/1997 and it was not restricted to unit who has undertaken expansion only after prior approval of Chief Inspector of factories. A comparative statement of Machineries & Installation Capacity of Panitala Tea Estate, Before and After Expansion is mentioned below:

Machineries/Facilities as on 23.12.1997				New Expansion/Addition after 24.12.1997				Machineries/Facilities after Expansion				Remarks			
Sl. No.	Section	Description	No.	Capacity (Rate)	Total Capacity	Made Tea (Equivalent)	Description	No capacity	Total Capacity	Made Tea	Description		No	Made Tea	PC acres
1.	Withering Trough	Open (total 27200 sq.ft.)	31	1.5 kg./day/sq.ft.	40800 kg/day	1122 kg/h	4068 Sq. Ft.	09 5 kg./hr 5 kg/hr.	3648 kg/hr 1710 kg/day	100.32 kg. 470.25 kg 570.57 kg	Open 31268 sq.ft.	40	1289.8 kg/hr	14.95 %	Expansion/modification is done by increase the 9 no. Open Withering Troughs
2.	CTC	Tea Master (36" x 8.5" x 8.5") Innova (36" x 8.5")	03 01	750 kg/hr 750 kg/hr	3000 kg	879.00 kg/hr	Kaizam (36" x 13") Kaizam (36" x 8.25")	02 050x2 +0100-1500	550	161 kg/hr	Kaizam (36" x 13") Kaizam (36" x 8.25") Innova (36" x 8.50")	03 01 01	1040.0 kg/hr	18.30 %	Expansion/modification is done by replaced Tea Master 3 No. and installed Kaizen 3 No.
3.	Fermenting	Floor Area 2715 sq.ft.	-	0.37 kg. Per batch	1004.55 kg. Per batch	669.70 kg./hr	Floor area 4647 sq.f.t.	37 - g/bt	1719.39 kg/bt.	1146.26 kg/hr	Area-7362 Sq.ft.		1815.9 kg/hr.	171.16%	A big size Floor area for more fermenting was increasing to increase the capacity

Therefore, once the actual expansion of installed capacity is established , it cannot be denied merely on the ground that the alteration /addition was done without obtaining the prior approval of Chief Inspector of factories. It is also observed that the Refund Sanctioning Authority had taken into account the Verification Report dated 28/09/2006 of the Range Supdt. and had himself conducted spot verification alongwith the Divisional staff. In the order dated 28/09/2006, the Refund Sanctioning Authority has recorded itemwise /sectionwise increase/addition /alteration. The eligibility order itself states that there was no increase in Rolling/Dryer Section of Power loom. There was increase in Withering Section by 14.95% due to installation of Nine Troughs and 18.3% in CTC Section due to modification of CTC machine by installing Kaizem machines replacing old Master machines and 171% increase in Fermenting Section owing to increase in Floor area by 4547 sq. Ft.

6. We find that the Registration letter F. No. 207/5/2002-CX6 dated 5/3/2003 and CBEC Circular No. 772/2005/2004-CX dated-21/01/2004 clarify that there is no requirement of increase in every section of a Tea factory. Increase in installed capacity by 25% of the installed capacity by addition of machineries in any Section would make them eligible for the benefit of Exemption in terms of Para 2 (b) of the Notification No. 33-99-CE dated 8/7/1999. The Department's contention of production activity without obtaining the valid Industrial License has no merit. We find that it has been consistently held in various decisions that substantial benefits can not be denied on extraneous grounds.

7. In view of the above discussions, we do not find any infirmity in the order impugned and the same is hereby sustained. Accordingly, the appeal is dismissed being devoid of merit.

(Operative part of the order already pronounced in the Court)

V. PADMANABHAN
(TECHNICAL MEMBER)

P.K. CHOUDHARY
(JUDICIAL MEMBER)

k.b/-

