

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
KOLKATA**

REGIONAL BENCH – COURT NO.2

**Excise Appeal No.14 of 2010**

(Arising out of Order-in-Original No.28/Commr./CE/Kol.III/2009-10 dated  
01.09.2009 passed by Commissioner of Central Excise, Kolkata III)

**Commissioner of Central Excise, Kolkata III**

180, Shantipally, Rajdanga Main Road, Kolkata-700107

**Appellant**

*VERSUS*

**M/s Unitech Engineering Private Limited**

21C, Block-D, Industrial Area, Kalyani, Nadia, West Bengal

**Respondent**

**APPEARANCE :**

Shri K.Chowdhury, Authorized Representative for the Appellant  
None for the Respondent

**CORAM:**

**HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)**

**HON'BLE MR.K.ANPZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO.....75896/2023**

DATE OF HEARING : 20 .06.2023

DATE OF DECISION : 20 .06.2023

**Per Ashok Jindal :**

The Revenue is in appeal against the impugned order wherein the Adjudicating authority has granted the benefit of abatement to the respondent.

2. The facts of the case are that the respondent was manufacturing non-alloy steel ingot and intimated the capacity of induction furnace installed in their factory premises for determination of Annual Capacity of Production (ACP) as per Rule 96ZO of the Central Excise Rules, 1944 read with provisions of Section 3A of the Central Excise Act, 1944 and Induction Furnace Annual Capacity Determination Rules, 1997.

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Provisionally, the ACP was fixed as 8000 MT based on the declaration filed by the respondent, which was reduced to 4800 MT. On the basis of the said fixation of the capacity, duty liability was fixed for the outstanding amount, for which, they have not paid the duty.

2.1 The respondent replied by letter dated 04.05.2009 stating that during this long intervening period, there has been flood in the area of their factory and as such the goods lying in the factory was damaged and the building of the factory was also broken and all the records and papers, were also badly damaged. As such, the same could not be salvaged. It was also submitted that the electricity connection was also disconnected by the State Electricity Board on 11.03.1998 and their factory remained closed since then. Due to closure of the factory, there has been theft of the remaining materials. Nothing in the factory is existing now. On the basis of this, the Id.Commissioner granted the abatement to the respondent for the closure of their factory.

2.2 Against the said abatement granted by the Id.Adjudicating Authority, the Revenue is in appeal on the ground that as per Sub-Rule (2) of Rule 96ZO of the Central Excise Rules, 1944, the abatement can be allowed subject to fulfillment of the condition that the manufacturer shall inform in writing about the closure to the Assistant Commissioner of Central Excise with a copy to the Superintendent of Central Excise, either prior to the date of closure or on the date of closure. However, the manufacturer shall intimate the reading of the electricity meter to the Assistant Commissioner of Central Excise with a copy to the Superintendent of Central Excise immediately after the production in his factory is stopped along with the closing balance of stock of the ingots

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and billets of non-alloy steel. The respondent neither intimated prior to closure of the factory nor on the date of closure of the factory. Therefore, the respondent is not entitled for abatement.

3. Heard the Id.A.R. for the Revenue and perused the records.
4. On perusal of records, we find that it is a fact on record that the electricity connection was disconnected on 11.03.1998. Further, there was a flood in the area where the factory was located and all the records were damaged.
5. In that circumstances, as the situations are beyond the control of the respondent to produce the relied upon documents. In that circumstances, the benefit of doubt goes in favour of the respondent.
6. Accordingly, the Id.Adjudicating Authority, has granted the abatement to the respondent.
7. In that circumstances, we do not find any infirmity in the impugned order and the same are upheld.
8. The appeal filed by the Revenue is dismissed.

(Dictated and pronounced in the open court)

Sd/-  
**(Ashok Jindal)**  
**Member (Judicial)**

Sd/-  
**(K.Anpazhakan)**  
**Member (Technical)**