(2010) 09 CHH CK 0055

In the Chhattisgarh High Court

Case No : Central Excise Appeal No. 16 of 2004

Ashirvad Ispat (Ryp) Ltd. APPELLANT

Vs

Commissioner of C. Ex. and Cus., Raipur RESPONDENT

Date of Decision : 25-09-2010

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35(C)
Hot Re-rolling Steel Annual Capacity Determination Rules, 1997 — Rule 5

Citation : (2011) 265 ELT 189 : (2012) 25 STR 193

Hon'ble Judges : Rangnath Chandrakar, J;Dhirendra Mishra, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Dhirendra Mishra and R.N. Chandrakar, JJ.—This excise appeal has been admitted by this Court on the following substantial question of law :-

Whether in the facts and circumstances of the case, the withdrawal of an appeal against a provisional determination of capacity of Hot Rolling Mills of the Appellant by the Commissioner, Central Excise & Customs would be a bar for the appellant to file an appeal against the final determination of capacity of the said rolling mills?

2. Briefly stated, facts of the case as projected in the memo of appeal are that the appellant declared his option for assessment under Rule 96ZP(3) of the Compounded Levy Scheme vide letter dated 10th September, 1997 to the Commissioner, Central Excise.

3. Learned Commissioner passed the provisional order for the period 1999-2000 and determined capacity of the Hot Rolling Mills of the appellant under Rule 5 of the Hot Re-rolling Steel Annual Capacity Determination Rules, 1997 (hereinafter referred to as "the Rules, 1997"). The appellant preferred an appeal against provisional order with delay. However, learned counsel for the appellant withdrew the appeal and the same was dismissed on 5-3-2003 vide Order of Annexure-

A/3. After dismissal of appeal against the provisional order by the Tribunal, the Commissioner, Customs & Central Excise, vide order dated 23rd May, 2003 (Annexure-A/4) held that the annual capacity of the production is required to be determined by applying the provisions of the Rules, 1997, Commissioner, Central Excise, Raipur while passing provisional orders has correctly interpreted and applied the provisions of the Rules, 1997 and finally determined the production of the year 1996-97 as mentioned in the order and the petitioner was directed to pay a sum equivalent to one twelfth of the amount calculated at the rate of Rs. 300/- PMT multiplied with the Annual Capacity of the Hot Rerolling Mill viz. 6734 during Sept. ''97 to Dec. ''97 and one twelfth of amount calculated at the rate of Rs. 150/- PMT multiplied with 6734 during period 1-1-98 to 31-3-2000.

4. The appellant preferred an appeal against the above order passed by the Commissioner and the same has been dismissed by the Tribunal vide order dated 20-1-2004 (Annexure-A/1) with an observation that the appellant had challenged the order dated 30th March, 1999 passed by Commissioner, Central Excise before the Tribunal and the appeal was dismissed as withdrawn vide order dated 5th March, 2002 and therefore, when the Commissioner has approved the annual capacity finally, they cannot challenge the same annual capacity deter-mined by the Commissioner, Central Excise and the appeal has been accordingly dismissed.

5. Heard learned counsel for the parties. Perused the impugned order as also the order dated 23rd May, 2003 (Annexure-A/4) passed by Commissioner, Customs and Central Excise after dismissal of the appeal by the Tribunal preferred by the appellant.

6. Undisputedly, the appellant''s appeal was directed against the final order dated 23-5-2003 of the Commissioner and as such, the same gave fresh cause of action to the appellant herein to prefer appeal before Tribunal u/s 35(C) of the Central Excise Act, 1944 and therefore, in our considered opinion, the same cannot be dismissed summarily on the ground that the appellant''s earlier appeal against the provisional order of the Commissioner, Central Excise was dismissed as withdrawn.

7. For the aforesaid reasons, we allow the appeal preferred by the appellant and set aside the impugned order and remand the matter to the Customs Excise and Service Tax Appellate Tribunal, New Delhi for fresh adjudication on merits.