
(2010) 02 P&H CK 0098
In the Punjab And Haryana At Chandigarh

Commissioner, Central Excise Commissionerate	APPELLANT
Vs	
Banta Singh Kartar Singh Iron and Steel Rolling Mills	RESPONDENT

Date of Decision : 10-02-2010

Acts Referred:

Citation : (2010) 254 ELT 765

Hon'ble Judges : Mehinder Singh Sullar, J; Ashutosh Mohunta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashutosh Mohunta, J.—The revenue has impugned the order dated 28.9.2005 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi, vide which, the appeal filed by the respondent-assessee was allowed and it was held that as the respondent is operating one furnace, therefore, its annual capacity shall be taken as 6201.69 MT and not 10594.508 MT as determined by the Commissioner.

2. The revenue has raised the following substantial question of law in this appeal:

Whether in view of the facts of the case and Hon'ble Supreme Court's ruling Channy Enterprises Vs. Commissioner of Central Excise, Chandigarh, , the annual capacity of the party is to be fixed by taking into consideration both the Rolling Mills having two burners/heating furnaces or not?

3. The brief facts of this case are that respondent M/s Banta Singh Kartar Singh Iron and Steel Rolling Mills, Mandi Gobindgarh are engaged in the manufacture of Hot Rolled Products of Non-alloy steel falling under Chapter Sub-heading 7214.90 of the First Schedule to the Central Excise Tariff Act, 1985. The unit working under Compounded Levy Scheme was required to file declaration and to make the payment of duty, in terms of the provisions of Rule 96ZP of the Central Excise Rules, 1944. As the respondent was having two rolling mills, but one furnace, so they were required to pay the duty for the rolling mills, which had higher capacity. The Adjudicating Authority determined only the capacity

production as 5439.250 MT by taking into account the mill having higher parameters. Thereafter, by applying Rule 5 of the Hot Rerolling Steel Mills Annual Capacity Determination Rules, 1997, the annual capacity of production of the assessee is determined as 10594.508 MT. This determination of annual capacity of the respondent was confirmed by the Commissioner. While determining the higher capacity as 10594.508 MT, the revenue relied on the capacity of the previous year under Rule 5-A of the Rules. The respondent-assessee filed an appeal before the Appellate Tribunal, which was allowed by holding that there is only one furnace, from which, both the rolling mills were being operated and, hence, the respondent is liable to pay the duty as per actual production of the higher capacity of the rolling mills.

4. Learned Counsel for the revenue has submitted that the Tribunal has recorded its finding on the basis of the fact that the mill has only one furnace. This finding has been returned merely on an impression gathered by the Tribunal and not on actual facts. He also submitted that in fact, the respondent was having two furnaces and, therefore, both the rolling mills were liable to be clubbed and duty is to be determined.

5. On the other hand, learned Counsel for the assessee has submitted that in fact there is only one furnace, from which, two rolling mills are being operated. He has also referred to the stand of the revenue, where it has been averred that "as per report of the Superintendent, there is a heating furnace with two melting zones with 11 doors. This indicates that furnace was able to heat two type of rolling material at one time and, hence, the effective number of furnaces was in fact two and not one.

6. A perusal of the aforementioned facts clearly shows that there is in fact one furnace, from which, two types of rolling mills can be operated. The report does not indicate that there are two furnaces. In *Channy Enterprises Vs. Commissioner of Central Excise, Chandigarh*, , the Hon''ble Supreme Court has held as under:

If each rolling mill had a separate heating furnace, as the appellant admittedly does, then the capacity of the unit would be the sum total of the capacity of each rolling mill in the unit irrespective of the fact that only one mill operated at a time. The language could not be plainer. What the appellant's argument overlooks is that the scheme did not operate on the basis of the actual production but on the capacity of the rolling mills to produce. We, therefore, see no reason to differ with the view expressed by the Commissioner, CEGAT and the High Court.

7. In the present case, as there is only one furnace as is clear from the stand taken by the revenue itself, therefore, the capacity of the two rolling mills could not have been claimed and the higher capacity of the two mills had to be taken into consideration for determination of the annual capacity and it is the capacity for which the respondent is liable to pay the duty.

8. In view of the above, the annual capacity of the rolling mills is to be fixed, which has higher capacity and there is no clubbing capacity of both the rolling mills. Hence, the question of law framed in this appeal is answered against the revenue and the appeal is accordingly dismissed.