(2015) 08 P&H CK 0162

In the Punjab And Haryana At Chandigarh

Case No : CEA No. 19 of 2015 (OandM)

Commissioner, Central Excise Commissionerate — APPELLANT

Vs

King Steel Rolling Mills — RESPONDENT

Date of Decision : 17-08-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G, 38A, 3A
Finance Act, 2001 — Section 131, 132

Citation : (2015) 08 P&H CK 0162

Hon'ble Judges : Ajay Kumar Mittal and Dr. Shekher Dhawan, JJ.

Bench : Division Bench

Advocate : Sukhdev Sharma, Advocate, for the Appellant

Judgement

Ajay Kumar Mittal, J.—This order shall dispose of two appeals bearing CEA Nos. 19 and 20 of 2015 as according to the learned counsel for the appellant, the issue involved in these cases is identical. For brevity, the facts are being extracted from CEA No. 19 of 2015.

2. This appeal has been preferred by the revenue under Section 35G of the Central Excise Act, 1944 (in short "the Act") against the order dated 21.8.2014 (Annexure A-2) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal") claiming the following substantial questions of law:-

i) Whether it was legally correct for the Hon''ble Tribunal to consider the challenge to the vires of Rule 5 of the Hot Re-rolling Steel Mills Annual Capacity Determination Rules, 1997, in the light of the judgment of the Hon''ble Apex Court in the case of Commissioner of C. Ex., Chandigarh Vs. Pepsu Steel Rolling Mills, , when such a challenge was not laid before the Hon''ble Tribunal or the Hon''ble High Court or even Hon''ble Supreme Court by the said party and whether on this very ground alone, the order of Hon''ble Tribunal is not liable to be set aside?

ii) Whether it is legally correct, fair and proper in holding that the interest is chargeable on delayed payment of duty as per the provisions of Rule 96ZP(3) of the Central Excise Rules, 1944 from the 11th day of the month succeeding the month in which the annual capacity of production was determined on final basis by the order of the Hon''ble Supreme Court whereas interest should have been charged under Rule 96ZP(3) from the dated when the duty was payable as per Final Order dated 12.05.2000?

iii) Whether under the compounded levy scheme the provisions of erstwhile Rule 96ZP of Central Excise Rules, 1944 permitting imposition of penalty equal to the amount of duty for delay in payment of duty, without any discretion and without having regard to extent and circumstances of delay, could be held to be ultra vires of the Central Excise Act, 1944 and the Constitution of India?

iv) Whether mandatory penalty equal to the amount of duty on the assessee in case of violation of the provisions of erstwhile Rule 96ZP of the Central Excise Rules, 1944 could be waived or reduced at the discretion of the adjudicating authority having regard to extent and circumstances of delay in payment of duty?

v) Whether the provisions of Section 38A of the Central Excise Act, 1944 inserted vide Section 131 of the Finance Act, 2001 (Validation of the action taken has been provided by virtue of the Section 132 of the Finance Act, 2001) shall be applicable in respect of obligation and liabilities incurred under Rules 96ZO and 96ZP of the erstwhile Central Excise Rules, 1944 before the same were omitted, notwithstanding the omission of Section 3A w.e.f. 11.05.2001?

3. Briefly, the relevant facts as narrated in the appeal may be noticed. The assessee was working under the compounded levy scheme during September, 1997 to March 2000 and opted to discharge their duty liability under Rule 96ZP(3) of the Central Excise Rules, 1944 (for brevity "the Rules") read with Section 3A of the Act. They failed to discharge the duty liability according to the determined annual capacity of production and was served with the detention order for recovery of short payment. The respondent filed CWP No. 4104 of 2000 and this Court vide order dated 24.4.2000 allowed the respondent to file appeal before the Tribunal. In pursuance thereto, the respondent filed an appeal before the Tribunal who vide order dated 23.6.2000 remanded the case back to the Commissioner for re-determination of annual capacity of production. The Commissioner vide order dated 30.11.2000, redetermined the same against which the respondent filed an appeal before the Tribunal. The Tribunal vide order dated 5.9.2001 allowed the appeal of the respondent. The department filed appeal before this Court. The respondent had effected certain charges in the parameters prescribed under Rule 3 of Hot Re-rolling Steel Mills Annual Capacity Determination Rules, 1997 (in short "the 1997 Rules") after following the procedure prescribed under Rule 4(2) of the 1997 Rules. The Commissioner redetermined the annual capacity of production under Rule 5 of the 1997 Rules vide order dated 13.10.2000 which was challenged before the Tribunal. The Tribunal vide order dated 9.4.2001 remanded the case back to the Commissioner

for re-determination of the annual capacity of production. Feeling aggrieved, the department filed an appeal against the order dated 9.4.2001 before this Court. This Court vide order dated 21.10.2003 dismissed the appeal of the department against which the department filed Civil Appeal Nos. 8342-44 of 2004 and 9814 of 2010 in the Apex Court. The Supreme Court vide a common order dated 6.7.2011 set aside the order of the Tribunal and restored that of the Commissioner dated 30.11.2000. Pursuant thereto, the respondent deposited the duty but without interest and the penalty. The respondent along with some other assessees filed a representation before the Commissioner regarding the relevant date for the payment of interest and penalty who vide order dated 12.4.2012 clarified that the interest was payable from the date of decision of the Supreme Court and the penalty was not imposable. The Range Officer, Mandi Gobindgarh vide letter dated 31.7.2013 requested the respondent to deposit the interest and penalty. The respondent filed a representation dated 12.8.2013 before the Commissioner for non-payment of interest and penalty and the Assistant Commissioner vide letter dated 20.12.2013 rejected its claim and directed to deposit the penalty and interest. Feeling aggrieved, the respondent filed an appeal before the Tribunal who vide order dated 21.8.2014 (Annexure A-2) allowed the appeal in terms of judgment of this Court in Bansal Alloys and Metals Pvt. Ltd. Vs. Union of India (UOI),   . Hence, the present appeal.

4. We have heard learned counsel for the appellant.

5. Learned counsel for the revenue did not dispute that the issues raised in these appeals stand concluded by the decision of this Court in CEA No. 39 of 2013 [Commissioner of Central Excise, Chandigarh-II v. M/s. Pee Iron & Steel Co. (P) Ltd., Derabassi] decided on 4.3.2014, where following the earlier decision of this Court in Bansal Alloys and Metals Pvt. Ltd.''s case (supra), the appeal filed by the revenue was dismissed.

6. In view of the above, no substantial question of law arises in these appeals. Consequently, both the appeals are dismissed.