(2013) 11 AHC CK 0180

In the Allahabad High Court

Case No : Central Excise Appeal Defective No. 48 of 2010

Commissioner of C. Ex. APPELLANT

Vs

Aswad Steels Alloys Pvt. Ltd. RESPONDENT

Date of Decision : 12-11-2013

Acts Referred:

Citation : (2014) 35 STR 24

Hon'ble Judges : Surya Prakash Kesarwani, J;Sunil Ambwani, J

Bench : Division Bench

Judgement

1. We have heard learned counsel for the appellant. Steps were taken by learned counsel appearing for the department on which notices were issued by the office on 13-9-2013 fixing 12-11-2013.

2. An office report has been submitted on 10-11-2013 that neither undelivered cover nor any appearance has been put by the respondents. Under the Rules of the court notice shall be deemed to be served upon the respondent.

3. This central excise appeal has been filed in the year 2010 with delay of 6 days. In the delay condonation application supported by the affidavit of Shri S.R. Gupta, clerk of the counsel it is stated that due to Holi holidays the appeal could not be filed within time.

4. The grounds for condonation of delay are good and sufficient. The delay in filing the appeal is condoned.

5. The central excise department has preferred following question of law:--

(I) Whether a manufacturer paying duty under the Compound Levy Scheme under Sec. 3A(4) of the Central Excise Act, 1944 read with sub-rule (3) of Rule 96ZO of the Central Excise Rules, 1944 and using DG Set (without meter) for manufacturing/production is eligible to avail abatement of duty under the said Section when Rule 96ZO(2) clearly says "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 and billets of non-alloy steel.

6. The Customs, Excise & Service Tax Appellate Tribunal while deciding the Central Excise Appeal No. 5950 of 2004 vide impugned order dated 18-8-2009 [2009 (243) E.L.T. 370 (Tribunal)] has observed in Paragraph 4 as follows:--

We have carefully considered the submissions made by both sides. The very fact that the Assistant Commissioner in the letter of the appellant on 26-9-97 had allowed abatement of 15 days shows that this was based on inspection of the factory and also takes us to conclusion that the factory was not functioning during the period and this was not disputed by the Revenue. Further, with regard to second period also the appellant had intimated on 31st October, 1997 about the closure from 1-11-97. They had also intimated the closing balance and stock of MS ingots and also informed the Revenue that they had started production again. We find only one condition under Rule 96ZO(2) that intimation regarding reading of the electricity meter to Assistant Commissioner, Central Excise with a copy to range Superintendent, Central Excise, has not been fulfilled by the appellants. However, the appellants were not using power supply from electricity board and therefore, they could not have given electricity meter reading, further, the intimation has not been challenged. We find that all other requirements have been fulfilled and the Department also is not contesting that factory had remained closed but the claim for abatement has been rejected only on the ground that reading of electricity meter has not been given to the Department. Under these circumstances, we consider that rejection was only on technical ground in view of the fact that factory was running only on DG sets and this is not disputed by the Department at all.

In view of above discussion, the impugned order is set aside and the appeal is allowed with consequential relief to the appellant.

7. Rule 96ZO(3) of the Central Excise Rules provides for an alternative method of assessment. The conditions given in the Rule require the appellant to give electricity meter reading for the purposes of claiming abatement. In the present case during inspection it was found that factory was not running at the relevant period. It was not denied that factory did not have electricity connection. No other material was available to have denied the abatement of 15 days claimed by the assessee of which the intimation was given in time.

8. Law does not insist on impossibility for complying with the provisions of the Act for claiming any exemption or abatement. Where it is established that the party did not have electric connection and was using only DG set, the insistence of providing electricity meter reading for abatement of liability was an absurd suggestion. The other circumstances namely that factory was not found running during inspection and that intimation was given in time was sufficient to grant abatement for relevant period.

9. We do not find that any question of law arise for consideration in the central excise appeal. The central excise appeal is dismissed.

