

(2014) 12 AP CK 0047

In the Andhra Pradesh High Court

Case No : Central Excise Appeal No. 52 of 2004

Commr. of Cus. and C. Ex.

APPELLANT

Vs

Kinnera Steels Ltd.

RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G 3A

Citation : (2015) 321 ELT 196

Hon'ble Judges : L.N. Reddy, J;Challa Kodanda Ram, J

Bench : Division Bench

**Advocate : V. Gopala Krishna Gokhale, Senior SC, Advocate for the Appellant;
C.V. Narasimham, Advocate for the Respondent;**

Judgement

L.N. Reddy, J.

1. The respondent is a manufacturer of mild steel bars and rods. Its annual capacity for the assessment year 1999-2000 was determined under Rule 96ZP of the Central Excise Rules (for short "the Rules") at 2,40,250/- metric tonnes. On 1-10-1999, the respondent filed an application stating that there is change of parameters in the factory and that the quantum of Central Excise duty determined against it needs to be revised. The application was considered by the concerned authority and through order, dated 13-12-1999, the annual capacity for the assessment year 1999-2000 was slashed to 1,10,910/- metric tonnes with effect from 1-10-1999. Stating that the factory did not function at all, between 9-9-1999 and 31-3-2000, the respondent filed an application for abatement, under Rule 96ZP(3) of the Rules. On a consideration of the claim made by the respondent, the Commissioner passed an order, dated 11-7-2000 granting relief in the form of exemption from paying excise duty to the extent of Rs. 8,33,635/-. Aggrieved by that, the Department filed Appeal No. E/762/02 before the Customs, Excise and Service Tax Appellate Tribunal, Bangalore. The appeal was dismissed through order, dated 11-6-2004. Hence, this appeal under Section 35G of the Central Excise Act (for short "the Act").

2. Heard learned counsel for the appellant and learned counsel for the respondent.

3. Rule 96ZP of the Rules prescribes the procedure to be followed by a manufacturer of hot re-rolled products, for payment of excise duty. The facilities are provided for payment of excise duty at a particular rate, covering the relevant period. It enables a manufacturer to pay excise duty at a stipulated rate latest by the 10th of each month. Sub-rule (2) thereof is to the effect that in case, the manufacturer does not produce the product continuously for a period of 7 days or more, and he wishes to claim abatement under sub-section (3) of Section 3A of the Act, it has to file application before the Commissioner, in that behalf. However, it is mentioned that a manufacturer who avails the facility under that provision, shall not be entitled to claim benefit under proviso to sub-section (3) or sub-section (4) of Section 3A of the Act. The provision reads:

96ZP(2) Where a manufacturer does not produce the hot re-rolled products of non-alloy steel during any continuous period of not less than seven days and wishes to claim abatement under sub-section (3) of Section 3A of the Central Excise Act, 1944, the abatement will be allowed by an order passed by the Commissioner of Central Excise of such amount as may be specified in such order, subject to the fulfillment of the following conditions, namely,-

(a) 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;

(b) 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 hot re-rolled products of non-alloy steel;

(c) the manufacturer, when he starts production again, shall inform in writing about the starting of production to the Assistant Commissioner of Central Excise, with a copy to the Superintendent of Central Excise, either prior to the date of starting production or on the date of starting production;

(d) the manufacturer shall on start of production again, along with the closing balance of stock on restarting the factory, intimate the reading of the electricity meter to the Assistant Commissioner of Central Excise, with a copy to the Superintendent of Central Excise;

(e) the manufacturer shall while sending intimation under clause (c), declare that his factory remained closed for a continuous period starting from ----- hours on ----- (date) to ----- hours on ----- (date).

4. Annual capacity of the respondent herein was determined at 2,40,250/- metric tonnes for the financial year 1999-2000 under the relevant provisions of law. That was reduced to 1,10,910/- metric tonnes with effect from 1-10-1999. Such deduction has become final.

5. The respondent pleaded that it did not undertake any production at all for a period of about six months i.e., between 9-9-1999 and 31-3-2000 and claimed the abatement under sub-rule (2) of Rule 96ZP of the Rules. The Commissioner processed the application and found the facts mentioned therein to be true. Accordingly an order was passed on 11-7-2000 granting relief to the extent of Rs. 8,33,635/-.

6. A serious doubt arises as to whether the Department can file an appeal against an order passed in the first instance. Normally, we come across cases, under the Income-tax Act, Central Excise Act or Customs Act, wherein the Department does not file appeals against the orders passed in original and it can feel aggrieved only when the order passed by the original authority is reversed in appeal, be it by the Commissioner, or the Tribunal. In the instant case, the Department filed the appeal against the order passed by the Commissioner in the first instance and not in exercise of appellate power. That however is a matter, which needs deep scrutiny in a deserving case.

7. Once sub-rule (2) of Rule 96ZP of the Rules provides for filing of an application for abatement, it is just un-understandable as to how any exception can be taken by the Department, to the order passed in it. It is a different matter if the appellant is of the view that the respondent has run the factory during that period. That however is not the case. The main plank of the argument is that an application for abatement under sub-rule (2) of Rule 96ZP of the Rules is barred under sub-rule (3) thereof. We do not find such mandate therein.

8. Sub-rule (3) creates the facility of payment of certain amount in accordance with the formula incorporated therein and the same would constitute compliance with the provisions of the Act and the Rules. The only rider added in that was that a manufacturer, who avails the benefit under sub-rule (2) shall not be entitled to claim the benefit under proviso to sub-section (3) or sub-section (4) of Section 3A of the Act. The application in the instant case is not under that provision. Sub-rule (3) of Rule 96ZP of the Rules does not bar the filing of applications under sub-rule (2). It was not even alleged that after availing the benefit under sub-rule (2), the respondent got the benefit under sub-rule (3) or vice versa.

9. The Tribunal has taken correct view of the matter. We are not inclined to take any different view.

10. Therefore, the appeal is dismissed. The miscellaneous petition filed in this appeal shall also stand disposed of. There shall be no order as to costs.