

(1999) 11 AHC CK 0175

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1020 of 1999

J.S. Metals (P) Ltd.

APPELLANT

Vs

Commissioner of Central Excise

RESPONDENT

Date of Decision : 03-11-1999

Acts Referred:

Central Excise Rules, 1944 — Rule 96ZO(3)
Central Excises and Salt Act, 1944 — Section 3A, 3A(2), 3A(4)
Constitution of India, 1950 — Article 226

Citation : (2000) 88 ECR 545 : (2000) 117 ELT 299

Hon'ble Judges : S.K. Jain, J; M.C. Agarwal, J

Bench : Division Bench

Advocate : Pankaj Bhatia, for the Appellant; G.R. Gupta, for the Respondent

Judgement

1. In this petition under Article 226 of Constitution of India, the petitioner is aggrieved of the omission of respondent No. 1 to redetermine the actual production of excisable goods in petitioner's factory in terms of Section 3A(4) of Central Excise Act, 1944 and the insistence of the respondents for payment of duty in terms of earlier determination, which does not legally survive.

2. We have heard Shri Pankaj Bhatia, learned Counsel for the petitioner and Shri G.R. Gupta, learned Counsel for the respondents.

3. The petitioner is engaged in the manufacture of the excisable goods i.e., M.S. Ingots/Runner Riser. Section 3A of the Act conferred power on the Central Government to determine the excise duty on the basis of the capacity of the production in respect of such goods. Sub-section (2) of Section 3A, authorises the Commissioner to determine the actual capacity of production and the duty payable. In terms of Section 3A(2) the Commissioner fixed the annual production capacity at 16000 M.T. and the duty payable at Rs. 8,33,333/- per month. This was communicated to the petitioner through a letter dated 30-9-1999, a copy of which is Annexure I to the writ petition. The petitioner filed an appeal against the said order before the Customs, Excise and Gold (Control) Appellate Tribunal, New

Delhi and the said appeal was allowed by the Tribunal vide order dated 26-5-1998, whereby the Tribunal set aside the Commissioner's order and remanded the matter back to him for afresh determination, after providing the tax payer an opportunity to be heard in person. The Commissioner then passed a fresh order dated 11-1-1999 taking the view that the petitioner had opted for the payment of duty at lumpsum fixed under Rule 96ZO(3) and therefore, it was not entitled to get the annual production re-determined u/s 3A(4) of the Central Excise Act. The petitioner again went in appeal to the Tribunal and by the order dated 29-6-1999 the Tribunal set aside the Commissioner's order and directed him to re-determine the actual production in terms of Section 3A(4) of the Act. The Tribunal took the view that Section 3A(4) overrides the provisions of the aforesaid rule.

4. Since the matter is pending before the Commissioner and the annual production as well as the duty payable is yet to be determined in accordance with the provision of Section 3A(4) of the Act, the petitioner's grievance that the respondents are insisting on the payment of duty in accordance with the earlier determination communicated to the petitioner vide a letter dated 30-9-1999; although the said determination has been set aside by the Tribunal and no determination is in existence. It is claimed that the respondent No. 2 visited the petitioner's factory and threatened to take coercive steps for the realisation of the excess excise duty. No counter affidavit proposed to be filed and after hearing the learned counsel for the parties, we dispose of this petition finally with the following directions :-

(1) The respondent No. 1 is directed to dispose of the matter in compliance with the Tribunal order dated 29-6-1999 u/s 3A(4) of the Act within a period of three months from the date of presentation of a certified copy of this order before him.

(2) Till such determination, the respondents are restrained from insisting upon the petitioner for the payment of excise duty in terms of determination communicated to the petitioner through a letter dated 30-9-1999, a copy of which is Annexure I to the writ petition.