courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 20/08/2026

(2014) 04 AHC CK 0267

In the Allahabad High Court

Case No : Central Excise Appeal No. 171 of 2006

Kamakhya Steels P. Ltd. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:
Central Excises and Salt Act, 1944 — Section 3A

Citation : (2014) 307 ELT 267 : (2014) 27 GSTR 256

Hon'ble Judges : Rajesh Kumar Agrawal, J;Dinesh Gupta, J

Bench : Division Bench

Advocate : Nishant Mishra, Advocate for the Appellant; Ajay Bhanot and R.C. Shukla, Advocate for the Respondent

Judgement

1. Heard Shri Devnath, the learned counsel for the appellant and Shri Amit Mahajan, the learned counsel appearing on behalf of the respondent. This appeal has been admitted mainly on the ground that whether the appellant is liable for the duty for the financial year 1999-2000 on the actual production or on the deemed production under rule 96ZO(3).

2. The brief facts of the case are that the appellant is engaged in the manufacture of M.S. ingots of non-alloy steel on the introduction of the compounded levy scheme. The appellant filed the necessary declaration under rule 96ZO(3) of the Central Excise Rules for discharging the liability. It appears that a declaration was made under the rule 96ZO(3) vide letter dated August 3, 1997 for the financial year 1997-98 and it also appears that one letter has also been issued on April 1, 1998.

3. The learned counsel for the appellant submitted that the appellant is not disputing the liability of the payment of duty under rule 96ZO(3) for the financial years 1997-98 and 1998-99. The appellant is only disputing the liability of duty under rule 96ZO(3) for the financial year 1999-2000. The contention of the appellant is that the appellant has not given any option for the payment of duty under rule 96ZO as required under sub-rule (3) for the financial year 1999-2000

and has made a request for the determination of the capacity of the furnace u/s 3A of the Central Excise Act and accordingly is liable for duty u/s 3A.

4. The Commissioner of Central Excise in its adjudication order dated July 8, 2007 in substance has held that the appellant is also liable for the duty in the financial year 1999-2000 under rule 96ZO(3) because the appellant has not revoked the option under the said rule.

5. The observation of the adjudication authorities is as follows:

"In the instant case, I find that the party had clearly opted to discharge their duty liability in accordance with sub-rule (3) of rule 96ZO, ibid as evidenced by their letter dated June 1, 1998. Even the party has admitted this fact of having opted for rule 96ZO(3) on June 1, 1998 as evidence by paragraph ''C'' of their defence reply dated February 20, 2002 to the show-cause notice dated March 14, 2001, submitted through their advocate submitted through their advocate Shri N.K. Arora. I find that the party, at no point of time, ever informed the Department of its choice of the operative sub-rule (3) of rule 96ZO, ibid, for duty payment in the subsequent financial years, i.e., after 1998-99. In other words the party did not intimate in subsequent year whether they would discharge the duty liability under sub-rule (1) or sub-rule (3) of rule 96ZO of the Central Excise Rules, 1944. Neither did they mention anything in this regard in their aforesaid letter dated June 1, 1998 nor did they restrict the applicability of their choice to their option, intimated vide letter dated June 1, 1998, was applicable to and in force during the subsequent financial years also. Moreover, when a choice has to be made, between two sub-rules of the same rule, for the payment of duty and such choice is irrevocable during a financial year, then any change in option for subsequent financial years has to be actual clear and unambiguous. Thus I am inclined to take a view that the provisions of rule 96ZO(3) would apply to the financial year 1999-2000 also, in the party''s case for payment of duty. Having come to the aforesaid conclusion and in the light of the foregoing paragraphs, it is clear that the party would not be eligible to the benefit of sub-section (4) of section 3A of the Central Excise Act 1944 for the year 1999-2000 and their application dated January 30, 2000, in this regard, is liable to be rejected."

6. The learned counsel for the appellant submitted that though the specific grounds has been taken in the grounds of appeal that since no declaration was made and no option has been given for the year 1999-2000 under rule 96ZO(3). The Tribunal has not considered this aspect of the matter. He submitted that the sub-rule (3) of rule 96ZO provides for giving the option for each financial year and if the option has not given for the year 1999-2000, the appellant is not liable to pay the duty under rule 96ZO.

7. Shri Amit Mahajan appearing on behalf of the respondent fairly submitted that the Tribunal in fact has not adjudicated this aspect of the matter and the matter requires reconsideration by the Tribunal.

8. We have considered the rivals submissions and perused the impugned order of

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/kamakhya-steels-p-ltd-appellant-…

the Tribunal dated October 7, 2005.

9. We find that the Tribunal has not considered the plea of the appellant that for the financial year 1999-2000 under rule 96ZO(3) the option has required under sub-rule (3) of 96ZO has not been given by the appellant.

10. The Tribunal has not adjudicated that if the option has not be given for the 1999-2000 whether the appellant is liable for the payment of duty under rule 96ZO.

11. On the aforesaid facts and circumstances we are of the opinion that this aspect of the matter requires consideration by the Tribunal afresh.

12. It is made clear that the matter is relegated only for the determination of the liability for the financial year 1999-2000 and not for any other year.

13. In the result the appeal is allowed, the impugned order dated October 7, 2005 passed in Appeal No. E/2097/2003 is set aside and the matter is relegated to the Tribunal to decide the appeal afresh in light of observation made above. Since the matter is quite old, the Tribunal is directed to decide the appeal expeditiously preferably within a period of three months from the date of presentation of the certified copy of this order which the learned counsel for the appellant undertakes to file within two weeks.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/kamakhya-steels-p-ltd-appellant-…