(2021) 04 CESTAT CK 0045

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 10657, 10690 Of 2020

Maheshwar Steel Rolling Mill — APPELLANT

Vs

C.C.E. And S.T.-Ahmedabad-III — RESPONDENT

Date of Decision : 28-04-2021

Acts Referred:

Hot Re-Rolling Steel Mills Annual Capacity Determination Rules, 1997 — Rule 5
Central Excise Act, 1944 — Section 3A(2)
Central Excise Rules 1944 — Rule 96ZO, 96ZP, 96ZQ

Citation : (2021) 04 CESTAT CK 0045

Hon'ble Judges : Ramesh Nair, J;Raju, Technical Member

Bench : Division Bench

Advocate : K.J Kinariwala, Sanjiv Kinker

Final Decision : Partly Allowed

Judgement

1. The issue involved in the present case is that whether appellant is entitled for reduced annual production capacity on the basis of reduction of

parameters in their mills. This is the fourth round of appeal before this tribunal. Earlier this tribunal remanded the matter stating that in fixing APC,

letter dated 09.03.98 and 15.04.98 has to be considered. The adjudicating authority fixed the APC and consequentially confirmed all demand of duty

relying upon Rule 5 of Hot Re-Rolling Steel Mills Annual Capacity Determination Rules, 1997.

2. Shri K.J Kinariwala, Learned Consultant appearing on behalf of the appellant submits that the APC should have been fixed considering the letter

dated 09.03.98 and 15.04.98 which has been directed by this tribunal. He submits that according to declaration made by the appellant the parameter

were changed and accordingly, APC stands to be reduced from the earlier production before change in the parameters. Therefore, the reduced capacity should have been accepted accordingly, no demand arises. In support of his submission he placed reliance on following judgments:

? JAMMU CASTING PVT. LTD Vs UNION OF INDIA- 2018 (360) E.L.T 282 (J&K)

? AWADH ALLOYS (P) LTD Vs COMMISSIONER OF CENTRAL EXCISE, MEERUT-1999 (112) E.L.T 719 (Tribunal)

? SAWANAMAL SHIBUMAL STEEL ROLLLING MILLS Vs CCE CHANDIGARH-I- 2001 (127) E.L.T 46 (Tri.- LB)

? SHREE BALAJI RE-ROLERS Vs COMMISSIONER OF C.EX. & CUS., BBSR-II-2004 (176) E.L.T 815 (Tri. Kolkata)

? BHUWALKA STEEL INDUSTRIES LTD. Vs COMMISSIONER OF C.Ex., CHENNAI â?" 2005 (185) E.L.T 73 (Tri.- Chennai)

? BHUWALKA STEEL INDUSTRIES LTD Vs UNION OF INDIA â?" 2017 (348) E.L.T 393 (SC)

? KRISHNA PROCESSORS Vs UNION OF INDIA â?" 2012 (280) E.L.T 186 (Guj.)

? ARBUDA ALLOYS PVt.LTD. Vs COMMISSIONER OF C. EX. & S.T., AHMEDABAD â?" 2016 (338) E.L.T 426 (Tri. â?" Ahmd)

? SHREE BHAGWATI STEEL ROLLING MILLS Vs COMMR. OF CENTRAL EXCISE â?" 2015 (326) E.L.T 209 (S.C)

2.1 He also submitted that the validity of Rule 5 of Hot Re- Rolling Steel Mills Annual Capacity Determination Rules, 1997 is under challenge before

the apex court and is pending. He invited our attention to the status of Civil Appeal No 7823/2014 and submits that the said appeal is pending.

Therefore, the vires of Rule 5 of Hot Re-Rolling Steel Mills Annual Capacity Determination Rules, 1997 is pending before the Honâ??ble Supreme

Court. The Adjudicating Authority should not have proceeded and confirmed the demand. He further submits that the penalty has already been

dropped, however the interest was demanded by the adjudicating authority, which is not sustainable. He relied upon the decision of the Honâ??ble

Supreme Court in case of Shree Bhagwati Steel Rolling Mills Vs. CCE 2015 (326) ELT 209 (SC).

3. On the other hand Shri Sanjiv Kinker, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding

of the impugned order. He also placed reliance upon the various judgments which are cited below:-

? COMMISSIONER OF C.Ex, CHANDIGARH Vs DOABA STEEL ROLLING MILLS 011

(269) E.L.T 298 (S.C)

? DOABA STEEL ROLLING MILL Vs COMMISSIONER â?" 2013 (296) E.L.T A52 (SC)

? (A.P) CPMMR.OF CUS. & C.EX, HYDERABAD Vs SIFCO METAL INDUSTRIES 2017 (346) E.L.T 50

? COMMISSIONER OF CUS.& C.EX, RAIPUR Vs VANDANA ROLLING MILLS LTD. 2016 (331) E.L.T 236 (Chhattisgarh)

? COMMR. OF C.Ex., CHENNAI-II Vs KANISHK STEEL INDUSTRIES LTD2015 (318) E.L.T 190 (Mad.)

? 2017 (345) ELT 600 (All.) COMMISSIONER OF CUS.& COMMR. OF C.Ex., CHENNAI-II Vs KANISHK STEEL INDUSTRIES LTD-2015

(318) E.L.T 190 (Mad.)

? 2017 (345) E.L.T 600 (All.) COMMISSIONER OF CUS.& C.EX., MEERUTII Vs SHANTI STEEL ROLLING MILLS

? COMMR.OF C.EX. & S.T., LTU, DELHI Vs. NANGALAMAL SUGAR COMPLEX 2020 (371) E.L.T 501 (Del.)

? MEENAKSHI STEEL RE-ROLLING MILLS Vs UNION OF INDIA 2015 (330) E.L.T 138 (Kar.)

? BHUWALKA STEEL INDUSTRIES LTD Vs UNION OF INDIA 2015 (323) E.L.T 73 (Kar.)

? COMMISSIONER OF C.Ex. & CUSTOMS Vs VENUS CASTINGS (P) LTD 2000 (117) E.L.T 273 (SC)

? Civil Appeal No(s) .7823/2014 M/S BHUWALKA STEEL INDUSTRIES LTD & ANR. Appellant(s) Vs UNION OF INDIA & ORS.

Respondent(s)

? SHASUN DRUGS & CHEMICALS Vs CESTAT, CHENNAI 2006 (198) ELT 179 (Mad.)

4. We have carefully considered the submissions made by both the sides and perused the records. We find that the entire case was decided by the

lower authority only relying on the rule 5 which is reproduced below:

In exercise of the powers conferred by sub-section (2) of section 3A of the Central Excise Act, 1944 (1of 1944), the Central Government

hereby makes the following rules, namely :-

1 (1) These rules may be called the Hot Re-rolling Steel Mills Annual Capacity Determination Rules, 1997. (2) They shall come into force on

the 1st day of August, 1997.

2. These rules shall apply to non-alloy steel hot re-rolled products falling undersub-heading Nos.7211.11, 7211.19, 7211.30, 7211.52,

7211.59, 7211.60, 7211.92, 7211.99, 7213.90, 7214.90, 7215.90, 7216.10 and 7216.90 of the Schedule to the Central Excise Tariff Act,

1985 (5 of 1986), for determining the annual capacity of production of a factory if such goods are manufactured or produced with the aid

of hot re-rolling mill.

3. The annual capacity of production referred to in rule 2 shall be determined in the following manner, namely :-

(1) a hot re-rolling mill shall declare the values of 'd', 'n', 'i' and 'speed of rolling', the parameters referred to in sub-rule (3), to the

Commissioner of Central Excise (hereinafter referred to as the Commissioner), with a copy to the Assistant Commissioner of Central Excise

or Deputy Commissioner of Central Excise;

(2) on receipt of the information referred to in sub-rule (1), the Commissioner shall take necessary action to verify their correctness and

ascertain the correct value of each of the parameters. The Commissioner may, if he so desires, consult any technical authority for this

purpose;

(3) the annual capacity of production of hot re-rolled products of non-alloy steel in respect of such factory shall be deemed to be as

determined by applying the following formula :-

Annual Capacity = 1.885 xl0-4 xdxnxixexwx Number of utilised hours (in metric tonnes) Where:

d = Nominal centre distance of the pinions in the pinion stand in millimeters

n = Nominal revolutions per minute (RPM) of the drive

i = Reduction ratio of the gear box or of the pulley system or combination thereof

w = Weight in Kilogramme per metre of the re-rolled product the value of 'e' in the formula shall be deemed to be 0.30 in case of low speed

mills, and 0.75 in case of high speed mills the value of 'w' factor in the formula for the high speed mills shall be deemed to be 0.45 and for

the low speed mills shall be deemed to be as under, -

Nominal centre distance of the pinions in the w in kilogramme per metre pinion stand in millimetres

Up to 110 0.100

111 to 160 0.150

161 to 210 0.395

211 to 260 0.888

261 to 310 1.200

311 to 360 2.466

361 to 410 4.850

Number of utilised hours shall be deemed to be as under, -

S. No. Reheating Furnace Utilised hours per year

Type No. of furnace

1. Batch 1 1200

2. Batch 2 1800

2. Batch more than 2 2400

3. Pusher type 1 or more 2400

Explanation. - For the purposes of this rule :-

(a) a high speed mill means a mill which produces hot re-rolled products at a speed of 8.5 metres per second or more and a low speed mill

means a mill which produces hot re-rolled products a speed less than 8.5 metres per second.

(b) nominal centre distance is the pinion centre distance of the pinion stand connecting the last rolling mill drive of the finishing mill

excluding any pinch roll. Such a pinch roll is not a finishing stand.

(4) the Commissioner of Central Excise shall, as soon as may be, after determining the total capacity of the hot re-rolling mill installed in the

factory as also the annual capacity of production, by an order, intimate to the manufacturer.

Provided that the Commissioner may determine the annual capacity of the hot re-rolling unit on provisional basis pending verification of the

declaration furnished by the hot re-rolling mills and pass an order accordingly. Thereafter, the Commissioner may determine the annual

capacity, as soon as may be, and pass an order accordingly.

4.(1) The capacity of production for any part of the year, or any change in the total hot re-rolling mill capacity, shall be calculated pro rata

on the basis of the annual capacity of production determined in the above manner stated in rule 3.

(2) In case a manufacturer proposes to make any change in installed machinery or any part thereof which tends to change the value of

either of the parameters 'd', 'n', 'e', 'i' and 'speed of rolling' referred to in sub-rule (3) of rule 3, such manufacturer shall intimate about the

proposed change to the Commissioner of Central Excise in writing, with a copy to Assistant Commissioner of Central Excise or Deputy

Commissioner of Central Excise, at least one month in advance of such proposed change, and shall obtain the written approval of the

Commissioner before making such change. Thereafter the Commissioner of Central Excise shall determine the date from which the change

in the installed capacity shall be deemed to be effective.

5. In case, the annual capacity determined by the formula in sub-rule (3) of rule 3 in respect of a mill, is less than the actual production of

the mill during the financial year 1996-97, then the annual capacity so determined shall be deemed to be equal to the actual production of

the mill during the financial year 1996-97.

4.1 On the plain reading of the above Rule 5 it is clear that even if the parameter is changed the APC should be fixed based on the annual production

of the year 1996-1997. However, the vires of Rule 5 is pending before the Honâ??ble Supreme Court in the Civil Appeal No 7823/2014. Therefore,

in the interest of justice we are of the view that as regard the issue of determination of APC and demand of duty it should be decided only after the

Honâ??ble Supreme Court judgment in the Civil Appeal no 7823/2014. Therefore, only for the issue of demand of duty, the matter is remanded to the

adjudicating authority.

5. As regard the demand of interest on the duty liability, we find that Honâ??ble supreme Court in the case of Shree Bhagwati Steel Rolling Mills

(Supra) has clearly held that the levy of interest cannot be made under rule 96ZO, 96ZP, 96ZQ of Central Excise Rules, 1944 as section 3A of the

Central Excise Act, 1994 which provided for compounded levy scheme itself does not stipulate levy of interest.

6. Considering the aforesaid judgment we set aside the liability of interest. The appeal is partly allowed in the above terms.

(pronounced in open court on 28.4.2021)

