
(2010) 04 P&H CK 0348
In the Punjab And Haryana At Chandigarh

Prem Khalsa Iron Steel Rolling Mills	APPELLANT
Vs	
Commissioner of Central Excise and Another	RESPONDENT

Date of Decision : 23-04-2010

Acts Referred:

Central Excises and Salt Act, 1944 — Section 3, 3A, 4, 4A

Citation : (2010) 176 ECR 108 : (2010) 253 ELT 516

Hon'ble Judges : Mehinder Singh Sullar, J; Ashutosh Mohunta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashutosh Mohunta, J.—This order shall dispose of CEA No. 126 of 2005, CEA No. 127 of 2005 and CEA No. 128 of 2005, as common questions of law and similar facts are involved. However, the facts are being extracted from CEA No. 127 of 2006.

2. The appellant unit is a hot re-rolling mill of non-alloys steel falling under Chapter 72 of Central Excise Tariff Act. During the course of checking of record by the Revenue, it was observed that the appellants had availed the benefit of SSI exemption in terms of Notification No. 9/2000-CE dated 01.03.2000 and paid duty accordingly. It was also observed that the value of the goods cleared by the party during the preceding financial year i.e. 1999-2000 was more than permissible limit of Rs. 300 lacs. As per Notification No. 9/2000-CE dated 01.03.2000, the SSI exemption was available only to the units having clearances not exceeding Rs. 300 lacs in the preceding financial year. The Revenue issued show cause notice demanding Central Excise duty on goods cleared under SSI exemption. The adjudicating authority confirmed the demand of Rs. 4,80,000/- and also imposed penalty of Rs. 50,000/-. Aggrieved with the orders of the adjudicating authority, the present appellant filed appeal before the Commissioner (Appeals) who set aside the order-in-original vide his order dated 31.03.2003. Thereupon, the Revenue filed appeal against the Orderin-Appeal before the CESTAT. The CESTAT vide Final Order No. 429- 31/05 dated

16.05.2005 set aside the Order-in-Appeal and allowed the appeal of the Revenue. The CESTAT relied upon its earlier judgment rendered in 2004 (97) ECC 774 .

3. Shri Akshay Bhan, counsel for the appellant vehemently argued that the impugned order of the CESTAT dated 16.05.2005 is legally unsustainable and deserves to be set aside and the Order of the Commissioner (Appeals) is required to be restored. The learned Counsel heavily relied upon the Notification No. 9/2000-CE dated 01.03.2000 in submitting that as per Paragraph 5, Clause (c) of the said notification, the value means:

(i) In respect of specified goods which have been notified u/s 4-A of the Central Excise Act, 1944 (1 of 1944), as determined in accordance with the provisions of that section; &

(ii) In respect of specified goods other than those referred to in Clause (i), the value is determined in accordance with the provisions of Section 4 of the Central Excise Act, 1944 (1 of 1944) or the tariff value fixed u/s 3 of the said Act.

4. Learned Counsel submits that in order to avail the benefit of SSI exemption, only three types of values are to be taken into consideration:

(i) Value u/s 4 of the Central Excise Act;

(ii) Value u/s 4A of the Central Excise Act;

(iii) Tariff value as fixed u/s 3 of the Act.

5. The learned Counsel further argued that clearances covered under the Compounded Levy Scheme i.e. Section 3-A are not to be included while determining the aggregate value of the goods cleared from the factory under Notification No. 9/2000-CE. Since Section 3-A does not find mention in Clause 5-C of the Notification (supra), therefore, intention of the legislature was to exclude the clearances under the Compounded Levy Scheme, Section 3-A of the Act. The learned Counsel further argued that if the clearances u/s 3-A of the Act are not included then the clearances of the preceding year falls below Rs. 300 lacs entitling the appellant unit to avail the benefit of SSI Exemption under Notification No. 9/2000-CE dated 01.03.2000.

6. On the other hand, Mr. Gurpreet Singh, counsel for the Revenue contended that the Notification No. 9/2000-CE dated 01.03.2000 had been amended immediately vide Notification No. 3 1/2000-CE(NT) dated 31.03.2000 wherein Clauses (e) & (f) had been added in Para 3 of the Notification as under:

Notification No. 9/2000-CE dated 01.03.2000.

S. No.

Notification No.

Amendment

(1)

(2)

(3)

1 to 4

9/2000-Central Excise, dated the 1st March, 2000

In the said notification, in paragraph 3, after clause (d), the following shall be inserted namely:

(e) clearances of hot re-rolled products of non alloy steel falling under sub-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, lying in stock on 31st March, 2000, on which duty of excise has been paid u/s 3A of the Central Excise Act, 1944";

(f) Clearances of ingots and billets of non-alloy steel falling under subheading Nos.7206.90 and 7207.90, lying in stock on 31st March, 2000, on which duty of excise has been paid u/s 3A of the Central Excise Act, 1944."

The counsel submitted that the amendment has been affected which has neither been relied by the counsel for the appellant nor pleaded and according to which it has been amply made clear that only those clearances of hot re-rolled products of non-alloys steel lying in the stock on 31st March, 2000 on which duty of excise has been paid u/s 3A of the Central Excise Act, 1944 are to be excluded. Meaning thereby that all the goods which have been cleared u/s 3A are to be included in the aggregate value for the purpose of determining whether the benefit of SSI Exemption can be extended to a particular unit. He further argued that in the heading of Para 3 it is mentioned that for the purposes of determining the aggregate value of clearances for home consumption, the clearances hereinbelow mentioned from Clauses (a) to (f) are not to be taken into consideration and, therefore, the stocks under Compounded Levy Scheme u/s 3A which are lying on 31st March, 2000 are only to be excluded under the said scheme otherwise there was no requirement of including Clauses (e) & (f) in Para 3. He further submitted that the purpose granting SSI exemption to a particular unit is defeated if the goods cleared in the preceding year are more than Rs. 300 lacs. It was submitted that the aggregate value of clearances during the preceding financial year 1999-2000 was Rs. 8.22 crores. He further submitted that it is the aggregate value of clearances of all excisable goods which has to be considered in order to determining the eligible factor. He referred to Para 2, Clause 6 in which it has been mentioned that aggregate value of clearances of all excisable goods have to be taken into account. Clearly, the goods cleared u/s 3A are also excisable goods. Learned Counsel relied upon the judgement of the Tribunal in *K.L. Concast v. CCE* (supra).

7. From the aforementioned contentions of the respective counsel the following

questions of law arise for consideration by this Court:

1. Whether in the facts and circumstances of the present case the value of goods cleared u/s 3-A can be treated for determination of aggregate value under notification 9/2000-CE dated 1.3.2000 in terms of explanation No. C of the said notification, when the question of inclusion of value of clearances of those goods for denying the SSI exemption from 01.04.2000, does not arise?

ii) Whether in the facts and circumstances of the present case the appellant rightly availed the benefit of Small Scale Unit Exemption under notification No. 9/2000-CE dated 1.3.2000?"

8. We have heard counsel for the parties at length.

9. From a perusal of Notification No. 9 of 2007, it is quite evident that the benefit of exemption is available only to a unit whose clearances for home consumption did not exceed Rs. 300 lacs during the preceding financial year. In the notification itself, it has been provided that while calculating the limit of Rs. 300 lacs, specified clearances shall not be included. The goods cleared on payment of duty u/s 3A of the Excise Act are not excluded. So, it cannot be presumed that clearances made u/s 3-A are excluded from the specified limit. The contention of the counsel for the appellant is that value means only value specified u/s 4, Section 4-A and the tariff value and goods cleared u/s 3-A do not fall under these categories. u/s 4, 4-A and tariff value, only assessable value of the goods is determined. In case, goods are cleared u/s 3-A of the Act, unlike payment of duty on clearances on every consignment, lump-sum amount is paid on the basis of capacity determined on the basis of machines. The value is shown in the invoice used for clearance of goods. All the goods which are not covered u/s 4-A, as tariff value is not fixed, are covered u/s 4 of the Act. Section 4 is the general Section dealing with the value of the goods. So, the value of goods cleared u/s 3-A of the Act can be determined u/s 4-A of the Act and the Revenue has determined the value which is not disputed by the appellant.

10. For arguments sake, if the contention of the appellant is accepted, a unit, clearing goods, running into crores, shall also be entitled to the benefit of notification if the clearances are made u/s 3-A of the Act. The intention of exemption notification is to provide benefit to Small Scale Units and not to every unit. Even the language of the notification is clear and there is nothing to suggest that clearances made u/s 3-A of the Act are not to be counted while calculating the aggregate value of the clearances. The clearances which are excluded stands specified, hence, in the absence of specific provision clearances made u/s 3-A of the Act cannot be excluded. In *K.L. Concast v. CCE (supra)*, it has been held as under:

3. We have considered the submissions of both the sides. The benefit of Notification No. 9/2000-CE dated 01.03.2000 is available to the goods specified in the table below the Notification subject to the conditions, inter alia, that the aggregate value of the clearances of all excisable goods for home consumption

by a manufacturer from one or more factories or from a factory of one or more manufacturer does not exceed Rs. 300 lakhs in the preceding financial year. Para 3 of the Notification mentions some of the clearances which shall not be taken into account for the purpose of determining the aggregate value of clearances for home consumption. It is evident from Para 2 that the value of clearances of all excisable goods has to be taken into consideration for determining the aggregate value of clearances during the preceding financial year. It is not in dispute that the goods manufactured by them and cleared after discharging the duty liability u/s 3A of Central Excise Act during the preceding financial year are excisable goods. Further, Para 3 of the Notification also nowhere provides that the value of the clearances of the goods which have suffered duty u/s 3A of the Act is not to be taken into account for determining the aggregate value of the clearances for home consumption. What has been excluded from taking into account by inserting Clause (e) and Clause (f) by Notification No. 31/2000-CE. Dated 31.03.2000 is clearances of Hot Re-rolled products of non- alloy steel and ingots and billets of non-alloy steel on which duty of excise has been paid u/s 3A and which are lying in stock on 31.3.2000. These two sub-clauses make it very clear that the value of clearances of the goods on which duty of Excise has been paid u/s 3A of the Act is to be taken into account for determining the aggregate value of clearances of home consumption during the preceding financial year and the value of clearances of those goods which were lying in stock on 31.3 .2000 is only to be excluded.

11. In the present case, the value of goods cleared u/s 3-A of the Act during 1999-2000, has to be taken into consideration for computing the aggregate value for clearances for the purposes of notification. No other clearances as made u/s 3-A of the Act from 1.4.1999 to 31.3.2000 figure in the above exclusions. It is thus, clear that clearances made u/s 3-A were to be taken into account for computing the aggregate value of the clearances. Therefore, the SSI exemption availed of by the appellant was grossly against the provisions of law.

12. It is evident from the facts of the case that reliance placed by the Commissioner (Appeals) on Trade Notice No. 28/CE/94 was wholly misplaced, as in that case the goods were exempted prior to 1.3.1999 and no duty was leviable on them and hence, for calculating the eligibility limit, clearances prior to 1.3.1994 were not to be included. However, in the instant case, the goods were very much dutiable prior to 1.4.2000, and hence, for calculating the eligibility limit, the clearances of the previous financial year had to be included.

13. In view of the above, the questions posed in the present appeal are answered in favour of the Revenue and against the assesseees. Resultantly, we find no merit in these appeal and the same are dismissed.