

(2006) 08 P&H CK 0012
In the Punjab And Haryana At Chandigarh

RK Machine Tools Limited

APPELLANT

Vs

Customs, Excise and Gold (Control) Appellate Tribunal and
Another

RESPONDENT

Date of Decision : 25-08-2006

Acts Referred:

Citation : (2006) 08 P&H CK 0012

Hon'ble Judges : Rajesh Bindal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal has been preferred by the assessee proposing following substantial questions of law:

i) Whether closure of one induction furnace out of two induction furnaces in a unit entitles the assessee for abatement claim when all the conditions as prescribed are fulfilled by the assessee?

ii) Whether the word "factory" means all the induction furnaces installed in a unit by the assessee or it may mean to one or more than one induction furnaces as the case may be?

iii) Whether the provisions of Rule 96 ZO (3) (2) of the Annual Capacity Determination Rules, 1997 entitles the assessee to abatement claim?

iv) Whether the tribunal was right in rejecting the abatement claim of the assessee by not following the judicial precedence?

v) Whether the tribunal and authorities below can fasten liabilities for which show cause notice is silent and go beyond contents of show cause notice?

vi) Whether the tribunal and authorities below have followed principles of natural justice and if not its effect?

2. The assessee is engaged in the manufacture of non-alloy steel ingots/billets by

operating two induction furnaces of 3.5 MT and 3 MT capacities. They opted for payment of duty on compounded levy basis. They sought abatement of duty to the tune of Rs. 23 lacs for certain periods during August 1997 to January 1998 on the ground that one of the furnaces remained closed during the said period. The authorities under the Act declined to grant the said relief.

3. The Tribunal observed that relief of abatement was permissible only when the entire factory was closed and not merely a particular furnace. The Tribunal followed its earlier decision in *Waryam Steels Castings Limited v. CCE, Chandigarh* I 2003 (55) RLT 793.

4. We need not examine this question further, in view of judgment of the Hon''ble Supreme Court in *Channy Enterprises Vs. Commissioner of Central Excise, Chandigarh*, , wherein it was observed:

6. The respondent's contentions are correct. It is not the appellant's case that the 1998 circular was incorrect. On the contrary it has been relied on to claim that the ACP should have been determined with reference to the mill which had the the higher capacity alone. The circular in answer to a query which exactly reflects the issue in this case, clearly says that the capacity of the higher of the two mills would be taken for assessing the ACP only if each rolling mill did not have a separate reheating furnace. If each rolling mill had a separate heating furnace, as the appellant admittedly does, then the capacity of the unit would be the sum total of the capacity of each rolling mill in the unit irrespective of the fact that only one mill operated at a time. The language could not be plainer. What the appellant's argument overlooks is that the scheme did not operate on the basis of the actual production but on the capacity of the rolling mills to produce. We, therefore, see no reason to differ with the view expressed by the Commissioner, CEGAT and the High Court.

5. In view of the above, no substantial question of law arises. The appeal is dismissed.