(2015) 04 UK CK 0011

In the Uttarakhand High Court

Case No : Writ Petition No. 1505 of 2009 (M/S)

Sant Steel and Alloys Pvt. Ltd.	APPELLANT
Vs	
Commissioner of Central Excise	RESPONDENT

Date of Decision : 21-04-2015

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

Citation : (2015) 321 ELT 40

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : Atul Kumar Bansal, for the Appellant; Shobhit Saharai, Advocates for the Respondent

Judgement

Alok Singh, J.

1. Present petition is filed assailing the judgment/order dated 27-9-2001 passed by Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in appeal No. E/1179/2001/NB (SM), M/s. Sant Steel and Alloys Pvt. Ltd. v. Commissioner, Central Excise [2003 (151) E.L.T. 72 (Tribunal)] . It is stated by Mr. Atul Kumar Bansal, learned counsel for the petitioner that petitioner company is engaged in manufacturing of alloy steel ingots classified under sub-heading No. 7206.90 of the Schedule of the Central Excise Tariff Act, 1985. He further contends that factory remained closed from 1-9-1997 to 8-9-1997; intimation about the closer of the factory was given by the registered post to the Assistant Commissioner, Central Excise on 1-9-1997 and fax thereof was also sent on 2-9-1997 and again intimation to restart the factory was given by the registered post on 8-9-1997, therefore, petitioner is entitled for the abatement under sub-section (3) of Section 3A of the Central Excise Act, 1944.

2. It is further contended by Mr. Atul Kumar Bansal, learned counsel for the petitioner that as per Rule 96ZO(2) of the Central Excise Rules, manufacturer has to inform in writing about the closer of the factory to the Assistant Commissioner, Central Excise, either prior to the date of closer or on the date of

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closer and manufacturer has to intimate the Assistant Commissioner, Central Excise about the start of the production again, on the date when production is restarted. He further contended that petitioner has sent registered letter on 1-9-1997 intimating the Assistant Commissioner, Central Excise about the closer of the unit, however, to show his bona fide, petitioner once again on 8-9-1997, before production could restart, intimated the Assistant Commissioner, Central Excise about the meter reading of the electricity meter installed in the factory premises and stock available thereon. Further contended that having received the information about the closer of the unit on 1-9-1997, inspection was made in the factory premises and inspection memo was prepared by the Excise Officer on 2-9-1997, therefore, it cannot be said that factory of the petitioner did not remain closed from 1-9-1997 to 8-9-1997, consequently, denial of the benefit of the abatement under sub-section (3) of Section 3A of the Central Excise Act is wrong and without jurisdiction.

3. Rule 96ZO(2), as applicable on the relevant date, reads as under:

"96ZO(2) where a manufacturer...the following conditions, namely

(a) the manufacturer shall inform in writing about the closure to the Assistant Commissioner of Central Excise, with a copy to the Superintendent of Central Excise, either prior to the date of closure or on the date of closure;

(b) the manufacturer shall intimate the reading of the electricity meter to the Assistant Commissioner of Central Excise, with a copy to the Superintendent of Central Excise, immediately after the production in his factory is stopped alongwith the closing balance of stock of the ingots and billets of non-alloy steel;

(c) the manufacturer, when he starts production again, shall inform in writing about the starting of production to the Assistant Commissioner of Central Excise, with a copy to the Superintendent or Central Excise, either prior to the date of starting production or on the date of starting production;

(d) the manufacturer shall on start of production again alongwith the closing balance of stock on restarting the factory, intimate the reading of the electricity meter to the Assistant Commissioner of Central Excise, with a copy to the Superintendent of Central Excise;

(e) the manufacturer shall while intimation under clause (c), declare that his factory remained closed for a continuous period staring from...hours on....(date) to...hours on....(date)"

4. As per sub-clause (a) of the Rule 96ZO(2), manufacturer has to inform, in writing, about the closer of factory to the Assistant Commissioner, Central Excise with a copy to the Superintendent, Central Excise, either prior to the date of closer or on the date of closer.

5. There is no material available on the record that intimation for closer of the factory was sent and got received in the office of Assistant Commissioner, Central

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Excise and in the office of Superintendent of Central Excise either on 1-9-1997 or prior to 1-9-1997.

6. Undisputedly, fax was sent and received in the office of Assistant Commissioner, Central Excise on 2-9-1997, however, factory, according to the petitioner, was closed with effect from 1-9-1997, it means that intimation about the closer of the unit was sent and received after the closer of the unit. Therefore, petitioner has not made compliance of clause (a) of Rule 96ZO(2).

7. As per clause (b) of Rule 96ZO(2), manufacturer is duty bound to intimate about the reading of electric meter to the Assistant Commissioner, Central Excise with a copy to the Superintendent, Central Excise immediately after the production of his factory is stopped along with the closing balance of stock of the ingots and billets of non-alloy steel. Undisputedly, petitioner has not sent the required intimation immediately after the closer of the unit on 1-9-1997 and admittedly, he has sent intimation about the meter reading and stock on 8-9-1997 on the date on which the production was restarted.

8. This is the settled position of law to take benefit of concession/abatement, manufacturer is duty bound to follow the strict procedure given under the Act or Rules which admittedly petitioner has not done.

9. There is another aspect of the matter. As per the information furnished by the petitioner on 8-9-1997, only 502 pieces of ingots and billets were available in the factory premises as on 1-9-1997 on the date of closer of the unit, however, as per the inspection report dated 2-9-1997, 571 pieces of ingots and billets were found available in the factory premises. It seems that petitioner has not furnished the correct information about the stock. Consequently, I do not find any reason to take contrary view to the view taken by the Tribunal, therefore, petition fails and is hereby dismissed.

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