(2010) 11 AHC CK 0074

In the Allahabad High Court

Case No : Central Excise Reference Application No. 18 of 2001

V.V.S. Voncast Ltd. — APPELLANT

Vs

Commissioner of C. Ex. — RESPONDENT

Date of Decision : 08-11-2010

Acts Referred:

Central Excise Rules, 1944 — Rule 96ZO(2)
Central Excises and Salt Act, 1944 — Section 3A, 3A(3)

Citation : (2011) 264 ELT 222

Hon'ble Judges : Yatindra Singh, J;Rajes Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The Assessee manufactures MS ingots. It was assessed to the excise duty on the basis of the capacity of production in respect of same u/s 3A of Central Excise Act, 1944 ("the Act").

2. The Assessee claimed the abatement of excise duty for the period 26-5-1998 to 30-6-1998 and 30-10-1998 to 2-12-1998 on the ground that on these dates the factory was closed.

3. The abatement was disallowed by the Commissioner Central Excise, Kanpur-I ("the Commissioner") by his order dated 15-3-1999

4. The Assessee filed appeal. It was rejected on 8-6-2000.

5. The Assessee filed reference application to refer the questions before this Court, which was allowed on 1-12-2000 and this Court has ordered to draw the statement of case on the following questions:

(i) Whether the applicant having filed the certificate of U.P. State Electricity Board for the consumption of electricity meter reading which was not possible on account of the seal on the outer door of the room in which the electric meter was installed along with the cubical boxes and there was a substantial compliance of the requirement of Rule 96ZO(2) and the Tribunal was not justified in refusing the relief of abatement u/s 3A(3) Proviso of Central Excise Act?

(ii) Whether the applicant having admittedly produced the entire R.T. 12 as prescribed under the Central Excise Rule (A perusal of which clearly establishes the stock position of the goods upto the time of closure of the unit) The Tribunal was not justified in over looking the said R.T. 12 while observing that the production figure has not been given by the applicant?

(iii) Whether the information about closure of the unit and restarting the same having been furnished well within the time with a request to make local inspection in respect of the unit itself the tribunal was not justified in holding that strict compliance of the Rule 96ZO(2) has not been done by taking the literal meaning of the Rule instead principle of substantial compliance?

6. We have heard counsel for the applicant and Sri Shambhu Chopra, counsel for the Department.

7. The benefit of abatement can be given if the conditions mentioned in Rule 96ZO(2) of Central Excise Rules, 1944 (''the Rules") are complied with. In this case all the conditions were not complied with.

8. The counsel for the applicant submitted that:

- The meter reading is concerned, the same could not be submitted as it was sealed;

- It was not accessible to the Assessee.

9. Be as it may, it is admitted that the Assessee did not furnish the information about the finished goods and the raw material on the date of closure. It is necessary condition under the Rule. As the necessary conditions were not complied with, the abatement was rightly refused.

10. In view of the aforesaid reasons, all the questions are answered in negative, against the Assessee and in favour of the excise department.