NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 34 of 2014

Commissioner, Customs and Central Excise Central Excise Building, Dhamtari Road, Tikrapara, Raipur 492001Chhattisgarh.

---- Appellant

Versus

M/s Vandana Rolling Mills Limited Office- Unit -2, Vandana Building, M.G. Road, Raipur- 492001, Factory- Plot No. 58, Sector-A, Urla Industrial Area, Urla, Raipur 493221 Chhattisgarh.

---- Respondent

For Appellant	:	Shri Maneesh Sharma, Advocate.
For Respondent	:	Shri Ramakant Mishra, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board

Per Navin Sinha, Chief Justice

29/09/2015

1. The original Central Excise Reference Case No. 66 of 2000 under Section 35 H of the Central Excise Act, 1944 (hereinafter called ‘the Act’) before its repeal, was made against the order dated 26.4.2000 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (hereinafter called 'the Tribunal') in Appeal No. E/2055/98-NB. This Court on 24.7.2012 remanded the matter to the Tribunal on 24.7.2012 for proper framing of the Reference which was done on 18.6.2014 as follows :-

> (1) Whether the Tribunal was justified in making proper determination of the annual production capacity of the Respondent/Assessee plant in conformity with relevant rules applicable for such re-determination?
>
> (2) Whether impugned re-determination made by the Tribunal can be said to be in conformity with the law laid down by the Supreme Court in the decision reported in (2010) 14 SCC 751 (Commissioner of Central Excise v. Doaba Steel Rolling Mills)?

2. Learned Counsel for the Revenue submits that the Tribunal committed gross error in not taking into consideration the amendment made to the Hot Re-rolling Steel Mills Annual Capacity Determination Rules, 1997 (hereinafter

called 'the Rules') by insertion of Rule 5 by Notification No. 45/97-CE(NT) dated 30.8.1997 w.e.f. 1.9.1997 in exercise of powers under Section 3-A(2) of the Act. The amended Rule 5 specifically provided that in case the annual capacity determined by the formula in sub-rule (3) of Rule 3 in respect of a mill was less than the actual production of the mill during the financial year 1996-1997, then the annual capacity so determined shall be deemed to be equal to the actual production of the mill during the financial year 1996-1997.

3. The Commissioner in his notice dated 13.10.1997, which was assailed before the Tribunal noticed that the Respondent had communicated the change in ‘d’ =nominal center distance of the pinions stand in millimeter changes had been made on 30.7.1997 but was communicated only on 1.9.1997 without complying with the provisions of Rule 4(2). In the circumstances, the Tribunal erred in holding that the last year's actual production figure was not a relevant consideration. The controversy stands settled in Doaba Steel Rolling Mills (supra).

4. Learned Counsel for the Respondent submitted that in exercise of powers under Section 3-A(2) of the Act, Notification No. 23/97-CE(NT) dated 25.7.1997 the Central Government notified the Hot Re-rolling Steel Mills Annual Capacity Determination Rules,1997 w.e.f. 1.8.1997 for determination of annual capacity of production of the factory. The changes made on 30.7.1997 by the Respondent in the production capacity was therefore required to be made the basis for assessment of production capacity for payment of excise duty. It was duly intimated to the department on 1.9.1997. The order of the Tribunal does not suffer from any infirmity and calls for no interference.

5. We have considered the submissions on behalf of the parties.

6. Section 3-A(2) of the Act empowers the Central Government to charge excise duty on the annual production capacity to be determined in the manner prescribed under Rule 3. If a manufacturer proposes to make any changes in

installed machinery which would affect the annual production capacity, Rule 4(2) required it to be intimated one month in advance, written approval obtained before making the change from the Commissioner Central Excise who would then determine the date from which the changed installed capacity shall be deemed effective.

7. Rule 5 was inserted by Notification dated 30.8.1997 w.e.f. 1.9.1997 and which reads as follows:

> “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 1996-1997, then the annual capacity so determined shall be deemed to be equal to the actual production of the mill during the Financial Year 1996-1997."

8. By deeming fiction, subject to compliance with Rule 4(2), the actual production, if less in the subsequent year, was to be determined for excise duty on basis of actual production for the year 1996-1997. Any changes made in the annual production capacity on 30.7.1997, according to the respondent itself was communicated to the department after insertion of the amended Rule 5. The annual production capacity for chargeable excise duty in the present case relates to the period 1997-98.

9. The Tribunal held that the actual production figures for the year 1996-97 was not relevant without noticing or taking into consideration Rule 5 brought into effect from 1.9.1997 by notification dated 30.8.1997. The finding was therefore completely perverse.

10. The Reference made stands answered and is covered by the decision in Doaba Steel Rolling Mills (supra) holding as follows :-

> “24. That being so, it must logically follow that Rule 5 cannot be ignored in relation to a situation arising on account of an intimation under Rule 4(2) of the 1997 Rules. Moreover, the language of Rule 5 being clear and unambiguous, in the sense that in a case where annual capacity is determined/redetermined by applying the formula prescribed in sub-rule (3) of Rule 3, Rule 5 springs into action and has to be given full effect to.

> 25. The principle that a taxing statute should be strictly construed is well settled. It is equally trite that the intention of the legislature is primarily to be gathered from the words used in the statute. Once it is shown that an assessee falls within the letter of the law, he must be taxed however great the hardship may appear to the judicial mind to be."

11. The order of the Tribunal dated 26.4.2000 is held to be not sustainable and is set aside. The Reference is answered in favour of the Revenue and disposed.

12. The order be communicated.

Sd/- Sd/-

(Navin Sinha)
CHIEF JUSTICE

(P. Sam Koshy)
JUDGE

Amit