IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WEDNESDAY, THE FIRST DAY OF JULY
TWO THOUSAND AND FIFTEEN

PRESENT

THE HONOURABLE SRI JUSTICE G.CHANDRAIAH
AND
THE HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

C.E.A. No.26 of 2005

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Between:

M/s.Maharshi Commerce Limited,
… Petitioner

And

Commissioner of Customs and
Central Excise, Hyderabad III,
Commissionerate, L.B.Stadium Road,
Basheerbagh, Hyderabad and another.
… Respondents

THE HONOURABLE SRI JUSTICE G.CHANDRAIAH
AND
THE HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

C.E.A. No.26 of 2005

JUDGEMENT: (Per Hon'ble Sri GC, J)

This Central Excise Appeal is filed against the order passed in Appeal No.E/1416/2000 on 05.11.2004 by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Bangalore.

The appellant claimed for abatement of Central Excise Duty relating to their 5 MT furnace in terms of condition (e) under sub-rule (2) of Rule 96ZO. The appellant's factory was closed for a period from 12.00 hours on 22.10.1999 to 12.30 hours on 29.10.1999. The Commissioner has taken a view that the day has to be reckoned from 00.00 hours and as they had already worked for 12 hours on 22.10.1999 and 12 hours on 29.10.1999, both the days are to be excluded and therefore, the 5 MT furnace was not continuously shut down for seven continuous days in terms of the Rules and hence rejected their abatement claim. Assailing the same, the appellant preferred an appeal before the Customs, Excise and Service Tax appellate Tribunal, Bangalore and the Tribunal,
on considering the appeal, held that the findings recorded by the Commissioner are legal and proper and rejected the appeal. Aggrieved by the same, the present appeal has been filed.

The only contention of the appellant is that the Commissioner committed an error in reckoning the period as referred in Rule 96ZO(2) and rejected the claim of the appellant erroneously though the appellant's factory was remain shut down continuously for a period of seven days. He further contended that there is a clear seven days stoppage of functioning of the manufacture and therefore, the appellant is entitled to rebate. Without proper appreciation of the version of the appellant, the Tribunal dismissed the appeal and therefore, the same is liable to be set aside. In support of his claim, he placed reliance in the case of RAJ KUMAR YADAV Vs. SAMIR KUMAR MAHASETH AND OTHERS[1].

The learned counsel, Sri V.Gopalakrishna Gokhaley, for the respondent department submitted that the original authority as well as the appellate authority have rightly considering the terms of condition (e) under sub-rule (2) of Rule 96ZO dismissed the claim of the appellant and therefore, no interference of this Court is required.

Rule 96ZO(2) refers to :

> "Where a manufacturer does not produce the ingots and billets of non-alloy steel during any continuous period of not less than seven days and wishes to claim abatement under sub-section (3) of section 3A of the Central Excise Act, 1944, the abatement will be allowed by an order passed by the Commissioner of Central Excise of such amount as may be specified in such order, subject to the fulfilment of the following conditions viz:
>
> (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 lectricity meter to the Assistant Commissioner of Centrla Excise, with a copy to the superintendent of Central Excise, immediately after the production in his factory is stopped along with 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 C.E., with a copy to the Superintendent of 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 along with 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 shile sending intimation under clause (c), declare that his factory remained closed for a continuous period starting from …. hours on ….. (date) to …. hours on …. (date)."

From the above, it is clear that to claim the abatement under sub-section (3) of Section 3A of the Central Excise Act, 1944, the manufacturer suppose not to produce during any continuous period of not less than seven days.

As could be seen from the impugned order it is clear that the appellant's furnace had functioned upto 12. hours on 22.10.1999 and from 12.30 hours to 24 hours on 29.10.1999. Therefore, the original authority had rightly excluded both the dates as the furnace had functioned on those days. Excluding those days, it was found that the furnace was not shut down for a continuous period of seven days and therefore, the appellant does not fall within the meaning of sub-section (3) of Section 3A of the Central Excise Act, 1944.

Further, from a perusal of the judgment supra reliance placed by the learned counsel for the appellant supports the contention of the department rather than the contention of the learned counsel for the appellant.

In that view of the matter, we do not see any reason to interfere with the impugned order and we do not find any question of law, much less substantial question of law, and therefore, the appeal is liable to be dismissed.

Accordingly, the appeal is dismissed. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, stands dismissed.

JUSTICE G.CHANDRAIAH

JUSTICE CHALLA KODANDA RAM

Date: 01.07.2015
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[1] (2005) 3 Supreme Court Cases 601