

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 10 of 2004 (O&M)

Date of Decision: 17.5.2016

M/s Accurex Steel Rolling Mills, Yamuna Nagar

....Appellant.

Versus

Commissioner of Central Excise, Panchkula

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **YES**
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.**

PRESENT: Mr. Jagmohan Bansal, Advocate for the appellant.

Mr. Sunish Bindlish, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the assessee under Section 35G of the Central Excise Act, 1944 (in short "the Act") against the order dated 1.3.2004 (Annexure P-7) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal") claiming the following substantial questions of law:-

- (i) Whether the benefit of deemed credit order no. TS-36/94-TRU dated 1.3.1994 continues to be admissible to SSI unit even after crossing the exemption limit slab of ₹ 75 lacs in terms of notification no. 1/93-CE dated 28.2.1993 as amended?
- (ii) Whether notification No. 1/93-CE dated 28.2.1993 and deemed credit order dated

1.3.1994 have been correctly interpreted by the Tribunal?

2. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The appellant is engaged in the manufacture of goods falling under Chapter 72 of the Central Excise Tariff Act, 1985 and had been availing the exemption of notification No. 1/93-CE dated 28.2.1993 (Annexure P-1). It was also availing the benefit of Modvat Credit of duty paid on inputs used in the manufacture of their final products. Further, the appellant had also been availing the benefit of deemed credit on re-rollable material of iron or steel as per Government of India order dated 1.3.1994. As per the said order, the facility of deemed credit @ ₹ 920/- per metric tonne without production of documents evidencing the payment of duty was allowed qua ingots and re-rollable materials of iron or steel purchased from outside and lying in stock on or after the 1st day of April, 1994 with the re-rollers, availing of exemption under notification, Annexure P-1. A show cause notice dated 22.6.1995 was issued to the appellant for recovery of deemed credit of ₹ 2,12,706.60P availed during the period from 1.12.1994 to 31.3.1995 for wrongly availing deemed credit of duty on re-rollable material. The adjudicating authority vide order dated 17.7.1997 (Annexure P-3) dropped the proceedings against the appellant on the basis of the decision of the Tribunal in **CCE, Coimbatore v. Sri Venkateshwara Steel Industries, 1996 (86) ELT 446** wherein it was held that the facility of Modvat Credit on re-rollable materials would be available to the SSI units even after it crosses the turn over of ₹ 75 lacs in the Financial year. Feeling aggrieved, the department filed an appeal on 22.7.1997 (Annexure P-4) before the Commissioner (Appeals), who vide order

dated 27.5.2003 (Annexure P-5) rejected the appeal. Still dissatisfied, the department filed an appeal on 25.8.2003 (Annexure P-6) before the Tribunal. The Tribunal vide order dated 1.3.2004 (Annexure P-7) allowed the appeal and set aside the order dated 27.5.2003 (Annexure P-5) passed by the Commissioner (Appeals). Hence, the present appeal.

3. Learned counsel for the appellant submitted that the appellant was entitled to avail the benefit of deemed credit of duty on the re-rollable material used as inputs in terms of the order dated 1.3.1994 of Government of India, Ministry of Finance even after crossing the exemption limit of ₹ 75 lacs, but the Tribunal has wrongly denied the claim of the appellant by mis-interpreting the notification No. 1/93-CE dated 28.2.1993 and the deemed credit order dated 1.3.1994. It was further submitted that the order passed by the Tribunal is erroneous and is liable to be set aside.

4. On the other hand, learned counsel for the revenue supported the order passed by the Tribunal.

5. We have heard learned counsel for the parties.

6. The Tribunal while adjudicating the issue had solely relied upon the decision of the larger Bench of the Tribunal in **Digamber Foundry v. CCE, Allahabad, 2000 (118) ELT 85** whereby the earlier view in **Sri Venkateshwara Steel Industries' case (supra)** was not accepted and it was held that any manufacturer whose clearances are over ₹ 75 lacs cannot avail the benefit of Notification No.1/93-CE dated 28.2.1993 and, therefore, could not get benefit of the deemed credit order dated 1.3.1994 issued by the Ministry.

7. The Himachal Pradesh High Court in **Sood Steel Industrial**

(P) Ltd. v. Commissioner of Central Excise 2009(241) ET 186 (HP)

had held the judgment of the Larger Bench of the Tribunal in **Digamber**

Foundry's case (supra) to be incorrect with the following observations:-

“11. Thereafter, the Chandigarh Collectorate issued a trade notice on 25.7.1994 whereby the trade and all persons concerned were informed that the benefit of deemed credit on re-rollable material and ingots as provided in the deemed credit order was not admissible to the re-rolling units whose value of clearances was in excess of Rs.75 lacs. Admittedly, for the year in question, the petitioner was entitled to avail the benefit of the notification No.1/93-CE, dated 28.2.1993. It is also not denied that the total clearances of the petitioner-company for the relevant year exceeded Rs.75 lacs. A show cause notice was issued to the applicant whereby the petitioner was denied the benefit of deemed credit after crossing the exemption of limit of Rs.75 lacs. The Deputy Commissioner, Excise confirmed the demand in view of the trade notice referred to above. The petitioner filed an appeal and the Commissioner allowed the appeal relying upon the decision of the Appellate Tribunal in the case of **Collector of Central Excise, Coimbatore v. Sri Venkateswara Steel Industries – 1996 (86) E.L.T. 446 (Tribunal)**. This judgment of the Two Member Bench was reconsidered by a Three Member Bench of the Customs, Excise and Gold

(Control) Appellate Tribunal (CEGAT) in the **Dagambar Foundary versus Commissioner of Central Excise, Allahabad 2000 (118) E.L.T. 85 (Tribunal-LB).**

12. The Larger Bench held that any manufacturer whose clearances are over Rs.75 lacs cannot be said to avail of the benefit of the Notification No. 1/93-C.E. and, therefore, could not get benefit of the deemed credit order. Following this order of the CEGAT, the appeal filed by the department was allowed. Hence, the present petition.

13. In our view, the order of the Larger Bench of the CEGAT is not correct. The benefit of Notification No. 1/93-C.E. is available to any manufacturer whose total clearances in the preceding financial year did not exceed Rs.2 crores. The deemed credit order clearly states that all concerns availing of exemption under Notification No. 1/93-C.E., dated 28.2.1993 will be deemed to have paid duty under Rule 57-I of the Rules and the credit may be allowed to them at the rate fixed without production of any documents evidencing the payment of duty. Any manufacturer whose total clearances did not exceed Rs.2 crores was entitled to the benefit of exemption under the Notification No. 1/93-C.E. No doubt the benefits under this notification were limited to clearances of Rs.75 lacs but this does not mean that manufacturers

whose clearances exceed Rs.75 lacs were not availing the exemption under the notification. In our considered view, the only interpretation which can be given is that the wording used in the notification identifies the category of manufacturers who are satisfying the criteria as set out in Notification No. 1/93-C.E. and are availing of the benefit of the said notification. The trade note limiting this benefit to those manufacturers whose clearances do not exceed Rs.75 lacs is totally illegal and against the deemed credit order issued by the Ministry. We may also point out that though the department may be bound by its trade note, the industry is not bound by the same and has a right to challenge the same.”

8. The Madras High Court in the case of **Ganesh Steels v. CESTAT, Chennai 2013 (294) ELT 529 (Mad.)** on the question of interpretation of the provisions of Notification No. 1/93 read with the Government Order dated 1st March, 1994 has agreed with the view taken by the Himachal Pradesh High Court and has held thus:

“15. We agree with the view taken by the Division Bench of Himachal Pradesh High Court. Notification No. 1/93-C.E., dated 28.2.1993 deals with payment of full/concessional/slab exemption rate of duty for the specified goods up to the aggregate value of clearances not exceeding Rs.75 lakhs, subject to various conditions and limitations as provided in that exemption Notification. The exemption under that

Notification was not available if the aggregate value of clearances of all excisable goods for home consumption (a) by a manufacturer from one or more factories; or (b) from any factory by one or more manufacturers had exceeded Rs.200 lakhs in the preceding financial year. Notification No. 1/93-C.E. Dated 28.2.1993 did not deal with availing of credit. Whereas the Ministry's Deemed Credit Order TS/36/94-TRU, dated 1.3.1994 is that goods should be lying in stock on or after 1.4.1994 with the re-rollers. As per the Ministry's Deemed Credit Order dated 1.3.1994, re-rollers availing exemption under Notification No. 1/93-C.E., dated 28.2.1993 will be deemed to have paid the duty.

16. In the present case, appellant has not crossed the value of clearance of Rs.200 lakhs during the preceding financial year and availed full exemption under Notification No. 1/93-C.E., dated 28.2.1993 up to 24.12.1994 and thereafter started paying duty. Therefore, appellant cannot said to be not availing exemption under Notification No. 1/93-C.E., dated 28.2.1993 during the year 1994-95. The Deputy Commissioner of Central Excise recorded factual finding that appellant satisfied the conditions viz., (i) the inputs were re-rollable materials of steels; (ii) the inputs were purchased from outside and were lying in stock; (iii) the appellant were re-rollers availing

exemption under Notification No. 1/93-C.E., dated 28.2.1993 and (iv) the process carried was heating and not melting and that the goods manufactured were classifiable under Chapter 72. When the Deputy Commissioner had recorded such factual finding that the appellant satisfied the conditions - Notification No. 1/93-C.E., dated 28.2.1993 and Ministry's Deemed Credit Order TS/36/94-TRU, dated 1.3.1994 and applying the ratio laid down by the Division Bench of Himachal Pradesh High Court in 2009 (241) ELT 186 (HP) [Sood Steel Industrial (P) Limited v. Commissioner of Central Excise], we are of the view that the order of Tribunal cannot be sustained.”

9. Further, the High Court of Gujarat at Ahmedabad in **Vinubhai Steel Co. Pvt. Ltd. v. Commissioner of Central Excise 2015 (330) ELT 858 (Guj.)** had also adjudicated the issue in favour of the assessee by relying upon the decision of Himachal Pradesh High Court in **Sood Steel Industrial (P) Ltd.** and Madras High Court in **Ganesh Steels cases (supra)**.

10. In view of the above, the order of the Tribunal dated 1.3.2004 (Annexure P-7) is set aside. The substantial questions of law are answered in favour of the appellant and against the revenue. The appeal stands allowed.

(AJAY KUMAR MITTAL)
JUDGE

May 17, 2016
gbs

(RAJ RAHUL GARG)
JUDGE