

S UP R E M E C OUR T OF I N D I A
R E CO R D OF P R O C E E D I N G S

CIVI L AP P E A L NO(s). 52 8 8 - 5 2 8 9 OF 2 0 0 1

COMM N R . OF CE N T R A L EXCI S E , CHAND I GA R H

Appellant (s)

VE R S U S

M/S. ASIAN AL LO Y S L TD.

Respondent(s)

(With appln(s) for ex-Pa rte stay and office report)

Date: 30 / 0 8 / 2 0 0 7 These Appeals were called on for hearing today.

CORAM :

HON' B L E MR. JUS T I C E ASHO K BHAN
HON' B L E MR. JUS T I C E V.S. SI R P U R K A R

For Appellant(s)

Mr. M.M. P a i k a dey, Sr. Adv.
Mr. Ajay Shar m a, Adv.
Mr. Shishir Pina ki, Adv.for
Mr. B. Kris hna Pra s ad,Adv.

For Respondent(s)

Rr- Ex- Pa rte

UPON hearing counsel the Court made the following
OR D E R

The Appeals are dismissed. No costs.

(Parveen Kr. Chawla)
Court Master

(Kanwal Singh)
Court Master

[Signed Order is placed on the File]
IN TH E SU P R E M E COUR T OF INDI A

CIVI L AP P E L L A T E JUR I S D I C T I O N

CIVI L AP P E A L NOS. 5 2 8 8 - 5 2 8 9 OF 2 0 0 1

Commis sioner of Central Excise, Chandigarh

..Appellant

Versus

M/s. Asian Alloys Ltd.

..Respondent

OR D E R

1. In spite of fresh service, respondent has not put in appear a nce. Ordered to be proceeded ex-parte.
2. Revenue is in appeal.

3. The facts as found by the Tribunal are that the respondent- assessee is engaged in the manufacture of steel Ingots, other Alloy Steel Ingots, Stainless Steel Ingots and Steel Castings. Assessee has got five furnaces installed in its unit. With the issue of notification No.53 / 97 - CE dt. 30.08.97 Capacity Based Duty Scheme was introduced w.e.f. 1.9.1997. Department alleged that the scheme of compounded levy was made effective from 1.9.1997 instead of from 1.8.1997, therefore, CED on the production of August 1997 + Closing stock of Non- alloy steel Ingots as on 31.7.1997 was to be discharged at a rate of Rs.600 / - per MT under amended notification No.50 / 97 - CE dated 1.8.1997 read with para 5 of Ministry's circular No. 331 / 47 / 97 - AX dt. 30.08.1997. It was alleged that the respondent produced 3692.570 MT of M.S.Ingots during August 1997 and there was a closing balance of 196.432 MT of these ingots as on 31.7.1997. Thus, the total quantity as on 31.8.1997 being 3889.002 MT out of which the respondent cleared 3343.777 MT of M.S.Ingots during August 1997 and remaining 545.225 during September 1997 on payment of Central Excise Duty of only Rs.1,17,859 / - and that the respondent was still to pay Rs.22,15,542 / -.

4. Accordingly, a show cause notice was issued to the respondent asking it to explain as to why Central Excise Duty amounting to Rs. 22,15,542 / - on goods manufactured and cleared without payment of duty during August 1997 should not be demanded and recovered from it under Rule 9(2) of Central Excise Rules, 1944 (for short 'the Rules') read with proviso to Section 11A(1) of Central Excise Act, 1944 (for short 'the Act'). It was also alleged as to why central excise duty amounting to Rs.43,66,667 / - due from it in terms of Rule 96ZO(3) on Non- alloy Steel Ingots should not be demanded from it under Rule 9(2) of the Rules read with Rule 96ZO(3) and Section 11A(1) of the Act along with 18%. It was further alleged as to why MODV A T Credit amounting to Rs. 29,94,927 / - should not be reversed by it. It was also alleged as to why central excise duty amounting to Rs.69,987 / - due on 6.658 MT non- alloy steel runners and risers captively consumed should not be demanded and recovered from it. It was further alleged as to why central excise duty amounting to Rs. 1,95,163 / - due on 117.215 MT of Alloy Steel Ingots found short in the factory should not be recovered from it. Respondent was also asked to explain as to why penalty should not be imposed and why interest should not be charged from them.

5. One of the arguments raised on behalf of the assessee- respondent before the Tribunal was that the assessee did not opt for the production capacity based duty scheme. It wrote to the department vide its letter dated 11.09.1997 and asked for certain clarifications. The Tribunal in its order came to the following finding of fact on the basis of the record made available to it.

".....Looking to the fact that the appellants (respondent herein) had not opted for compounded levy rate, that their letter dt. 11.9.97 stating that they were ordinarily manufacturing alloy steel and other steel products and castings and were incidentally producing non-alloy steel products. We hold that duty cannot be charged twice as held by the Ld. Commissioner in the impugned order. First, charging duty based on the capacity of the furnace and then charging duty at standard rates on products of stainless steel. In the instant case, the appellants had not opted for payment of duty under Rule 96ZO (3) and had categorically stated that they were categorically producing alloy steel and others and incidentally producing non-alloy steel products and castings. We, therefore, hold that in their case standard rate of duty shall be applicable and duty shall not be chargeable twice first on capacity based method and then subsequently on standard rate method. The appeal is allowed in the above terms. Consequent relief, if any, shall be admissible to the appellants in accordance with law."

6. Counsel appearing for the revenue has referred to a letter dated 7th August, 1997 wherein the assessee is alleged to have opted for the production capacity based scheme for duty. On perusal of the paper book and also original record made available to us, we do not find any such letter having been written by the assessee. Original Record was handed over to the counsel appearing for the revenue as well. On verification of the same, he also fairly states that the letter dated 7.8.1997 is not on the record but he insisted that such a letter was there as the order-in-original passed by the Commissioner has referred to the letter dated 7.8.1997.

7. Be that as it may, since neither the letter dated 7.8.1997 is there on our paper book nor is it available in the original record made available to us, we cannot take note of it. We have perused the letter dated 11.9.1997 and find that the assessee had not opted for payment of excise duty under the production capacity based scheme. Under the circumstances, we do not find any infirmity in the order of the Tribunal.

8. In view of above, these appeals are dismissed. No costs.

.....J .
[ASHO K BHA N]

N E W D E L H I ;
AUGUS T 3 0 , 2 0 0 7 .

..... J.
[V . S . S I R P U R K A R]