

M/S HANS STEEL ROLLING MILL.

v.

COMMNR. OF CENTRAL EXCISE, CHANDIGARH
(Civil Appeal No. 2715 of 2003)

MARCH 10, 2011

[DR. MUKUNDAKAM SHARMA AND
ANIL R. DAVE, JJ.]

*HOT RE-ROLLING STEEL MILLS ANNUAL CAPACITY
DETERMINATION RULES, 1997 :*

Rule 96ZP read with s. 3A of Central Excise Act-Compound Levy Scheme-Applicability of s.11-A –Held : Compound levy scheme for collection of duty based on annual capacity production u/s 3 and Capacity Determination Rules is a separate scheme from the normal scheme for collection of central excise duty –It is a comprehensive scheme in itself and general provisions in the Act and Rules are excluded –The time limit prescribed for one scheme would be completely unwarranted for another scheme and the time limit prescribed u/s 11A of the Act is no exception.

The appellants were engaged in the manufacture of iron and steel products falling under Chapters 72 and 73 of the Central Excise Tariff Act, 1985. During the period ranging from 1.9.1997 to 31.3.2000, the goods manufactured by the appellants 1997 to 31.3.2000, the goods manufactured by the appellants were chargeable to Central Excise Duty in terms of s. 3A of the Act, and the payment of duty was to be under Rule 96ZP of the Central Excise Rules, 1944. The Hot-Re-rolling Steel Mills Annual Capacity Determination Rules, 1997 were introduced by notification no. 32/97-CE (NT) dated 01.08.1997, wherein the manner and procedure for determination of annual capacity of rolling mill was

A provided. The Commissioner of Central Excise
determined the Annual Capacity to be 3355 MT. A show
cause notice was issued to the appellants on 3.11.1998,
contending that the demand of the duty has to be based
on the capacity determination of 3355MT, for which the
B recovery of duty u/s. 11A of the Act amounting to Rs
2,19,750.00 was to be made. Subsequently, the appellants
changed the parameters of their re-rolling mill and
applied for the re-determination of the annual capacity for
fresh declaration in terms of Capacity Determination
C Rules. On 31.5.1999, the Commissioner passed an order
stating the Capacity Determination Rules as 1890MT. The
appellants filed an appeal before the Tribunal. The larger
Bench of the Tribunal, held that in case of the
manufacturer operating under Compound Levy Scheme
D in terms of s. 3A of the Act, and Rule 96ZP of the Central
Excise Rules, recovery mechanism provided in terms of
s. 11A of the Act was not to be followed and hence the
matter was to be remanded back to the Commissioner for
re-determination. In the instant appeal filed by the
E assessee, the question for consideration before the
Court was whether the provisions of time limit contained
in Section 11A of the Central Excise Act, 1944 would be
applicable to the recovery of amounts due under the
compound levy scheme for Hot-Re-rolling mills, under the
Annual Capacity determination Rules 1997.

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Dismissing the appeal, the Court

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HELD : 1.1. It is clearly established that the
appellants are availing the facilities under the Compound
Levy Scheme, which they themselves, opted for and filed
declarations furnishing details about annual capacity of
production and duty payable on such capacity of
production. It has to be taken into consideration that the
compounded levy scheme for collection of duty based
on annual capacity of production u/s. 3 of the Act and Hot

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Re-rolling Steel Mills Annual Capacity Determination Rules, 1997 is a separate scheme from the normal scheme for collection of central excise duty on goods manufactured in the country. Under the same, Rule 96P of the Rules stipulate the method of payment and Rule 96P contains detailed provision regarding time and manner of payment and it also contains provisions relating to payment of interest and penalty in event of delay in payment or non-payment of dues. Thus, this is a comprehensive scheme in itself and general provisions in the Act and Rules are excluded. [Para 12] [847-C-E]

Commissioner of C. EX & Customs v. Venus Castings (P) Ltd 2000 (117) ELT 273 (SC); *Union of India v. Supreme Steels and General Mills* 2001 (133) ELT 513 (SC) and *Collector of Central Excise, Jaipur V. Raghuvar (India) Ltd* 2000 (118) ELT 311 (SC) –relied on

1.2. The Tribunal has rightly held that the importing of elements of one scheme of tax administration to a different scheme of tax administration would be wholly inappropriate as it would disturb the smooth functioning of that unique scheme. The time limit prescribed for one scheme could be completely unwarranted for another scheme and time limit prescribed u/s. 11A of the Act is no exception. [Para 15] [848-C-D]

Case Law Reference:

2000 (117) ELT 273 (SC)	relied on	para 13	
2001 (133) ELT 513 (SC)	relied on	para 13	
2000 (118) ELT 311 (SC)	relied on	para 14	G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2715 of 2003 ect.

From the Judgment & Order dated 8.4.2002 of the

A Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. E/765/01-NB (DB).

WITH

C.A. No. 2717 & 3988 of 2003.

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Balbir Singh, Rajesh Kumar, Sangeeta Chaudhary, Rupender Sinhmar, Deepak, Abhishek Singh Baghel, V. Shekhra S., H.R. Rao, Arijit Prasad, Jatin Rajput, B.V. Balaram Das, B. Krishna Prasad for the appearing parties.

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The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. The issue that falls for consideration in these appeals is, as to whether the provisions of time limit that are contained in Section 11A of the Central Excise Act, 1944 (in short 'the Act') are applicable to the recovery of amounts due under the compound levy scheme for Hot-Re-rolling mills, under the Annual Capacity determination Rules 1997 because otherwise, it is a separate scheme for the collection of Central Excise Duty for the goods manufactured in the country.

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2. In order to record a definite finding on the aforesaid issue it would be necessary to set out certain facts leading to filing of the present appeals.

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3. The appellants are engaged in the manufacture of iron and steel products falling under Chapter 72 and 73 of the Central Excise Tariff Act, 1985. During the period ranging from 01.09.1997 to 31.3.2000, the goods manufactured by the appellants were chargeable to Central Excise Duty in terms of Section 3A of the Act. As per the Act, the duty was suppose to be paid on the annual production capacity of the plant, irrespective of the actual production. Under the scheme of Section 3A, the payment of duty to be under Rule 96ZP of the Central Excise Rules. The Hot-Re-rolling Steel Mills Annual

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Capacity Determination Rules, 1997 were introduced by notification no. 32/97-CE (NT) dated 01.08.1997, wherein the manner and procedure for determination of annual capacity of rolling mill was provided. On 27.04.1998, the Commissioner of Central Excise determined the Annual Capacity to be 3355 MT.

4. Being aggrieved by the determination made, the appellants filed an appeal before the Customs, Excise & Gold (Control) Appellate Tribunal, (in short 'the Tribunal') New Delhi, whereby and whereunder the Tribunal remanded the matter back to the Commissioner for the re-determination of the value.

5. A show cause notice was issued to the appellants on 03.11.1998, contending that the demand of the duty has to be based on the capacity determination of 3355MT, for which the recovery of duty under Section 11A of the Act amounting to Rs 2,19,750.00 was to be made.

6. On 11.12.1998, the appellants changed the parameters of their re-rolling mill and applied for the re-determination of the annual capacity for fresh declaration in terms of Capacity Determination Rules. On 31.05.1999, the Commissioner passed an order based on Rule 5 of the Capacity Determination Rules stating the capacity as 1890MT. During the pendency of the final re-determination, the Central Excise Department issued a demand notice under Section 11 of the Act, for recovery of duty. Aggrieved by the same, the appellants filed a writ petition before the Punjab and Haryana High Court, whereby and whereunder the High Court set aside the demand notice and directed the revenue to re-determine the annual capacity.

7. On 04.01.2001, the Commissioner of Central Excise re-adjudicated the matter and determined the annual capacity of the period 1.09.97 to 31.3.2000 to be 1890MT. The appellant filed an appeal before the Tribunal against the same. On 08.04.2002, the larger bench of the Tribunal, held that in case of the manufacturer operating under Compound Levy Scheme

A in terms of Section 3A of the Act, and Rule 96ZP of the Central Excise Rules, recovery mechanism provided in terms of Section 11A of the Act is not to be followed and hence the matter was to be remanded back to the Commissioner for re-determination.

B 8. Still aggrieved the appellants filed the present appeals on which we heard the learned counsel appearing for the parties, who have taken us through various orders passed by the different authorities and also through other connected records. Having considered the same, we proceed to dispose
C of the present appeal by recording our reasons for our conclusion.

9. It was submitted by the counsel appearing for the appellants that the provisions of Section 11A of the Act are
D mandatory for recovery of any duty short levied and short paid. The learned counsel for the petitioner further contended that the Section 11A of the Act stipulates the procedure to be followed invariably and without exception for recovery of any duty which has not been levied or not paid or short paid or erroneously
E refunded. The counsel referred to sub Section (2) of Section 11A of the Act which stipulated that the determination of amount of duty short levied etc, from a person is to be made after considering his representation in the matter. In this case since the recovery proceedings have been initiated under Section 11
F of the Act, the procedural requirements for issuing notice, determining the amount etc, have not been satisfied at all. The counsel further submitted that there is no exception in the Central Excise Act or Rules regarding the procedure of recovery.

G 10. The aforesaid submissions of the counsel appearing for the appellants were however refuted by the counsel appearing for the respondent. The learned counsel for the respondent has pointed out that under the Compound Levy Scheme, the appellants opted for the payment of duty at
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compounded rates and filed declarations furnishing details about annual capacity of production and duty payable on such capacity of production. Once the commissioner approved such applications, payments are to be made in terms of Rule 96ZP of the Rules.

11. We have already set out the issue which falls for our consideration in these present appeals.

12. On going through the records it is clearly established that the appellants are availing the facilities under the Compound Levy Scheme, which they themselves, opted for and filed declarations furnishing details about annual capacity of production and duty payable on such capacity of production. It has to be taken into consideration that the compounded levy scheme for collection of duty based on annual capacity of production under Section 3 of the Act and Hot Re-rolling Steel Mills Annual Capacity Determination Rules, 1997 is a separate scheme from the normal scheme for collection of central excise duty on goods manufactured in the country. Under the same, Rule 96P of the Rules stipulate the method of payment and Rule 96P contains detailed provision regarding time and manner of payment and it also contains provisions relating to payment of interest and penalty in event of delay in payment or non-payment of dues. Thus, this is a comprehensive scheme in itself and general provisions in the Act and Rules are excluded.

13. The judgments of this court in the cases of *Commissioner of C. EX & Customs v. Venus Castings (P) Ltd* as reported in 2000 (117) ELT 273 (SC) and, *Union of India v. Supreme Steels and General Mills as reported in 2001* (133) ELT 513 (SC), has clearly laid down the principle that the, compound levy scheme is a separate scheme altogether and an assessee opting for the scheme is bound by the terms of that particular scheme. It is settled matter now that Section 11A of the Act has no application for recovery under different schemes.

A 14. In the case of *Collector of Central Excise, Jaipur V. Raghavar (India) Ltd* as reported in 2000 (118) ELT 311 (SC), this court has categorically stated that Section 11A of the Act is not an omnibus provision which stipulates limitation for every kind of action to be taken under the Act or Rules. An example
B can be drawn with the Modvat Scheme, because even in that particular scheme, Section 11A of the Act had no application with regard to time limit in the administration of that scheme.

C 15. We are in agreement with the finding and decision arrived at by the Tribunal that the importing of elements of one scheme of tax administration to a different scheme of tax administration would be wholly inappropriate as it would disturb the smooth functioning of that unique scheme. The time limit prescribed for one scheme could be completely unwarranted for another scheme and time limit prescribed under Section
D 11A of the Act is no exception.

16. Accordingly, in view of the above, we find no merit in these appeals which are dismissed herewith but without costs.

R.P.

Appeals dismissed.