

Ramesh Steel Re-Rolling Mills Vs C.C. and C.E. (A)

Court: Andhra Pradesh High Court

Date of Decision: Nov. 9, 2006

Acts Referred: Central Excise Rules, 1944 " Rule 96ZP(3)
Central Excises and Salt Act, 1944 " Section 35F, 3A

Citation: (2008) 223 ELT 358 : (2008) 9 STR 14

Hon'ble Judges: J. Chelameswar, J; D. Appa Rao, J

Bench: Division Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D. Appa Rao, J.

The petitioner seeks a Writ of Mandamus directing the 1st respondent, the Commissioner of Customs and Central Excise

(Appeals) to dispose of restoration application dated 1-5-2006 for restoration of the appeal preferred by it u/s 35F of Central Excise Act, 1944.

2. The petitioner was engaged in the manufacture of M.S. Rods and CTD bars of non-alloy steel falling under Chapter 72 of the Schedule to the

Central Excise and Tariff Act, 1985. It had availed the scheme under Rule 96ZP(3) of the Central Excise Rules, 1944 for the purposes of payment

of excise duty. Since, it was in financial distress, it could not make the payment of the duty. It had taken a plea before R.1 in the assessment

proceedings of that as the unit was ultimately closed with effect from 1-11-1998, there was no liability to pay any duty. However, the 2nd

respondent, the Deputy Commissioner of Central Excise in his assessment proceedings held that it was liable to pay a duty of Rs. 72,257/- with

interest @ 18% per annum u/s 3-A of the Central Excise Act. As against the orders of the 2nd respondent, the petitioner preferred an appeal

before the 1st respondent and also sought exemption from pre-deposit of the duty and interest. The 1st respondent by an order dated 21-11-2000

directed the petitioner to pay a sum of Rs. 40,000/- within a period of one month. Since the factory has been seized under panchanama dated 8-

10-1998, it could not fulfill the pre-deposit and consequently the appeal was dismissed. Earlier, when 2nd respondent levied duty for the period

after 1-11-1998, an appeal was preferred and the 1st respondent opined that no duty need be paid and be recovered. Later, the petitioner has

filed an application for restoration of the appeal after making a pre-deposit of Rs. 40,000/-. However, the 1st respondent did not dispose of the

restoration application dated 1-5-2006 filed for restoration of the appeal.

3. The respondents filed counter admitting the various proceedings held against the petitioner. However they denied that the petitioner was not

liable for payment of duty. The appeal cannot be reviewed after a gap of six years and it was barred by limitation. Therefore, they prayed for

dismissal of the writ petition.

Heard, learned Counsel for the parties.

4. Admittedly, the entire amount, which the petitioner was required to deposit as a condition for hearing an appeal has already been deposited. In

somewhat, a similar case, the Supreme Court in *Makharia Traders v. Collector* 2003 (156) E.L.T.269 , after considering the fact that the

petitioner deposited the entire amount as required for preferring an appeal has set aside the order of dismissal and directed hearing of the appeal

on merits.

5. Admittedly, the very 1st respondent by Order dated 20-11-2003, allowed me appeal holding that the writ petitioner was eligible for benefit of

abatement from payment of duty for the period of closure of mill. The impugned order pertains to November, 1998. The 1st respondent rejected

the appeal solely on the ground that pre-deposit was not made. In view of the fact that it had complied the condition of pre-deposit, we are of the

opinion that the interest of justice would have been met if application was heard. In view of the hardship pleaded, we are of the opinion that the

request of the petitioner could be acceded. Accordingly, the 1st respondent is directed to dispose of the restoration application on merits.

The Writ Petition is allowed accordingly. No costs.