

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2715 OF 2003

M/s Hans Steel Rolling Mill

.....Appellant

vs.

Commnr. of Central Excise,
Chandigarh

....Respondent

WITH

CIVIL APPEAL NO. 2717 OF 2003

WITH

CIVIL APPEAL NO. 3988 OF 2003

JUDGMENT

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.

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.
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 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 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.

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 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 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 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 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.

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 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.

14. In the case of **Collector of Central Excise, Jaipur V. Raghuvar (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 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.

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 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.

....., J
(DR. MUKUNDAKAM SHARMA)

....., J
(ANIL R. DAVE)

NEW DELHI;

MARCH 10, 2011.

