

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Excise Reference No. 3/2004

Commissioner of Central Excise
Meerut-I,

..... Applicant.
Versus

M/S Amrit Varsha Ispat (P) Respondent

Sri Arvind Vashisth, Advocate for the applicant.
Sri D.S. Patni and Sri Alok Arora, Advocates for the respondent.

Dated: 30.03.2007

**Coram: Hon'ble P.C. Verma, J.
 Hon'ble B.C. Kandpal, J.**

This Reference has been preferred proposing following substantial question of law:-

“Whether the mandatory penalty imposed in terms of the erstwhile Rule 96Z((3) of the Central Excise Rules, 1944, can be reduced by the Hon'ble Tribunal?.”

2- The respondent M/s Amrit Varsha Ispat (P) Ltd. Dhalwala Industrial Area, Tehri Garhwal has been engaged in the manufacture of M.S. Ingot classifiable under sub-heading No. 7206.90 of the Schedule of the Central Excise Tariff Act, 1985. The annual capacity of production of the assessee was fixed by the Commissioner Central Excise, Meerut-I under the provision of “Induction Furnace Annual Capacity Rule 1997”. The monthly duty liability on the capacity comes to Rs.5,00,000/- which per provision of rule 96ZO(3) was required to be paid in two equal instalments, the first instalment latest by 15th of each month and the second instalment latest by last of that month. During the financial year 1998-99 the assessee short paid the excise duty to the tune of Rs. 10,00,000/- within stipulated time

limit. Accordingly a show cause notice was issued asking as to why duty of Rs. 10 lakhs short paid should not be demanded from the assessee and interest @ 18% per annum.

3- On adjudication, the Addl. Commissioner, Central Excise Meerut, confirmed the demand of duty amounting to Rs. 10 lakhs for the period from Feb. 99 to March 99 and ordered the adjustment of Rs. 10 Lakhs deposited and also confirmed the demand of interest amounting to Rs. 1,41,781/- under proviso 3(i) of rule 96ZO(3) of Central Excise Rules, 1944. The respondent/assessee was also imposed penalty of Rs. 35 Lakhs.

4- Aggrieved with the above order of Addl. Commissioner, the respondent/assessee preferred appeal before Commissioner (Appeals), Central Excise Meerut-I who disallowed the appeal. Thereafter, the assessee preferred appeal before the Customs, Excise and Service Tax Appellant Tribunal New Delhi, who partly allowed the appeal of the assessee by reducing the penalty from Rs. Lakhs to Rs. 2 Lakhs.

5- Now the Commissioner Central Excise has preferred this reference.

6- We have heard the learned counsel for the parties and perused the record.

7- The Tribunal has held that once assessee has not withdrawn its option to work under Rule 96ZO (3), it cannot be claimed by them that the said option did not continue during the financial year

1998-99 and under these circumstances, equal amount of penalty imposed on the assessee is not justified especially where the assessee has already paid the duty with interest. The above view of the Tribunal is fortified with the decision of the Hon'ble Apex Court in the matter of **Union of India Vs. Supreme Steels and General Mills** reported in 2001(133) E.L.T. 513 (S.C).

8- It is well settled that penalty equal to duty is not mandatory condition, except where there is element of mens rea. In the instant case the assessee has already deposited entire duty amount with interest, and therefore, the Tribunal was justified in reducing the penalty.

9- In view of above, the Tribunal was well within its jurisdiction to reduce the penalty in terms of erstwhile Rule 96ZO (3) of the Central Excise Rules, 1944. The substantial question of law is answered accordingly.

10- For the reasons recorded above, we find no ground to interfere with the impugned order passed by the Tribunal. The reference is dismissed accordingly. No order as to costs.

(B.C. Kandpal, J.)

(P.C. Verma, J.)

Aswal