

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 13189 of 2013-SM

[Arising out of Order-in-Original/Appeal No 127-2013-AHD-II-CE-AK-COMMR-A-AHD dated 20.06.2013 passed by Commissioner of Central Excise-AHMEDABAD-I(Appeal)]

Sagar Rolling Mills Pvt Limited

.... Appellant

357, Gvmm Ind. Estate, Odhav,
AHMEDABAD, GUJARAT-382414

VERSUS

Commissioner of Central Excise & ST, Ahmedabad-ii Respondent

Custom House... First Floor, Old High Court Road,
Navrangpura, Ahmedabad, Gujarat-380009

WITH

EXCISE Appeal No. 13190 of 2013-SM

[Arising out of Order-in-Original/Appeal No 134-2013-AHD-II-CE-AK-COMMR-A-AHD dated 01.07.2013 passed by Commissioner of Central Excise-AHMEDABAD-I(Appeal)]

Udaya Udhyog

.... Appellant

253, Gujarat Vepari Mahamandal,
Odhav, AHMEDABAD, GUJARAT-382415

VERSUS

Commissioner of Central Excise & ST, Ahmedabad-ii Respondent

Custom House., First Floor, Old High Court Road,
Navrangpura, Ahmedabad, Gujarat-380009

APPEARANCE :

None for the Appellant
Shri Himanshu P Shrimali, Superintendent (AR) for the Revenue.

CORAM: HON'BLE SOMESH ARORA, MEMBER (JUDICIAL)

DATE OF HEARING/ DECISION: 30.08.2023

FINAL ORDER NO. 11829-11830/2023

SOMESH ARORA :

The matter has been coming up number of times and pertains to the year 2013. There have been at least six listings prior to this date in the matter therefore, the appeals are taken up for decision on merits. The issue involved in the present matter is abatement of duty under compounded levy scheme pertaining to cold rolling iron and steel machines. The appellants,

for the part of the period had no operations on certain machines and the same remained idle or dismantled in the factory. The department has denied the abatement of duty under Notification No. 17/2007-CE dated 01.03.2007 and as per Para 8, the Commissioner (Appeals) has confirmed the duty without abatement as claimed by the appellant. The Commissioner (Appeals) confirmed department's stand that Central Excise duty has been correctly demanded on cold rolling machines.

2. As pointed out by the learned AR, the issue is no more *res-integra* and has been decided in the case *SS Strips Pvt. Limited vs. CCE, Ahmedabad-II* in order No. A/11629-11630/2018 dated 01.08.2018 by the Division Bench of CESTAT Ahmedabad. Para 4.2 to 4.4 being relevant is reproduced below:-

4.2 In the instant case notification No. 17/07, gives an option of concessional rates of duty subject to certain conditions. The opening para of the said notification clearly prescribes that the assessee shall have an option to pay duty of excise on the cold rolling machines "installed" for cold rolling. The two key words in the sentence are "option" and "installed". It is also to be noted that the entire scheme of thing does not provide for any exemption if assessee chooses to close some machines or to not operate some machines. The scheme only prescribes that the duty shall be paid on the number of machines "installed" in the factory. The notification also exempts the assessee from the operation of rule 8 of the Central Excise Rules, 2002. Rule 8 of the Central Excise Rule, 2002.

4.3. From the above it is apparent that the appellant have consciously opted for a scheme which does not envisage any concession in respect of machines which is installed in the factory but is not used. Para 6 and 8 of the Notification prescribed on the condition in respect to new factory/close factories resuming number of factories ceasing to work or reverting to normal procedure. There is no procedure in the notification or the scheme regarding non use of installed machines.

4.4 Having chosen the option of availing the concession on the basis of number of machines installed, the appellants cannot now claim that the benefit of machines which they have declared to have not been used during certain period. “

3. In view of the foregoing and the decision of the Division Bench of CESTAT Ahmedabad, this Court is inclined to dismiss the appeals. Both the appeals are dismissed.

(Dictated and pronounced in the open court)

(Somesh Arora)
Member (Judicial)