

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CEA No.100 of 2011 (O&M)**

**Decided on: 20.09.2013**

**M/s Mittal Alloys, Ludhiana**

**..... Appellant**

**VERSUS**

**Commissioner of Central Excise, Chandigarh**

**..... Respondent**

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA  
HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON**

**Present: Mr.Rupesh Kumar, Advocate, for the appellant.**

**Mr.Sukhdev Sharma, Advocate, for the respondent.**

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**RAJIVE BHALLA, J.**

The appellant challenges orders dated 20.05.2009 and 09.10.2003, passed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as the 'CESTAT'), New Delhi, and the Commissioner of Central Excise, Chandigarh, respectively.

Counsel for the appellant submits that as Rule 96ZO of the Central Excise Rules, 1944 (hereinafter referred to as the 'Rules') was omitted vide Notification No.6 of 2001 dated 01.03.2001, the order disallowing abatement based upon factors and conditions set out in the above Rule, is illegal. It is further contended that as Rule 96ZO of the Rules was omitted, it cannot be applied to pending proceedings. The obligation of the respondents to grant abatement

was to be considered without reference to Rule 96ZO of the Rules. It is further submitted that as the notification omitting Rule 96ZO of the Rules does not contain a saving clause, the impugned orders based upon Rule 96ZO of the Rules are null and void and should, therefore, be set aside. In support of his arguments, counsel for the appellant places reliance upon the following judgments: -

1. Messrs Rayala Corporation (P) Ltd. and M.R.Pratap V/s Director of Enforcement, New Delhi, 1969(2) SCC 412;
2. Shyamal Chakraborty V/s The Commissioner of Police, Calcutta and another, 1969(2) SCC 426;
3. Kolhapur Canesugar Works Ltd. and another V/s Union of India and others, (2000) 2 SCC 536; and
4. Krishana Processors V/s Union of India, 2012 (280) ELT 186 (Guj.).

Counsel for the revenue per contra submits that a similar controversy came up for consideration before a Division Bench of this Court in “Shree Bhagwati Steel Rolling Mills V/s Commissioner of Central Excise, Chandigarh”, 2007(207) ELT 58 (P&H), but was answered against the assessee by placing reliance upon Section 131 of the Finance Act, 2001, in the context of omission of Section 38A of the Central Excise Act, 1944. It was held that in view of Section

38A of the Central Excise Act, 1944 introduced by Section 131 of the Finance Act, 2001, there is no question of proceedings initiated prior to omission of the Section and/or its deletion being rendered null and void.

We have heard counsel for the parties, perused the impugned orders and upon due consideration of the arguments addressed, are not inclined to grant any relief to the appellant. The appellant is a manufacturer of non-alloy steel ingots/billets and opted for payment of duty on lump-sum bases in terms of Rule 96ZO(3) of the Rules. The duty liability was worked out at Rs.60 lacs per annum vide order dated 14.10.1997. The appellant filed an abatement claim under Rule 96ZO, alleging closure of their furnace from 02.12.1997 to 09.12.1997, 20.12.1997 to 01.01.1998, 10.01.1998 to 27.01.1998, 04.02.1998 to 14.02.1998, 04.03.1998 to 17.03.1998 and 02.12.1997 to 19.12.1997, 01.01.1998 to 09.01.1998, 27.01.1998, 3<sup>rd</sup> and 4<sup>th</sup> February, 1998. The abatement claim was disallowed on 09.10.2003 for failure to adhere to obligations placed by the above Rule. The appellant filed an appeal before the CESTAT which was dismissed.

During the course of proceedings, the appellant was allowed to amend grounds of appeal. The appellant has raised an additional ground pertaining to omission of Rule 96ZO(3) of the Rules and its consequence. A faint attempt was also made to challenge the impugned orders, particularly, relating to the findings

regarding non-compliance of provisions of Rule 96ZO(3) of the Rules but as these findings are based upon facts of the case namely default by the appellant in intimating closure of the unit etc. we do not find any reason to entertain this plea.

The lone ground canvassed by the appellant relates to omission of Rule 96ZO(3) of the Rules in 2001 as it is urged that with omission of this provision, during pendency of proceedings the impugned orders refusing abatement by taking into consideration Rule 96ZO(3) of the Rules, could not have been passed. A perusal of the precedents relied by the appellants reveals that omission of a Rule as opposed to a mere repeal or deletion, does not confer legitimacy on pending proceedings as they would necessarily come to an end but as we are satisfied that this principle of law does not apply to the present controversy, are not inclined to accept this plea.

While considering a similar controversy, a Division Bench of this Court in “Shree Bhagwati Steel Rolling Mills V/s Commissioner of Central Excise, Chandigarh's case (supra), held as follows: -

“20. We, however, need not go into the question in further detail as we find that vide Section 131 of the Finance Act, 2001, Section 38A was added to the Central Excise Act, 1944, to the following effect: -

**“38A. Effect of amendments, etc., of rules, notifications or orders.-** Where any rule, notification or

order made or issued under this Act or any notification or order issued under such rule, is amended, repealed, superseded or rescinded, then, unless a different intention appears, such amendment, repeal, supersession or rescinding shall not-

- (a) revive anything not in force or existing at the time at which the amendment, repeal supersession or rescinding takes effect; or
- (b) affect the previous operation of any rule, notification or order so amended, repealed, superseded or rescinded or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any rule, notification or order so amended, repealed, superseded or rescinded; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under or in violation of any rule, notification or order so amended, repealed, superseded or rescinded; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or

punishment may be imposed as if the rule, notification or order, as the case may be, had not been amended, repealed, superseded or rescinded.”

A perusal of the aforementioned judgment reveals that with introduction of Section 38A in the Central Excise Act, 1944, the omission or otherwise of Rule 96ZO(3) of the Rules would not affect any obligation or liability that had already accrued or incurred and, therefore, the submission that omission of Rule 96ZO(3) of the Rules would render adjudication of proceedings of abatement based upon Rule 96ZO(3) of the Rules a nullity, are without merit.

In this view of the matter, we find no merit in the appeal and dismiss the same with no order as to costs.

**[ RAJIVE BHALLA ]  
JUDGE**

20.09.2013

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**[ DR. BHARAT BHUSHAN PARSOON ]  
JUDGE**