

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/1031 -1032/2006 -SM[BR]

Date 20/02/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :

(1-2) M/S R.H.INDUSTRIES

C-28, PHASE-II, INDL, ESTATE, S.S.A. NAGAR
(MOHALI) DISTT. ROPAR, PB

M/S R.H.INDUSTRIES

CCE, CHANDIGARH

Appellant

Vs

Respondent

I am directed to transmit herewith a certified copy of Final order No.315 -316 /2008 -SM [BR] dated 4.12.2007 passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

CCE, CHANDIGARH

C.R.BUILDING, PLOT NO 19, SECTOR-
17C, CHANDIGARH

2. Adv. / Consult

MR. AJAY JAIN

1293, SEC 18-C, CHANDIGARH

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi

11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file


Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Excise Appeal No. 1031-1032 of 2006-Ex. (SM)

(Arising out of Order-in-Appeal No. 443, 442/CE/CHD/2005 dated 29.12.05 passed by the Commissioner (Appeals), Central Excise, Chandigarh)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	✓
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities.	

M/s R.H. Industries

Appellant

Vs.

CCE, Chandigarh

Respondent

Appearance:

Shri Ajay Jain, Advocate

- For appellant

Ms. Archana P. Tiwari, Jt. CDR

- For respondent

CORAM:

HON'BLE MR. S.S. KANG, VICE PRESIDENT

Date of Hearing: 4.12.07

Final Order No. 315-316/08-SM(BR) dated 4.12.07

Per S.S. Kang

Common issue is involved in these appeals, therefore, are being taken up together.

2. The appellant filed these appeals against the impugned orders whereby deemed credit under Notification No. 58/97

was denied on the ground that the supplier of inputs had not paid appropriate duty and the invoices under which the inputs were received and having declaration only to the effect that appropriate duty is to be paid.

3. The contention of the appellant is that there was a dispute in respect of the duty payment under the Compounded Levy Scheme by the supplier of the inputs i.e. M/s Malhotra Industrial Corporation. The contention is that the Revenue wants to enhance the capacity of the mill of M/s Malhotra Industrial Corporation and the order enhancing the capacity was set aside by the Tribunal vide Final Order No. A/982/02 dated 6.9.2002. The contention is that it is not the case that the supplier of the inputs has not paid any duty under the Compounded Levy Scheme only. The appellant relied upon the decision of the Tribunal in the case of **Delhi Steel Industries Vs. CCE** reported in 2002 (149) ELT 673. It is also submitted by the appellant that a view taken by the Delhi Steel Industries is followed by the Tribunal in the case of **Amit Engineering Vs. CCE** reported in 2006 (206) ELT 361.

4. The contention of the Revenue is that even after setting aside the enhanced capacity by the Tribunal, the supplier of inputs has not paid appropriate duty as per the finding in the order-in-appeal. The contention is that as the supplier of inputs had not discharged appropriate duty, therefore, the respondent is not entitled for deemed credit under Notification No. 58/97-CE.

5. In the present case, the appellant availed deemed credit under Notification No. 58/97-CE in the invoices under which the inputs were received, the supplier made a declaration that appropriate duty has to be paid. I find that this issue is came before the Tribunal in the case of **Delhi Steel Industries** (supra). The Tribunal held as under :-

“The Tribunal in the case of *Delhi Steel Industries* (2002 (149) ELT 673 (Tribunal) has held as under :

“This question, in my view, requires to be considered in the light of the provisions of Para 2 of the Notification, which reads as under :

“.....The Central Government further declares that the duty of excise under the Central Excise Act, 1944 (1 of 1944) (hereinafter referred to as said Act), shall be deemed to have been paid (hereinafter referred to as deemed duty), on the inputs declared herein and the same shall be

equivalent to the amount calculated at the rate of twelve per cent of the price, as declared by the manufacturer in the invoice accompanying the said inputs (hereinafter referred to as invoice price), and credit of the deemed duty so determined shall be allowed to the manufacturer of the final products.”

The above para of the Notification is a declaration by the Central Government that the duty of excise under the Central Excise Act shall be deemed to have been paid on the inputs declared in the Notification. The substantial provisions of deemed Modvat credit are contained in Paragraphs 1, 2 and 3 of the Notification. The rest of the Notification deals with the conditions for availment of deemed Modvat credit. The condition stated in Para 4 of the Notification to the effect that the inputs-manufacturers' invoices should declare that the appropriate duty of excise has been paid on the inputs under the provisions of Section 3A of the Central Excise Act should be interpreted in a manner not repugnant to the substantive provisions contained in Paras 1, 2 and 3 of the Notification. Para 2 of the Notification contains the Central Government's declaration that the duty of excise under the Central Excise Act shall be deemed to have been paid on the inputs declared in the Notification. Any denial of the deemed Modvat credit on the ground of absence of declaration by the input-manufacturers in terms of Para 4 of the Notification will be repugnant to the substantive provisions of Para 2 of the Notification. The declaration-related condition in Para 4 is virtually of no significance in the light of Central Government's declaration contained in Para 2 of the Notification. I am, therefore, inclined to accept Id. Counsel's argument that, in view of the Government's declaration, it is not open to the departmental authorities to deny the deemed Modvat credit on the ground of absence of input-manufacturers' declaration in terms of para 4”.

6. Further, I find that this view is followed by the division Bench of the Tribunal in the case of **Amit Engineering** (supra). In view of the above decisions, the impugned order is set aside and appeal is allowed.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM