

GRAM : CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

BENCH NB (SM)

Appeal No. E/1746/10 - NB (SM)

Dated: 3/1/2001

CEGAT
NEW DELHI

To

M/s Rajit Paints Ltd.,

D-23, Phase - V

Focal Point, Ludhiana (PB)

In the matter of :

M/s Rajit Paints Ltd.,

Appellant

vs.

CCE Chandigarh

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/01/2001/NB(SM)
Dated: 22-12-2000 passed by the Tribunal under Section 35-C(1) of Central Excise
& Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to :

Asstt. Registrar

NB (SM)

1. CCE Chandigarh
2. CCE/CE/(Appeal) Chandigarh
3. Chief Commissioner of Central Excise / Customs. New Delhi
4. Adv./Consult: shri K.K. Anand, Adv.
A-5, Basement, Lajpat Nagar - III,
New Delhi - 24
5. S.D.R.
6. JCDR
7. Bar Association, CEGAT, New Delhi
8. Library, CEGAT, New Delhi
9. Director (Review), C.B.E.C. North Block, New Delhi
10. Guard File
11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.
12. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, opp. Sachdeva P.T. College of
Defence Colony, New Delhi-110003
13. M/s Lex Site Com. Ltd., Mumbai
14. Office Copy
15. M/s Cen-cus Publication.

Asstt. Registrar

CUSTOMS, EXCISE AND GOLD (CONTROL) APPELLATE TRIBUNAL
NEW DELHI

Appeal No.E/1746/2000-NB(S)

[Arising out of Order-in-Appeal No.348/CE/Chd./2K dated 17.2.2000 passed by the Commissionr (Appeals) Central Excise, Chandigarh.]

M/s. Rajit Paints Ltd.

Appellants
(Shri K.K. Anand, Advocate)

Vs.

Commissioner of Central Excise, Chandigarh Respondent
(Shri M.D. Singh, S.D.R.)

FINAL ORDER NO. A/01/2001/NB CS/m Dt.22.12.2000.

Per. S.S. KANG, MEMBER

Appellant filed this appeal against the order in appeal whereby the credit has been denied the appellant on the ground that the invoices on which the credit was taken did not have the reference of RG 23^D Register.

2. Heard both sides.

3. The contention of the appellant is that now Rule 57Q of Central Excise Rules is amended by Notification No.7/99-CE(NT) dated 9.2.99 and amended rules provides that the credit shall not be denied on the ground that any of the documents mentioned in sub-Rule does contains all the particulars required to be contained therein under these rules, if such documents contains details of payment of duty description of goods, assessable value, name and address of the factory or warehouse. The Board issued a Circular No.441/7/99-CX dated 23.2.99 containing ^{guidelines} ~~certificates~~ ~~guinness~~ in respect of the Notification No/7/99-CE(NT) dated

9.2.99 and it was specified in the circular that guidelines are applicable to the pending cases and the pending cases are to be disposed of accordingly. The amendment and the Circular were considered by the Larger Bench decision in the case of Kamakhya Steels (P) Ltd. Vs. C.C.E., Meerut, reported in 2000 (40) RLT 575 (CEGAT-LB.) and the Tribunal held as under :

//Shri A.R. Madhav Rao, Id. Advocate as an intervener submitted that the question referred to the larger bench in the instant case need not be answered and matter be remanded to the Adjudicating Authority to examine the issue afresh in the light of amendment to Rules 57G and 57T as per Notification No. 7/99-CE(NT) dated 9.2.99, and the two Circulars (M.F. DR. Letter F.No. 267/6/92-CX dated 30.1.92 and Circular No. 441/7/99-CX dt. 23.2.99) [reported in 1999 (31) RLT M61]. He referred to the relevant amendment (7/99-CE(NT) dt. 9.2.99) which is as under:-

"7/99-CE(NT), dt. 9.2.1999: In exercise of the powers conferred by Section 37 of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby makes the following rules further to amend the Central Excise Rules, 1944, namely:-

1. (1) These rules may be called the Central Excise (3rd Amendment) Rules, 1944.
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Central Excise Rules, 1944,-
 - (a) in rule 57G, after sub-rule (10), the following sub-rule shall be inserted, namely,-

"(11) Credit under sub-rule (2) shall not be denied on the grounds that -

 - (i) any of the documents, mentioned in sub-rule (3) does not contain all the particulars required to be contained therein under these rules, if such document contains details of payment of duty, description of the goods, assessable value, name and address of the factory or warehouse;
 - (ii) the declaration filed under sub-rule (1) does not contain all the details required to be contained therein or the manufacturer fails to comply with any other requirements under sub-rule (1)."

He submitted that circulars are binding on the authorities functioning under the statute. Referring to the Circular No. 441/7/99 dated 23.2.99, he said that Circular was issued to follow certain guidelines in respect of Notification No. 7/99 dated 9.2.99 while considering the admissibility of modvat credit and further it was specified in the circular that guidelines are applicable to the pending cases and the pending cases are to be disposed of accordingly. In this context, he referred to the decision of the Supreme Court in the cases of Mathew M. Thomas Vs Commissioner of Income Tax reported in 1999 (33) RLT 227 (SC)=1999 (111) ELT 4 (SC) wherein it was held that proceedings shall include proceedings at the appellate stage. Particularly, he drew our attention to the para 8 of the said judgement which reads as under:-

Revenue Law Times

"8. It is well settled that the word "Proceedings" shall include the proceedings at the appellate stage. It is sufficient to refer to the judgement of this Court in Garikapati Vccraya V.N. Subiah Choudhary & Ors. - AIR 1957 S.C. 540 wherein the Court said at page 553:-

(i) That the legal pursuit of a remedy, suit appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceedings".

Hence we are unable to persuade ourselves to agree with the view expressed by the Full Bench of the High Court in the Judgement under appeal that the Circular would apply only to proceedings pending before the Competent Authority".

We are not convinced with the arguments advanced on behalf of the Revenue that amended provisions and Circulars referred to above are not applicable to the point in issue. On going through the amendment to Rule 57G particularly with reference to sub-clause II of 2(a) of 7/99-CE(NT) dated 9.2.99 the Circulars and the case law, we find that matter is required to be re-examined as it was rightly pointed out by the intervener. In the view we have taken, the matter is remanded to the Jurisdictional Assistant Commissioner to examine the admissibility of modvat credit for the period covered under Appeal No. E/1840/95 and to pass an order in accordance with law.//

4. In view of the above decision of the Tribunal, the impugned order is set aside and the matter is remanded to the adjudicating authority for deciding afresh after taking into consideration the above mentioned decision of the Tribunal. The appeal is disposed of by way of remand.

(S.S. KANG)
MEMBER (JUDICIAL)

Dated : 22.12.2000.

/RANA/