

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/1461/98-NB(SM)

Dated : 5-1-2001

CEGAT
NEW DELHI
To,

CCE, ~~ND~~ Delhi - III

In the matter of :

CCE ~~ND~~ Delhi - III

Appellant

vs.

M/s Hero Metal Cast Engg.

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/25/2001/NB(SM)
Dated : 01-01-2001 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 : M/s Hero Metal Cast Engg.
83, Indl. Area, Phase-I
Panchkula, (Haryana)

Asstt. Registrar
NB(SM)

- 1.
2. CCE/CE/(Appeal) New Delhi
3. Chief Commissioner of Central Excise/Customs: New Delhi
4. Adv./Consult.

— None —

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 & Gold(Control)Appellate Tribunal

Northern Bench(Single Member)

E/1461/98-NB

(Arising out of Order-in-Appeal No.489-CE/DLH/96 dt.26.2.98 passed by the Commissioner of Central Excise(Appeals), New Delhi)

CCE, New Delhi

Appellant
(Rep. by Shri S?C?Pushkarna,JDR)

vs

M/s. Hero Metal Cast Engg.

Respondent
(Rep. by none)

FINAL Order No. A/25/01/NB(CS/M)
1.1.2001

Per G.R.Sharma:

In the impugned order Ld. Commissioner(Appeals)held¹⁴ that the dispute regarding the method of marking of copies of invoices remains decided in favour of the appellants in many cases. The objection regarding the non-declaration of certain inputs also is not justified as scrap is one of the inputs declared by the appellants. In the circumstances, denial of Modvat credit and imposition of penalty are not justified. The appeal is accordingly allowed with consequential relief to the appellant and adjudication order is set aside. 9)

Being aggrieved by this order, Revenue has filed the above appeal.

2. The facts of the case briefly stated are that the appellants are engaged in the manufacture of different excisable goods falling under chapter heading 7325.10. They are also availing the facility of Modvat credit on inputs. Scrutiny of R.T.12 returns of the assessee revealed that Modvat was availed by the assessee on invoices which were not marked in the manner provided under Rule 52A; that on the invoices the S.No. and the description 'duplicate for transport' was not printed. It was either stamped or handwritten or typed out; Modvat credit was also availed on copy instead of the original; that credit was availed on the final products when rejected consignments were received back. The Asstt. Commissioner while confirming the demand ordered :-

"In view of the facts, I hereby disallow the inadmissible Modvat credit of Rs.2253/- under Rule 57-I of Central Excise Rules,44 read with Section 11A of the Central Excise Act,44 and order its recovery accordingly. I also impose a penalty of Rs.2,000/- upon the party under Rule 173C of Central Excise Rules,44 for contravention of Rule 52A and 173-H of Central Excise Rules,44".

3. Revenue who is the appellant in this case was represented by Shri S.C.Pushkarna, Ld. DR who submitted that the Ld. Commissioner(Appeals) did not take into account that the rules violated by the appellant were of a mandatory nature; that the Central Excise assessee working under Chapter VII-A of Central Excise Rules^{was} to seek prior permission for receipt of therejected goods and file D-3 intimation; that in the instant case this requirement was not complied with and therefore, there was no question of availing Modvat credit in respect of rejected goods.

4. Ld. Dr submitted that the Excise Invoices Procedure is not merely of technical nature but is mandatory for the assessee to follow; that by no stretch of imagination the defective/rejected returned goods could be construed as inputs by simply pleading that the same were ~~not~~ nothing but scrap.

5. None appeared for the respondent.

6. I have heard the submissions of Ld. Dr. I have also perused the evidence on record. I note that the points taken by the Revenue in their appeal^{are} that the rules violated and the instructions not carried out in the instant case were mandatory in nature. I find that in the instant case Modvat credit was denied to the assessee on the ground that it was taken on rejected goods. I find that this issue came up for consideration of the Larger Bench of this Tribunal in the case of Hindalco Industries Ltd. reported in 2000(119)ELT.711. I note that this issue was dealt with by the Larger Bench of this Tribunal in para 2&4 of the order referred to above which are reproduced:

"2. When the matter came up for hearing before this Larger Bench, the Ld. Counsel for the assessees referred us to Circular of Central Board of Excise & Customs No.263/45/89-CX.8, dt.7.8.89 and stated that the issue remains clarified in favour of the assessees under the aforesaid Circular. He also submitted that Revenue authorities cannot go against the clarifications of the Central Board and therefore, the issue must be decided in favour of the assessees. Ld. DR agrees that the classification of the Central Board settles the matter in favour of the assessees.

4. The law is well settled that the Revenue authorities cannot contend against the clarifications and directions issued by their Apex body namely, Central Board of Excise & Customs. The aforesaid Circular of the Board makes it clear that assessees are eligible to take credit of duty paid on final products, in cases where such final products are subjected to melting, and remanufacture. The reference is, accordingly, answered in favour of the assessees. The appeal No.E/1309/99-NB(S) is also allowed the consequential relief, if any".

Following the ratio of the above decision, of the Larger Bench I hold that credit of duty paid on rejected goods in ^{could be taken the} ~~which~~ cases where the rejected goods are subjected to melting and remanufacture in terms of Rule 57A of Central Excise Rules, 44 and Board Circular No.263/45/89/CX.8 dt.7.8.89. The appeal of Revenue is, therefore, rejected.

(G.R.Sharma)
Member Technical

Dt.4.1.2001
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