

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/ 2750 / 2000 - NB (SM)

Dated : 5-1-2001.

CEGAT
NEW DELHI
To,

M/s Siddharth Petro Products

28. S.S. 1 Co-operative Indl. Estate,

G.T. Karnal Road, Delhi - 110033.

In the matter of :

M/s Siddharth Petro Products

Appellant

vs.

C.C.E. Delhi

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/ 31 / 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 :

Asstt. Registrar

NB (SM)

1. C.C.E. Delhi
2. CCE/EE/(Appeal) New Delhi
3. Chief Commissioner of Central Excise / Customs - New Delhi
4. Adv. / Consult. Ms. Shubuti Chaudhary, Adv.,
40 Appellants.
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, Bhisim 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/2750/2000-NB

(Arising out of Order-in-Appeal No.596-CE/DLH/2000 dt.24.5.2000 passed by the Commissioner of Central Excise(Appeals), New Delhi)

M/s. Siddharth Petro Products Appellant
(Rep. by Ms. Shruti Chaudhary, Adv.)

vs

CCE, Delhi Respondent
(Rep. by Shri M.D.Singh, SDR)

FINAL Order No. A/31/2001 / WB CE/m 1.1.2001

Per G.R.Sharma:

In the impugned order the Ld. Commissioner(Appeals) held

"I hold that the ground for disallowing the credit is too flimsy and accordingly, I hold that the subject modvat credit is admissible to the appellants. However, I also hold that the appellants should have approached the jurisdictional Officers for accepting the rectified documents before taking the modvat credit and to that extent, I hold that imposition of penalty on the appellants is justified and I uphold the same".

2. In the impugned order of adjudication, the Ld. Asstt. Commissioner had imposed a penalty of Rs.15,000/- under Rule 173Q.

3. The facts of the case briefly stated are that the appellants are engaged in the manufacture of lubricating grease and are availing Modvat credit. The Department observed that the assessee had wrongly taken and utilised Modvat credit of duty amounting to Rs.2,46,060^W when they came to know of this they themselves voluntarily debited the whole amount of Rs.2,46,060/- on 28.4.95. The Department issued a SCN calling upon them to show cause as to why the Modvat credit amounting to Rs.2,46,060/- should not be disallowed and why a penalty should not be imposed. The Asstt. Commissioner confirmed the demand of Rs.2,46,060/- under Rule 57-I and imposed a penalty of Rs.15,000/- under Rule 173Q. The appellants filed an appeal before the Ld. Commissioner(Appeals) who held as indicated above.

4. Arguing the case for the appellants Ms. Shruti Chaudhary, Ld. Counsel submits that the Ld. Commissioner(Appeals) had held that the ground of disallowing credit was too flimsy and also that the subject Modvat credit is admissible to the appellants. Ld. Counsel submits that in view of these findings, there was no case made out against the appellants for imposition of penalty. She, therefore, prays that the order imposing penalty may be set aside.

5. Shri M.D.Singh, Ld. DR submits that the Ld. Commissioner(Appeals) has also held that the main objection was on preauthentication of invoices which was not done. He submits that invoices authenticated subsequent to the date of issue are not pre-authenticated and the defect is not a rectifiable mistake but is a statutory requirement which was not complied with and which attracted the imposition of penalty. He submits that Larger Bench of this Tribunal has held that the rules should be strictly followed. He, therefore, prays that the imposition of penalty on the appellant by the Ld. Commissioner(Appeals) was warranted.

6. I have heard the rival submissions. I note that the findings of the Ld. Commissioner(Appeals) reproduced above clearly held that disallowance of Modvat credit is too flimsy a ground and that the appellants were entitled to Modvat credit. Once this finding is rendered nothing remains for imposition of penalty in-as-much as not only Modvat credit was allowed but it was also held that disallowance was on flimsy ground. Therefore, I hold that retention of penalty was not warranted in the present case. In the circumstances, the order of confirming the penalty is set aside and the appeal is allowed.

(G.R.Sharma)
Member Technical

Dt.1.1.2001
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