

## THE CUSTOMS, EXCISE &amp; GOLD (CONTROL) APPELLATE TRIBUNAL,

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

BENCH NB (SM)

Appeal No. E/4170-4171/91-NB(SM)

Dated: 5-1-2001

CEGAT  
NEW DELHI  
To,

CCE Chandigarh

In the matter of:

CCE Chandigarh

Appellant

vs.

M/s R.H. Inds. &amp; M/s Kansal Enterprises

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/23-24/2001/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:

- ① M/s R.H. Industries,  
C-28, Indl. Area, Phase II, Mohali.
- ② M/s Kansal Enterprises  
420, Indl. Area, Phase-II, Chandigarh
2. CCE/CG/(Appeal) Chandigarh
3. Chief Commissioner of Central Excise/Customs, New Delhi
4. Adv./Consult. Shri J.P. Kaushik, Adv.,  
M-93, Saket, New Delhi-17.
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  
NB(SM)

Asstt. Registrar

Customs Excise & Gold(Control)Appellate Tribunal

Northern Bench(Single Member)

E/4170 & 4171/91-NB

(Arising out of Order-in-Appeal No.1250/CE/CHD/91 dt.29.8.91 and 1165-66/CE/CHD/91 dt.17.7.91 passed by the Collector of Central Excise(Appeals), Chandigarh)

CCE, Chandigarh

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

vs

M/s. R.H.Industries  
M/s. Kansal Enterprises

Respondent  
(Rep. by None)  
(Rep. by Shri J.P.Kaushik,Adv.)

FINAL Order No. A/23-24/2001/1.1.2001 NB  
CCM/

Per G.R.Sharma:

These two Appeals Nos.E/4170/91-NB and E/4171/91-NB were taken together as the issue in both the cases is the same. The issue is admissibility of deemed Modvat credit in view of the exemption under Notification No.206/83-CE dt.1.8.83. The Department held that Modvat credit was not admissible on the inputs as the final product is exempt. The contention of the appellants was that the exemption notification was conditional and that since the notification was conditional, it was the burden of the revenue to prove that the goods were clearly recognisable as non-duty paid, which they did not discharge.

2. Arguing the case in Appeal No.E/4171/91, Shri J.P.Kaushik, Ld. Counsel submits that the issue in both the above appeals is the same and that the dispute was whether deemed Modvat credit was admissible on the inputs in terms of exemption Notification No.206/83-Ce dt.1.8.83. Ld. Counsel submits that the question of admissibility of deemed Modvat credit on certain inputs came up for consideration before the Larger Bench of this Tribunal in the case of Machine Builders reported in 1996(12)RLT.817. Ld. Counsel submits that in that case the Larger Bench of this Tribunal categorically held that if the notification was conditional then the onus was on the Department to prove that the goods were clearly recognisable as non-duty paid. He submits that the admitted position is that the Notification is conditional and since the Department has not discharged the burden of proof on it, therefore, the appellants were

entitled to deemed Modvat credit. He, therefore, prayed that the appeal may be allowed.

3. Shri S.P.Pushkarna, Ld. DR reiterates the findings of the authorities below and submits that <sup>every point</sup> neither has been considered in detail, therefore, the appeals may be rejected.

4. I have heard the submissions of both the sides. I note that the issue in both these appeals is the same i.e. whether deemed Modvat credit was admissible to the appellants. I further note that there is no dispute <sup>and</sup> ~~therefore~~ <sup>that</sup> the said notification is the conditional notification. I also observe that this Tribunal in para 23 of its decision in the case of Machine Builders held

"23. The mere existence or the exemption notification is not sufficient to show that the input is wholly exempt from duty to clearly recognised as not being duty paid or charged to nil rate of duty. This consequence may automatically follow in the case of unconditional exemption once it is shown that the inputs in question are attracted by the notification. In the case of conditional exemption, unless it is shown that all the conditions are satisfied in a given case, it cannot be stated with certainty that the inputs are wholly exempt or are clearly recognizable as non-duty paid or charged to nil rate of duty. It is, therefore, for the Revenue by conducting necessary enquiry (and it shall be the duty of the assessee to cooperate) to see if the conditions are satisfied and the exemption notification has fully taken effect in regard to the inputs in the question. Revenue cannot be ~~held~~ to say that it is for the assessee to show that the conditions are not satisfied and since he has failed to do so, the exemption must be regarded as having taken effect. It has to be appreciated that in the generality of such cases, the person who clears the inputs is not the assessee, but the manufacturer of the inputs and the assessee might not have purchased the same directly from the manufacturer but might have purchased from the Bazar. When the controversy arises in appellate forum it is for the Revenue to satisfy the appellate forum that the conditions are satisfied in the given case amount the exemption has taken effect".

5. On scrutiny of this finding of the Larger Bench, I find that the issue is fully covered by this decision of the Larger Bench. Following the ratio of this decision, I hold that deemed Modvat credit will be admissible to the appellants in these two appeals. Therefore, the said two appeals are, ~~therefore~~, rejected.

(G.R.Sharma)  
Member Technical

Dt.1.1.2001  
km