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

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

BENCH NB (SM)

Appeal No. E/1178/2000 - NB(SM)

Dated : 16.1.2001.

CEGAT
NEW DELHI
To,

M/s Air Conditioner co. of India,

C-23, Sector - 58,

Noida (U.P)

In the matter of :

M/s Air Conditioner co. of India.

Appellant

vs.

Ce E. Meerut

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/64/2001/NB(SM)
Dated : 12-1-2001 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. CCE Meerut
2. CCE/CE (Appeal) - Ghaziabad
3. Chief Commissioner of Central Excise / Customs. Kanpur
4. Adv. / Consult. Shri J. S. Agarwal, Adv.,
S-187, Greater Kailash - II
New Delhi - 48.
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
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15. M/s Cen - Cus Publication.

Asstt. Registrar

**In the Custom, Excise & Gold (Control) Appellate Tribunal
New Delhi**

APPEAL NO. E/1178/2000/NB/SM OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

111-CE/MRT/2000 dt 28.2.2000 DATED.....

PASSED BY...Commissioner..... of..... Central.....

Excise(Appeals) Ghaziabad(U.P.)

Date of decision..... 26.12.2000

M/s Air Conditioner Co. OF INDIA APPELLANT (S)

Represented by Sh./Smt. J.S. Agarwal, Adv.

VERSUS

CCE Meerut RESPONDENT (S)

Represented by Sh./Smt. A.K. Jain JDR

CORAM: Shri V.K. Agarwal, Member(T)

To be referred to the Reporter or not?

FINAL ORDER NO. A/64/01/NB(S/M)

Per..... Shri V.K. Agarwal, Member(T)

The issue involved in this appeal, filed by M/s Air Conditioner Co. of India, is whether the Modvat Credit was available to them under Rule 57 H of the Central Excise Rules.

2. Shri J.S. Agarwal, learned Advocate, submitted that the appellants availed of exemption from payment of duty in 1997-98 under

Notification No. 75/87-C.E. dt 1.3.87, being a new unit; that expecting increase in sales, they applied for Central Excise Registration which was granted to them on 26.5.1998; that they filed a Modvat Credit declaration on 29.5.98 under Rule 57 G; that on the same day a declaration in respect of inputs lying as such and contained in final products was also filed; that as there was an omission on their part in declaring all the inputs, they filed an additional declaration on 5.6.1998 under Rule 57 H in respect of evaporator coil/condensor coils and compressor and simultaneously requested for condonation of delay as per provisions of Rule 57 G; that the Deputy Commissioner disallowed the Modvat Credit, under Adjudication Order No. 98/99 dt 5.10.99 on the ground that Modvat Credit was admissible only in respect of inputs lying in stock at the time of filing the declaration under Rule 57 H; that the Commissioner (Appeals), under the impugned order, remanded the matter to ascertain as to when the final products ^{containing} ~~containing~~ the inputs were cleared with the observation that "if the final products manufactured out of these inputs were cleared after filing the declaration on 29.5.98, Modvat Credit will be admissible otherwise not." The learned counsel, further, submitted that no final goods were cleared during the period from 26th May to 29th May, 1998; that the final goods were removed on 29.5.98 on payment of duty in P.L.A. He

relied upon the decision in the case of Balaji Cement Products (P) Ltd. Vs C.C.E. Pune, 1994(69) ELT 786(T) wherein it was held that "Modvat Credit could be extended under Rule 57 H not only in respect of inputs lying in stock but also in respect of inputs used in the manufacture of final product, which have been cleared from the factory on or after 1.3.1987." He finally mentioned that M.P. High Court's judgement in Guilt Pack Ltd Vs Assistant Collector, 1994(69) ELT 222(MP) to the effect that Modvat Credit under ~~transition~~ ^{transition} provision is not deniable on the ground that pre-declaration inputs were not available for verification, being not in stock, has been confirmed by Supreme Court as S.L.P. filed by the Union Of India was ~~discussed~~ ^{dismissed} as reported in 1999(114) ELT A 226.

3. Opposing the appeal, Shri A.K. Jain, learned DR, submitted that the Modvat Credit cannot be allowed as the final goods, in the manufacture of which inputs were used, were not available for verification by the officers.

4. I have considered the submissions of both the sides. Rule 57 H of the Central excise Rules provides as under:

Rule 57 H: (1) Notwithstanding anything contained in rule 57G, a manufacturer intending to avail of credit of duty paid on inputs received

by him immediately before obtaining the date acknowledgement of the declaration made under that rule, shall file a declaration under this sub-rule with the jurisdictional Assistant Commissioner of Central Excise stating that:-

(a) such inputs are lying in stock, or are received in the factory after filing the declaration made under rule 57 G; or

(b) such inputs are used in the the manufacture of final products which are cleared from the factory after filing the declaration made under rule 57G.

and that no credit has been taken by the manufacture in respect of such inputs under any other rule or notification.”

5. This rule provides for availment of Modvat Credit in respect of inputs received by a manufacturer immediately before obtaining the dated acknowledgement of declaration filed under Rule 57 G and the inputs are used in the manufacture of final products which are cleared from the factory after filing the 57G declaration. It is observed that the declaration under Rule 57G was filed on 29.5.98 and the goods were also cleared from that day. The payment of excise duty was made through P.L.A., The Deputy Commissioner denied the Modvat Credit as clearance was effected even

before their receipt could be ascertained. The Modvat Credit can^{not} be denied only on the ground that verification of inputs could not be done as the verification can be done on the basis of the records regarding utilisation of the inputs in the final product as held by Tribunal in Balaji Cement Products(P) Ltd., supra. The decision in the case of Gilt Pack Ltd Vs Assistant Collector, 1994(69) ELT 222(MP) squarely applies to the facts of present matter wherein it was held as under:

“Rule 57G has two limbs, one pertains to such inputs as are lying in stock or are received in the factory after filing the declaration made under Rule 57G and the second limb of the Rule pertains to those inputs which are used in the manufacture of final products and which are cleared from the factory on or after 1st March, 1987 provided that no credit has been taken by the manufacture in respect of such inputs under any other Rule or Notification or that the final products of such inputs are dutiable. A bare reading of the aforesaid two provisions shows that a manufacture is entitled to get credit on the inputs which are lying in stock or are received in the factory after filing the declaration and also on such inputs which are already used in manufacture of the final products and those final products are cleared from the factory on or after 1st March 1987. As such when an argument is advanced that the inputs are not available for verification as they are not lying in

stock, acceptance of such an argument would result in making the provision of second clause of Rule 57H nugatory. It appears that the purpose behind the Rule was to give credit both to the inputs which were lying in stock for verification and also those inputs which were already used in the manufacture of the goods which were cleared from the factory on or after 1st day of March, 1987. The clear language of the Rule does not admit of any other interpretation than the one which gives benefit in both the cases."

6. In view of the position, the appellants are eligible to avail of the Modvat Credit in respect of the inputs contained in final products under Rule 57H which were removed on or after 29.5.98. The appeal is thus allowed.

(V.K.Agarwal)
Member (T)

PW

12.1.2001