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/641/99-NB (SM) Dated : 19/1/2001

CEGAT
NEW DELHI
To,

M/s Kisan Sahkari Chini
Mills Ltd., Tilhar
Distt. Shajahanpur (U.P)

In the matter of :

M/s Kisan sahkari chini Mills Ltd., Appellant

vs.

CCE Lucknow Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/86/2001/NB (SM) Dated : 15-12-2000 passed by the Tribunal under Section 35-C(1) of Central Excise & Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Asstt. Registrar
NB (SM)

Copy to :

1. CCE Lucknow
2. CCE / CC / (Appeal) Allahabad.
3. Chief Commissioner of Central Excise / Customs. Kanpur
4. Adv. / Consult. Shri Bipin Garg, Adv.
   A-4, Neeti Bagh,
   New Delhi - 49,
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
NEW DELHI

Appeal No. E/641/99-NB(S)

(Arising out of Order-in-Appeal No. 331-CE/KNP-II/98 dated 3.12.98 passed by the Commissioner (Appeals) Central Excise, Allahabad)

M/s. Kisan Sahkari Chini Mills Ltd. ..Appellants
(Rep. by Shri Bipin Garg, Advocate)

vs.

C.C.E. Lucknow .. Respondent
(Rep. by Shri V.M. Udhoji, JDR)

DOH: 26.9.2000:

FINAL Order No. A/86/01/NB(S/M) dt:

Per K.K. Bhatia, Member (T):

The appellants manufacture V.P. Sugar falling under Heading 17.01 with Molasses as its by-product falling under Heading 17.03. They availed modvat credit on the inputs as well as the capital goods under the provisions of Rule 57A and Rule 57Q respectively as per the declarations filed by them as provided under the relevant rules. The Asst. Commissioner of Central Excise, Sitapur issued them a show cause notice dt. 15.4.97, inter alia calling upon to show cause as to why the modvat credit totally amounting to Rs.1,99,775.44 should not be denied to them in respect of the items reflected at Sl.Nos.1 to 18 in the Annexure to the show cause notice since the invoices in respect of these items had been issued by the consigners prior to six months from the date of availment of modvat credit in violation of the second proviso to Rule 57G(2) of Central Excise Rules, 1944. On considering the reply of the party, the Asst. Commissioner of Central Excise, Sitapur Division vide his order dt. 30.7.97 disallowed the modvat credit of the aforestated amount to the party for the reasons as notified in the show cause notice. He also imposed a penalty of an equivalent amount on the appellants under Rule 173Q and Rule 57-I(4) of Central Excise Rules, 1944.

2. The party filed an appeal against the above order. The Commissioner (Appeals), Allahabad in his order dt. 3.12.98 observed that the credits had been taken after six months from the date of the invoices, that Rule 57G(2) provides that credit is not allowable if it is taken beyond six months from the date of invoice. He therefore held that the adjudicating authority had rightly disallowed the credit in respect of the impugned items. He therefore, rejected the appeal of the party on this score and reduced the penalty to Rs.20,000/- The present appeal is against the above order of Commissioner (Appeals). I have heard Shri Bipin Garg, Advocate for the appellants and Shri V.M. Udhoji, JDR for the Respondents. The ld. Advocate for the appellants submitted that on receipt of each of the consignment of the impugned goods with effect from 4.4.95, the appellants had been sending D-III intimations along with the photo copies of the invoices to the Divisional/ Range Office with a request to register their claim for modvat credit. It is submitted that simultaneously they started making entries in RG.23A Part I and Part II registers but did not utilise the credit on the directions of the Range Office to wait for their permission. They also did not submit the extracts of these registers with the invoices to the Departmental authorities along with their monthly RT 12 Returns, as they were given to understand that it was

required only when the credit would be utilised. The Range Superintendent vide his letter dt. 28.9.96 called upon them to explain the reasons for non-submission of the modvat records in respect of the inputs and the capital goods. Thereafter, they held discussions with the Range Officer and after getting guidance from him during the month of September, 1996, they submitted the above said monthly return for the month of October, 1996 along with the copies of modvat credit register under their letter dt. 15.11.1996. It is stated by the appellants that at the very time of the submissions of the above records, they scored out the month/year and also the dates against certain entries relating to inputs as well as capital goods and re-wrote them as relating to October, 1996 in the first and second copies of the extracts of RG.23 A & C Registers on the directions of the Range Officer. It is further stated by ld. Advocate of the appellants that the triplicate copy of the modvat credit accounts in RG.23 A & C Registers is still held by them in which the entries with regard to the impugned invoices are made within six months of the dates of their issue. Ld. Counsel for the appellants submitted that these can be compared with the copies of the extracts submitted by them to the Department which would vouch for their contention that the dates in the copies of the modvat registers were scored out at the instance of the Range Officer. I have considered these submissions. The appellants are stating that they are in possession of triplicate copy of the modvat credit registers for the relevant period for which the modvat credit in respect of the impugned invoice is ~~filed~~ taken within six months of the date of their issue which is within the para-meters of the provisions of Rule 57G(2). Under the circumstances, it appears to me but fair that the claim of the appellants in this regard is verified by the original authority and the necessary ~~view~~ decision arrived at ~~for~~ after taking into consideration of these submissions of the party. Accordingly, I set aside the orders of the lower authorities and remand the matter to the original authority to re-consider these matters in the light of the submissions of the party and the observations recorded herein above. The original authority thereafter pass a fresh speaking order in the matter. The appellants shall be afforded a reasonable opportunity of hearing before a final decision is taken in the case.

3. The appeal is thus allowed by remand in above terms.

(Announced in the Court)

(K.K. Bhatia)
Member (Technical)

ms.

Dt:15.12.2k