

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/1742/97-NB(SM)

Dated : 9/1/2001

CEGAT
NEW DELHI
To,

M/s Vijay Plastics
F-54, B.S.R. Indl. Area,
Ghaziabad. (U.P.)

In the matter of :

M/s Vijay Plastics Appellant
vs.
CCE Meerut Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/48/2001/NB(SM)
Dated : 12-12-2000 passed by the Tribunal under Section 35-C(1) of Central Excise
& Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to :

1. CCE Meerut

Asstt. Registrar
NB(SM)

2. CCE/EC/(Appeal) Ghaziabad
3. Chief Commissioner of Central Excise / Customs. Kanpur
4. Adv. / Consult. Shri Rajesh Chhibber, Adv.,
FA-9, Kavi Nagar,
Ghaziabad (U.P.)
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
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Asstt. Registrar

CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL
NEW DELHI.

E/1742/97-NB

(Arising out of Order-in-Appeal No.663-CE/MRT/97
dated 9.5.97 of the Commissioner of Central Excise
(Appeals), Ghaziabad).

M/s. Vijay Plastics ...Appellants
Rep. by Shri Rajesh Chhiber, Advocate

Vs.

CCE, Meerut ...Respondents
Rep. by Shri M.D. Singh, SDR

CORAM: SHRI LAJJA RAM, MEMBER (T)

FINAL Order No. A/48701/NB(CS/M) Dated: 12.12.2000

PER LAJJA RAM:

In this appeal filed by M/s. Vijay Plastics, Ghaziabad, the matter relates to the modvat credit in respect of the rejected returned plastic containers which after being received in the manufacturer's factory were re-melted and re-made into fresh plastic containers and cleared on payment of appropriate excise duty. On receipt, the assessee had taken modvat credit, which was sought to be denied on the ground that instead of following the procedures under Rule 173 H or 173 L of the Central Excise Rules, the assessee had taken modvat credit on their own goods on their own returned invoices.

2. Shri Rajesh Chhiber, Advocate submits that there was no doubt that the returned goods were their own inputs and modvat credit was rightly available to them. He relied upon the Tribunal's Larger Bench decision in the case of Commissioner of

Central Excise, Meerut Vs. Tin Manufacturing Co. = 2000 (119) ELT 290 (Tribunal-LB) and Commissioner of Central Excise, Meerut-II Vs. Bhushan Steel and Strips Ltd. - 2000 (119) ELT 293 (Tribunal - LB). He also submits that their prayer for availing of the facilities under Rule 173 H and 173 L of the Rules had not been considered. No findings had been given as why they were not eligible for the benefit as given by these Rules. It is his submission that once the matter has been settled by the Larger Bench of the Tribunal, there should be no difficulties in regularising the matter as there is no any loss of revenue. Whatever duty they have paid earlier had been taken credit of when the goods had been received. He prays that the matter could be re-examined by the jurisdictional authorities in the light of these Tribunal's decisions and in any case, if the matter could be regularised thereunder then the benefit of Rules of 173 H and 173 L should be extended.

3. In reply, Shri M.D. Singh, SDR submits that the assessee has not followed the prescribed procedure and the benefit of modvat credit had been rightly denied. He has however no objection for remand of the matter to re-consider ^{the same} in the light of the Larger Bench decisions if the same are applicable to the facts and circumstances of this case.

4. We have carefully considered the matter.

The dispute before the appellate authority was whether the modvat credit could be taken on the returned goods when no procedure has been followed.

No D-3 intimations were filed. The goods were manufactured earlier by the same assessee, which according to him, has been rejected and returned. On return, no intimation was filed.

5. The ld. Advocate submits that as on return, the rejected containers were treated as their inputs, there was no need for any declaration. He further submits that in their modvat declaration, they had intimated that rejected and returned containers were also one of their inputs.

6. I do not find any copy of the modvat declaration on record. It is also submitted before me that in reply to the show cause notice, the appellants had pleaded that the matter may be regularised under Rule 173 L of the Rules and in place of refund, the modvat credit may be allowed. I consider that the Tribunal's Larger Bench decision has taken a view that when the goods are

returned as defective and re-made into new goods then the defective returned goods upon rejection becomes inputs in the manufacture of the finished goods and that the duty paid in respect of them could be taken as modvat credit.

The ld. Advocate refers to the order-in-original wherein, it has been recorded that in the declaration under Rule 57 A dated 23.10.94, defective Poly Containers received back had been declared as the inputs for final products.

7. I consider that the Commissioner (Appeals) has not taken cognizance of these facts, which need to be re-examined in the light of the observations made in the original order read with the Tribunal's Larger Bench decision, relied upon by the ld. Advocate.

8. Accordingly, I consider it to be a fit case for remand. The jurisdictional Commissioner of Central Excise (Appeals) will provide an opportunity to the appellants to present their case and then pass a speaking appealable order as per law. The appeal is thus, allowed by way of remand. Ordered accordingly.

Order dictated & pronounced in the Open Court on 12.12.2000.

(LAJJA RAM)
MEMBER (T)

12.12.2000
Ckp.