

GRAM : CEGCANAL

REGISTERED/A.D

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

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

E/S | 1903 | 2500 - NB (SM) BENCH NB (SM)

Appeal No. E | 3372 | 00 - NB (SM)

Dated : 19/1/2001

CEGAT
NEW DELHI

To,

M/s Incon Industrial

Controls Pvt. Ltd., 77, Maruti

Indl. Complex, Sector-18,

Gurgaon (Haryana)

In the matter of :

M/s Incon Indl. Controls Pvt. Ltd.,

Appellant

vs.

CCE New Delhi

Respondent

Stay order No. S | 43 | 200 - NB (SM)

I am directed to transmit herewith a certified copy of Final Order No. A | 94 | 01 | 708 (SM)
Dated : 15-1-2001.....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 New Delhi
2. CCE / EE / (Appeal) New Delhi
3. Chief Commissioner of Central Excise / Customs. New Delhi
4. Adv. / Consult. Shri Ram chander chaudhary, Adv.,
1610/4, U. E. - Gurgaon, (Haryana)
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

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

E/S/1903/2000-NB(SM) in
APPEAL NO. E/3372/00 OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/XXXXXXXXX/APPEAL NO.

706-CE/DLH/2000 DATED 24.08.2000.

PASSED BY COMMISSIONER OF CENTRAL EXCISE
(APPEALS), NEW DELHI.

Date of decision 15.01.2001.

M/s INCON INDUSTRIAL CONTROLS Pvt. Ltd. APPELLANT (S)
GURGAON

Represented by Sh. ~~XXXX~~ RAM CHANDER CHAUDHARY,
ADVOCATE.

VERSUS

CCE, NEW DELHI - RESPONDENT (S)

Represented by Sh. ~~XXXX~~ K. PANCHATCHARAN,
JDR.

CORAM:
SHRI P.G.CHACKO, MEMBER (JUDICIAL).

Per P.G.CHACKO:

To be referred to the Reporter or not?
STAY ORDER NO. S/43/01/NB(CS/m)
FINAL ORDER NO A/94/01/NB(CS/m)

The appeal is admitted.

2. The stay application filed by the appellants is for waiver of pre-deposit of the penalty of Rs.10,000.00 imposed on them by the lower appellate authority while remanding the dispute on merits to the adjudicating authority as per order dated 11.08.2000. On a careful examination of records and on hearing both sides, I find that the appeal itself requires to

be disposed of at the present stage. I, therefore, allow this application unconditionally and proceed to dispose of the appeal finally.

3. The dispute on its merits is that the appellants, in January-February 1995, took Modvat credit on certain inputs described in the manufacturer's invoices as "heavy duty fuse unit" and classified therein under Tariff Sub-Heading 8537.00, but the Department sought to disallow the credit on the ground that the inputs were declared as "fuses" and "switches" and classified under Tariff Sub-heading 8535.00 by the appellants in their declaration filed under Rule 57G. As per the impugned order, this dispute stood remanded to the Assistant Commissioner for fresh decision. The lower appellate authority, further, reduced the penalty imposed on the ^aprty to Rs.10,000.00. Ld. Advocate Shri R.C.Choudhary for the appellants submits that, on a similar set of facts, a Larger Bench of the Tribunal remanded a similar dispute to the adjudicating authority in the case of Kamakhya Steels (P) Limited Vs CCE, Meerut [2000 (121) ELT 247]. He also cites a more recent remand order passed similarly in their own case by the Tribunal vide Final Order No.A/2028/2000-NB(SM) dated 30.10.2000 and submits that, in passing the said order, the Bench was following the Larger Bench decision. Ld. Counsel, therefore, prays for a remand of the present dispute to the adjudicating authority.

4. Ld. JDR Shri K.Panchatcharan opposes the above prayer and wants the appeal to be rejected. He submits that the Tribunal had remanded the very same dispute earlier as per the aforecited Final Order dated 30.10.2000 and the matter has now

come up before the Bench in a second round of litigation and there is no warrant for a second remand.

5. I have carefully examined the submissions. The only issue involved in this appeal is whether the Rule 57G declaration filed by the appellants declaring the "heavy duty fuse units" supplied by the manufacturers, as "fuses" and "switches" was acceptable for the purpose of availment of Modvat credit by the party on the said inputs. I find that the Notification and the Board's Circular considered by the Larger Bench in Kamakhya Steels [supra] are quite relevant to this issue inasmuch as Notification No.7/99-CE(NT) dated 09.02.1999 amended Rule 57G thereby further relaxing the conditions (with regard to Modvat documents) for availment of Modvat credit and Board's Circular No.441/7/99-CX dated 23.02.1999 was issued for guiding the field officer^s of the department in following the amended provisions of the Rule. Significantly, it was also clarified by the Board that the guidelines in the Circular were applicable to pending cases also. Ld. Counsel has submitted in the instant case that, if the said guidelines are followed by the Departmental authorities, there would be no question of denial of the Modvat credit. The authorities are bound by the Board's guidelines. I have no reason to reject this submission. As in the cases cited by Counsel, the issue requires to be remanded to the adjudicating authority for a fresh decision, taking into consideration the Board's guidelines contained in the Circular under reference. As regards ld. JDR's submission that the Tribunal had remanded the same matter earlier and the present appeal has arisen in a second round of litigation, I cannot help saying that such a submission is only attributable

to absolute ignorance of the history of these proceedings. Obviously, the JDR has not applied his mind. The plain truth is that the present proceedings have nothing to do with the remand order dated 30.10.2000 cited by Counsel.

6. For the reasons already recorded, I follow Kamakhya Steels and set aside the orders of both the lower authorities and allow this appeal by way of remand, directing the jurisdictional Assistant Commissioner to take fresh decision and pass a speaking order after taking into due consideration the Board's Circular No.441/7/99-CX dated 23.02.1999 as well as the amended provisions of Rule 57G. Needless to say that the party should be given a reasonable opportunity of hearing by the adjudicating authority.

(Dictated and pronounced in the open Court.)

(P.G.CHACKO)
MEMBER (JUDICIAL)

15.1.01.

mk.