

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

REGISTERED/A.D

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

Appeal No. E/ 3296/2000 - NB(SM) **BENCH NB(SM)**

Dated: 22/1/2001

CEGAT  
NEW DELHI

To,

CCE Chandigarh

In the matter of :

CCE Chandigarh

Appellant

vs.

M/s Saket Steel Ltd.

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/ 107/2001/NB(SM)  
Dated: 17-1-2001 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 :

M/s Saket steel Ltd.,  
G.T. Road, Mandi Gobindgarh  
(PB)

BLI  
Asstt. Registrar  
NB(SM)

- 1.
2. CCE / CE / (Appeal) Chandigarh
3. Chief Commissioner of Central Excise / Customs. New Delhi
4. Adv. / Consult. Shri J. S. Agarwal, Adv.  
S-187, Greater Kailash - II
5. S.D.R New Delhi - 48.
6. JCDR
7. Bar Association, CEGAT, New Delhi
8. Library, CEGAT, New Delhi
9. Director (Review), C.B.E.C. North Block, New Delhi
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11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.
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Asstt. Registrar

CUSTOMS EXCISE AND GOLD (CONTROL) APPELLATE TRIBUNAL,  
NEW DELHI

E/Appeal No. 3296/2000NB(S)

(Arising out of Order-in-Appeal No. 1316/CE/CHD/2000  
dated 9.8.2000 passed by the Commissioner (Appeals),  
Central Excise, Chandigarh)

CCE, Chandigarh

Appellant,  
Reptd. by Sh. S. Kumar, JDR

Versus

M/s. Saket Steel Ltd.

Respondents,  
Reptd. by Sh. J.S. Agarwal, Adv.

Coram: Shri V.K. Agrawal, Member (T)

FINAL ORDER NO. A/107/01 / NB CE/01 DATED 17.1.2001

Per V.K. Agrawal:

The issue involved in this appeal filed by the Revenue is whether Modvat credit is admissible on the strength of quadruplicate copy of Bill of Entry.

2. Shri S. Kumar, learned D.R. submitted that the documents prescribed for availing the Modvat credit is triplicate copy of Bill of Entry and as such Modvat credit cannot be availed of on the strength of quadruplicate copy of Bill of Entry; that the Larger Bench of the Appellate Tribunal in the case of CCE, New Delhi vs. Avis Electronics (P) Ltd., 2000 (117) ELT 571 has held that "it is evidently clear that the manufacturer should who wants to take the credit of the duty paid on inputs must do it on the basis of duplicate copy of the invoice in case the documents evidencing

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payment of duty on inputs is an invoice....." He, therefore, conended that the Order-in-Appeal which has allowed the Modvat credit should be set aside.

3. Opposing the appeal Shri J.S. Agarwal, learned Advocate submitted that the issue involved before the Larger Bench was availability of Modvat credit on the basis of original copy of invoice as duplicate copy of invoice has been lost in transit; that in the present case the Respondents M/s. Saket Steel Ltd. has produced quadruplicate copy haveng the same particulars as a supporting document for the loss of triplicate copy. He, further, submitted that the Appellate Tribunal in the case of CCE, Jaipur vs. India Polytech (P) Ltd., 2000 (40) RLT 727 (CEGAT) has allowed the Modvat credit on the basis of endorsed Bill of Entry though the Revenue has relied upon the decision of the Larger Bench in the case of Avis Electronics (supra). Finally the learned Advocate submitted that the Asstt. Commissioner while disallowing the Modvat credit has also imposed penalty of Rs.50,000/- which is totally unjustified in view of the fact that the Commissioner (Appeals) had allowed their appeal.

4. I have considered the submissions of both the sides. Provisions of Rule 57G(2) at the material time provided that no credit shall be taken unless the inputs are received in the factory under the cover of specified documents. One of the documents specified therein is triplicate copy of Bill of Entry. It is not in dispute that the goods were <sup>not</sup> received in the factory under the cover of ~~duplicate~~ <sup>triplicate</sup> copy of Bill of Entry. Larger Bench of the Tribunal has settled the law by holding that

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"insistence on documents evidencing payment of duty on the inputs as prescribed by Rules is not a technicality to be complied with for availing Modvat credit..... When any particular thing is directed to be performed in a manner prescribed by Rules, it should be performed in that manner itself and not otherwise." Reliance placed by the learned Advocate for the Respondents on the decision in Indian Polytechs case is misplaced as the Bench observed the finding recorded by the Adjudicating Authority to the effect that the Central Board of Excise and Customs has prescribed several documents as valid documents for the purpose of availing Modvat credit including endorsed Bill of Entry. Such is not the situation in the present matter as the competent authority has not prescribed quadruplicate copy as one of the documents evidencing payment of duty. Accordingly, the Respondents are not eligible to take Modvat credit on the strength of quadruplicate copy. However, I agree with the learned Advocate for the Respondents that this is not a fit case for imposition of penalty at all. I, therefore, allow appeal filed by the Revenue to the extent that the Respondents are not eligible to avail of the Modvat credit but no penalty is imposable on them. The Appeal is disposed of in the above terms.

(V.K. AGRAWAL)  
MEMBER (TECHNICAL)

Dated 19th January, 2001

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