

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/2711/2500 - NB(SM)

Dated: 22/1/2001

CEGAT
NEW DELHI

To,

M/s Abrol Engg. Co. (P) Ltd.,
Industrial Area,
Kapurthala, (PB)

In the matter of :

M/s Abrol Engg. Co. Pvt. Ltd., Appellant
vs.
CCE Chandigarh Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/109/2501/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 :

Asstt. Registrar
NB(SM)

1. CCE Chandigarh
2. CCE/EE/ (Appeal) Chandigarh
3. Chief Commissioner of Central Excise / Customs. New Delhi
4. Adv. / Consult. Shri Ravi Chopra, Adv.
Connaught Circus, Jalandhar city
(PB)
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- eus Publication.

Asstt. Registrar

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

E/2711/00-NB(S)

APPEAL NO.....OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

104/DIR/P&PR/2000 dt. 13-6-2000.....DATED.....

PASSED BY COMMISSIONER (APPEALS)
CENTRAL EXCISE, CHANDIGARH

Date of decision..... 17-1-2001.....

M/s Abrol Engg. Co. (P) Ltd.APPELLANT (S)

Represented by Sh./Smt. Ravi Chopra,
Advocate

VERSUS

CCE CHANDIGARHRESPONDENT (S)

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

CORAM :

.....SHRI V.K. AGRAWAL, MEMBER (TECHNICAL) V.K. AGRAWAL,

.....

.....

To be referred to the Reporter or not ?

FINAL ORDER NO. 1109/01/MS (CC/m)

V.K. AGRAWAL:
Per.....

In this Appeal, filed by M/s Abrol Engineering Co. Pvt. Ltd., the issue involved is whether captial goods credit under Rule 57Q of the Central Excise Rules is available in respect of Refractories used in furnace.

2. Shri Ravi Chopra, Ld. Advocate, submitted that refractories are capital

goods and have been specifically mentioned under Clause 1(d) of Explanation to Rule 57Q as amended by Notification No. 11/95-CE-(NT) dt. 16-3-95; that the said amendment is clarificatory in nature and has to be given retrospective effect; that in Jindal Steel Strips Ltd. Vs CCE Raipur, 1998(9) ELT 620 (T) refractories were held to be eligible capital goods for capital goods credit even prior to 16-3-95 as part of furnace. He, further, submitted that the department has denied capital goods credit even in respect of refractories which were received after 16-3-95 which in any case is not correct; that the imposition of penalty is ^{not} ~~one~~ warranted as it was a question of interpretation of the provisions of Rule 57Q.

3. Opposing the appeal, Shri A.K.Jain, Ld. DR, submitted that the issue involved in the present appeal is pending before the Supreme Court in Jawahar Mills case and as such the matter may be kept pending.

4. I have considered the submissions of both the sides. A Show cause notice was issued to the Appellants for dis-allowing the capital goods credit taken by them on 13-1-95 and 18-3-95 in respect of refractories. Admittedly refractories were

specifically added as capital goods in Explanation to Rule 57Q by Notification No. 11/95. The Commissioner (Appeal) has not given any findings in the impugned Order about the capital goods credit taken on 18-3-95, and therefore, the matter has to be remanded to the Commissioner (Appeal) for passing the order afresh. I also agree with the Ld. Advocate for the Appellant that no penalty is imposable in the present matter as the issue involved is of interpretation of Rules. Penalty imposed is therefore, set aside and the appeal is allowed by way of remand to the Commissioner (Appeal) for passing order afresh *in accordance with law.*

(V.K.AGRAWAL)

MEMBER (TECHNICAL)

Sunita

17-1-2001