

Appeal No. E/2465 & 2468/00-NB(SM) BENCH NB(SM)Dated : 9/2/07CEGAT
NEW DELHI
To,CCE Chandigarh

In the matter of :

CCE Chandigarh.

Appellant

vs.

M/s Bhandari Export Indus. Ltd.

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/168-169/01-NB(SM.)
 Dated :3.1.1.07.....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 Bhandari Export Indus. Ltd.
vill. Sarsini, Laru,
Distt. Patiala (Pb)

BU
 Asstt. Registrar
 NB(SM)

1. CCE/ee/(Appeal) Chandigarh
2. Chief Commissioner of Central Excise / Customs. New Delhi
3. Adv. / Consult. Sh. S.K. Gupta, C.A
4. c/o CCE Chandigarh.
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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CUSTOMS, EXCISE AND GOLD (CONTROL) APPELLATE TRIBUNAL
NEW DELHI:

Appeal Nos. E/2465 & 2468/2000-NB(SM)

(Arising out of Order-in-Appeal No. 886-887/CE/CHD/2000 dated 25.4.2000 passed by Commissioner (Appeals), Excise Commissionerate, Chandigarh)

C.C.E. Chandigarh .. Appellants
(Rep. by Shri M.D. Singh, SDR)

vs.

M/s. Bhandari Export Inds. Ltd. .. Respondents
(Rep. by Shri S.K. Gupta, C.A)

DOH: 12.10.2000

FINAL Order No. A/168-169/01/NB(SM) dt:

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

The Respondents manufacture 'Cotton Blended Yarn' classifiable under Chapter sub-heading 5205.11/5206.11 of the Schedule to the Central Excise Tariff Act, 1985. The Asst. Commissioner of Central Excise, Chandigarh vide his Orders dt. 19.11.97 and 27.01.98 held that the modvat credit totally amounting to Rs. 5,41,450/- availed by them on the capital goods viz., 'Electrical Control Panel (S.H. 8537.00), Airtight Door Butter Fly Damper (S.H. 8479.90), and Vacuum Circuit Breaker (S.H. 8537.00) on 7.9.96 and 25.2.97 was admissible to them under the provisions of Rule 57Q of the Central Excise Rules, 1944. The Department filed appeals and the Commissioner (Appeals), Chandigarh vide his order dt. 25.4.2000 observed that the stated capital goods did not fall under the excluded clause of Explanation to Rule 57Q(1) and accordingly held that the credit was

admissible and rightly allowed. He observed that the credit was admissible on the impugned goods even prior to 23.7.96 i.e., prior to amendment vide Notfn. No.14/96-CE(NT) dated 23.7.96, as these goods were covered within the ambit of "Capital Goods" as per explanation 1(b) to Rule 57Q. Accordingly, he rejected the appeal of the Department. The Revenue is in appeal against the order passed by Commissioner (Appeals).

2. I have heard Shri M.D. Singh, SDR for the Revenue appellants and Shri S.K. Gupta, Chartered Accountant for the Respondents. It is argued on behalf of the Revenue that prior to the changes brought out by the Budget - 1996-97 on 27.3.97, the Chapter sub-heading in respect of the above stated items were not included in the category to "Capital Goods" under Rule 57Q. The credit in this case was taken on 7.9.96 and 25.2.97 and the admissibility of modvat credit would have to be determined with reference to the relevant rules applicable on that date. It is contended that notification dt. 23.7.96 cannot be given retrospective effect. The clause 2(ii) under the Explanation to Rule 57Q clearly laid down that no credit of the specified duty on capital goods than those capital goods in respect of which credit duty was allowable under any other rule or notification prior to 23.7.96) shall be allowed if such capital goods were received in the factory before 23.7.96. It is contended that the items under consideration were received in the factory prior to 23.7.96. Therefore, the modvat credit in respect of them was not covered under the definition of the

capital goods at the relevant time and same is not admissible.

3. I have considered these submissions. As observed in the Order-in-Original, the definition of capital goods at the relevant time covered, (a) Machine, Machinery, Equipment, apparatus, tools and apparatus used for producing or processing of any goods or for bringing out any change in any substance for manufacture of final products.

4. The above definition of the capital goods in my view was wide enough to cover the items under consideration for the purpose of availing the modvat credit thereon even before 23.7.96. The Revenue is therefore mis-directed to refer to the provisions of Notfn. No.14/96-CE(NT) dt.23.7.96 and to contend that the provisions of this notification are clarificatory, that these would have no retrospective effect and these would hold a guide for interpreting the definition of the capital goods even prior to the issue of this notification. Consequently, I find no force in the Revenue appeal and the same is accordingly, rejected.

(Announced in the Court)

(K.K. Bhatia)
Member (Technical)

MS.
31.1.01