

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/2458/00-NB(SM)

Dated : 9/2/01

CEGAT
NEW DELHI
To,

M/s Alfa Machinery Makers

G.T. Road,

Batala (Pb.)

In the matter of :

M/s Alfa Machinery Makers Appellant

vs.

CCE Chandigarh Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/174/01-NB(S)
Dated : 31.1.01 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 : CCE Chandigarh

JU
Asstt. Registrar
NB(SM)

1.

2. CCE/CEI (Appeal) Chandigarh
3. Chief Commissioner of Central Excise / Customs New Delhi
4. Adv. / Consult. Sh. H. K. Handa

5. S.D.R. C/o M/s Alfa Machinery Makers
6. JCDR G.T. Road, Batala (Pb.)

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 Census Publication

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Asstt. Registrar

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

E/APPEAL NO. 2458/00-NB(S)

(arising out of Order-in-Appeal No. 24/DIR/P&PR/2000 dated 13.06.2000 passed by the Commissioner of Customs & Central Excise (Appeals), Chandigarh).

M/s. Alfa Machinery Makers Appellant
(Sh. H.K. Handa, Co. Rep.)

vs

C.C.E., Chandigarh.

Respondent
(Sh. R.C. Sankhla, JDR)

FINAL ORDER NO. A/174/01/NB C/100
(Dated the Jan., 2001)

PER S.S. KANG :

The appellants filed this appeal against the order-in-appeal dated 13.6.2000 passed by the Commissioner (Appeals).

Brief Facts of the case are that the appellants are engaged in the manufacture of machinery and parts thereof and were availing the benefit of MODVAT credit on the inputs used in the manufacture of final product. During the period from August, 94 to December, 94, the appellants availed the credit on their input, viz., pig iron on the basis of invoices issued by the depot of Visakhapatnam Steel Plant and the depot is not registered as dealer with the revenue department. The appellants also availed the MODVAT credit in respect of lathe machine as an input. A show cause notice was issued to the appellants on the ground that the extension counter, which supplied the inputs, is not registered with the revenue authorities. Therefore, such invoices are not valid duty-paying documents and the lathe machine is not an input.

The adjudicating authority confirmed the demand and imposed a penalty of Rs. 50,000/-. The appellants filed an appeal and the same was rejected.

Ld. Counsel, appearing on behalf of the appellants, submits that the MODVAT credit on the input was taken on the basis of invoices issued by M/s. Jaldhara General Industries, Ludhiana, who were the dealers of . . . Visakhapatnam Steel Plant, the manufacturer of inputs and were duly registered with the Central Excise Department before 31.12.94. The extension counter at Batala was only a delivery counter, who merely issued delivery challans against the supplies made directly from the manufacturer to the appellants. He submits that in a similar situation where the inputs were received from Batala extension counter, in the case of M/s. Sarabjit Machine Tools vs C.C.E., Chandigarh, the Tribunal vide Final Order No. A/26/99-NB(S) dated 12.01.99 rejected the contention of the revenue and allowed the benefit of MODVAT credit. In respect of credit on lathe machine, ld. Counsel submits that the credit was denied on the ground that it is not an input and the appellants had not filed any declaration for availing the benefit of MODVAT credit

as capital goods in respect of lathe machine. His submission is that the appellants filed a declaration under rule 57 T of Central Excise Rules within time provided under the proviso to Rule 57 T with the request to jurisdictional Assistant Commissioner to condone the delay in filing the declaration vide letter dated 8.3.95. His submission is that this aspect was not considered by the Commissioner (Appeals). He also relied upon the Larger Bench decision of the Tribunal in the case of C.C.E. vs Modi Rubber Industries reported in 2000 (38) RLT 718 to say that credit should not be denied on the ground that the declaration was only for availing the credit as capital goods, whereas the goods, in question, are inputs. He, therefore, prays that the appeal be allowed.

Ld. D.R., appearing on behalf of the revenue, reiterates the findings of the lower authorities.

The appellants availed the benefit of MODVAT credit on the inputs on the strength of invoices issued by Jaldhara General Industries, Ludhiana, who are the dealers of Visakhapatnam Steel Plant. The inputs were only delivered by extension counter at Batala. The Tribunal in respect of same dealer, in the case of Sarabjit Machine Tools (supra), held as under :

"I have gone through the submissions of both the sides. The undisputed facts in the present matter are that the appellants had

purchased the inputs from a dealer who was duly registered with the Excise Department. Their supplier, in turn, had purchased the inputs from Batala Extension Counter of VSP's Branch Sales Office at Jalandhar. It has not been rebutted by Revenue that sales tax registration number of the Extension Counter was not different from the sales tax number allotted to Branch Sales Office to which Extension counter at Batala was attached to. This strengthens the submission of the learned counsel that Extension Counter at Batala did not have an existence separate from Branch Sales Officer at Jalandhar. The Branch sales office at Jalandhar is registered with the Central Excise Department as a dealer. In view of these facts it cannot be said that the invoices on the strength of which appellants supplier had issued the invoices were not valid invoices for the purpose of availment of MODVAT credit. The Central Excise registration number was mentioned on all the challans issued from the Extension Counter besides containing the duty particulars. In view of these facts and circumstances of the case, the availment of MODVAT credit cannot be disallowed to the appellants. Accordingly, I allow the appeal."

In view of the above decision of the Tribunal, the impugned order in respect of denial of credit of Rs. 2,01,212/- is set aside and the appeal is allowed.

In respect of MODVAT credit on lathe machine, the Commissioner (Appeals) in the impugned order, held that the credit cannot be allowed under Rule 57 Q of the Central Excise Rules as the appellants had not filed any declaration. The contention of the appellants is that first they filed the declaration in

respect of this machine, as an input, and thereafter, they filed a fresh declaration under Rule 57 T of the Central Excise Rules for availing the benefit of MODVAT credit as capital goods. The Larger Bench of the Tribunal, in the case of C.C.E. vs Modi Rubber Ltd. (supra), held that the credit cannot be denied on the ground that the declaration for availing the credit, as capital goods, was filed whereas the goods were inputs. Therefore, this issue required re-consideration, in view of the above decision of the Tribunal. Hence, the impugned order in respect of denial of MODVAT credit on lathe machine is set aside and the matter is remanded to the adjudicating authority for deciding afresh. The appeal is disposed of as indicated above.

(S.S. KANG)
MEMBER (JUDICIAL)

dt. 31st Jan., 2001
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