

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/2996/99-NB(SM)

Dated : 9/2/07

CEGAT  
NEW DELHI  
To,

M/S U.P. State Sugar Corpn.

Unit Siswa Bagar

Distt.- Maharaj ganj (U.P)

In the matter of :

M/S U.P. State Sugar Corpn. Appellant

vs.

CCE Allahabad. Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/176/07/NB(SM)  
Dated : 3.0.1.07 passed by the Tribunal under Section 35-C(1) of Central Excise  
& Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

*KU*

Copy to : CCE Allahabad

Asstt. Registrar  
NB(SM)

- 1.
2. CCE/CET(Appeal) Allahabad
3. Chief Commissioner of Central Excise / Customs. Kanpur
4. Adv. / Consult. Sh. Bipin Garg Adv. A-4, Neeti Bagh, New Delhi - 49
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 Census publication.

*KU*

Asstt. Registrar

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

APPEAL NO. E/2996/99-NB(S) OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

56-CE/ALLD/99.....DATED...10.9.99

PASSED BY... Commissioner (APPEALS) Central Excise

Ghaziabad

Date of decision... 30.1.2001

M/s U.P State Sugar Corpn.

.....APPELLANT (S)

Represented by Sh./Smt. ~~xxx~~ Bipin Garg, Adv.

VERSUS

CCE, Allahabad

.....RESPONDENT (S)

Represented by Sh./Smt. ~~xxxx~~ S.C. Pushkarna, JDR

CORAM :

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

To be referred to the Reporter or not ?

FINAL ORDER NO. A/176/01/NB(CS/m)

Per..... P.G. Chacko.....

The appellants are manufacturers of sugar and are availing the facility of modvat credit on capital goods under Rule 570 of the Central Excise Rules. In October, 1996 they took modvat credit on certain

capital goods namely, "A.C. Supply Geared Motor" and "Brass Tubes." Both the lower authorities disallowed the modvat credit taken on A.C. Supply Geared Motor on the ground that no declaration had been filed in respect of the said capital goods. In respect of Brass Tubes, both the authorities disallowed the modvat credit on the ground that the credit was taken prior to installation of the capital goods in the assessee's factory. In the present appeal, the appellants have challenged the orders of the Assistant Commissioner and the Commissioner (Appeals).

2. I have heard both sides after examining the records. Ld. Advocate Sh. Bipin Garg for the appellants submits that the appellants had, in fact, filed a declaration on 11.12.95, wherein they had declared the capital goods (A.C. Supply Geared Motor) as "other engines and Motors". He has drawn my attention to a copy of the declaration available on record. He argues that the A.C. Supply Geared Motor was covered by the expression "other Engines and Motors" in the declaration dated 11.12.95 and, therefore, it was improper on the part of the departmental authorities to deny modvat credit on the said goods on the ground that no declaration had been filed in respect of the goods. Ld. Counsel has raised an alternative plea, apart from the above

ground of the appeal. He submits that, according to the Board's Circular No. 441/7/99-CX dated 23.2.99, the benefits of Notification No. 7/99-CE(NT) dated 9.2.99, whereby Rule 57T was amended by way of insertion of Sub-rule 13, are available to the appellants. As per Sub-rule 13, modvat credit on capital goods shall not be denied on the ground that a declaration filed under Sub-rule 1 of Rule 57T does not contain all the details required to be contained therein. The benefits of this provision should be extended to the appellant's case also as per the Board's circular. Ld. Advocate has, in this connection, relied on the Tribunal's Larger Bench decision in the case of Kamakhya Steels Pvt. Ltd. Vs. C.C.E., Meerut [2000 (40) RLT 575]. In Kamakhya Steels the Larger Bench remanded the question of admissibility of modvat credit taken on certain inputs on the basis of Rule 57G declaration, to the jurisdictional Assistant Commissioner, directing him to examine the question in the light of the Board's circular, *ibid*, which clarified that the provisions of Notification 7/99-CE(NT) were applicable to all pending modvat cases. The Larger Bench held that the Board's circular would also be applicable to proceedings arising before the departmental authorities pursuant to remand orders of the Tribunal. Ld. Advocate has, therefore, prayed for remanding the admissibility of modvat credit on "A.C.

Supply Geared Motor" to the Assistant Commissioner for fresh decision after due consideration of the appellant's declaration dated 11.12.95 in the light of the Board's circular and the decision of the Larger Bench in Kamakhya Steels.

3. In respect of modvat credit on Brass Tubes, ld. Counsel admits that the credit was taken prior to installation of the goods in the appellants' factory. He, however, submits that the credit would still be available to the appellants by virtue of the exclusion clause contained in Rule 570 (2) (ii). Ld. Counsel submits that the "Brass Tubes" in question were components, spares or accessories of pans, evaporators and juice-heaters, which were capital goods covered by sub-clause (aa) of clause (1) of Explanation to Sub-rule 1 of Rule 570 and, therefore, the Brass Tubes were squarely covered by sub-clause (d) of clause (1) of the Explanation. Referring to the department's plea that the Brass Tubes were covered by sub-clause (g), ld. Counsel submits that, even if it is assumed that the Brass Tubes were covered by sub-clause (g), they would not ipso facto stand excluded from sub-clause (d). Capital goods covered by sub-clause (d) have been mentioned in the aforesaid exclusion clause contained in Clause (ii) of sub-rule (2) of Rule 570 and, therefore, modvat credit would be admissible on the goods irrespective

of the fact that the goods were installed after taking of modvat credit thereon. Ld. Advocate further submits that, since there is no dispute regarding payment of duty on the capital goods or their receipt and installation in the factory of the appellants or their utilisation in the manufacturing process in the factory, the modvat credit cannot be denied on the ground of any minor procedural lapse on the part of the assesseees. Ld. Advocate, therefore, prays for allowing the modvat credit taken on Brass Tubes.

4. Ld. JDR, Sh. S.C. Pushkarna submits that the question of admissibility of modvat credit on A.C. Supply Geared Motor could be remanded to the adjudicating authority by following the Larger Bench decision in Kamakhya Steels (supra). As regards the admissibility of modvat credit on Brass Tubes, ld. DR submits that these Brass Tubes are squarely covered by the expression "Tubes and Pipes and fittings thereof used in the factory" contained sub-clause (g) <sup>of clause (1) of</sup> Explanation to Sub-rule (1) of Rule 57Q and, therefore, the goods cannot attract the general provisions contained in sub-clause (d). He submits that a special provision should prevail over <sup>a</sup> general one. It is further submitted by ld. DR that there is nothing on record to show that the Brass Tubes in question were components, spares or accessories of

and other fans, evaporators or juice-heaters as claimed by the appellants. He, therefore, pleads for upholding the decision of the departmental authorities on the question of admissibility of modvat credit on Brass Tubes.

5. I have carefully examined the above submissions. As regards the modvat credit on A.C. Supply Geared Motor, I find that the appellants had in fact filed a declaration on 11.12.95, declaring inter alia, other Engines and Motors, and classifying such goods under Chapter 84 of the Central Excise Tariff. There is no denial of the fact that A.C. Supply Geared Motor was also a Motor or of the fact that the declaration was duly received under signature by the Inspector of Central Excise. This being the factual position, it appears that denial of modvat credit on the said goods on the ground of "no declaration" was wrong. The only question arising for consideration now is whether the declaration filed on 11.12.95 was sufficient for the purpose of availment of the modvat credit. In this connection, ld. Counsel's reliance on the Board's circular is quite apposite. That circular said that the amended provisions of Rule 57T [as amended under Notification No. 7/99-CE(NT)] were also to be followed by departmental authorities in pending modvat cases. The decision of the Larger Bench in Kamakhya Steels

(supra) is to the effect that remanded proceedings before the departmental authorities are continuation of the original proceedings and, therefore, would attract the Board's instructions contained in their circular. If the instant issue is remanded to the Assistant Commissioner, it would be a pending case before the Assistant Commissioner so as to attract the Board's circular and the Larger Bench decision. I am, therefore, inclined to remand the question of admissibility of modvat credit on A.C. Supply Geared Motor to the jurisdictional Assistant Commissioner for a fresh decision, by having due regard to the provisions of Sub-rule 13 of Rule 57T [inserted by Notification No. 7/99-CE(NT)] and also having regard to the aforesaid Board's circular.

6. As regards the Brass Tubes, there is no dispute of the fact that the goods were installed after 26.10.96 and the credits on the goods were taken before the date of installation. The only question to be considered is whether the Brass Tubes would attract sub-clause (d) of clause (1) of the Explanation to Rule 57Q (1) notwithstanding the coverage of the goods by sub-clause (g) of the said clause. The appellants have not contested the coverage of the goods under sub-clause (g) but they have argued that such coverage of the goods under sub-clause (g) would not, ipso facto, affect their

coverage under sub-clause (d). The Revenue's argument is that the goods are exclusively covered by sub-clause (g) and, therefore, credit cannot be allowed on them by virtue of the provisions of Rule 57Q (2)(ii). It has been consistently argued by the appellants that the Brass Tubes in question were components, parts or accessories of capital goods (pan, evaporator, juice-heaters) falling under Chapter 84 of the Central Excise Tariff and were, therefore, covered by sub-clause (d) of clause (1) of the Explanation. Ld. JDR, on the other hand, has argued that there is no evidence on record in this behalf. I, therefore, find that this question also requires to be remanded to the Assistant Commissioner in the interest of justice. The Assistant Commissioner shall ascertain as to whether the Brass Tubes in question were, in fact, used as components, parts or accessories of pans, evaporators, juice-heaters or any other capital goods covered by sub-clauses (a) to (c) of clause (1) of the Explanation to Rule 57Q (1). If the adjudicating authority finds that the goods viz. Brass Tubes were so used in the appellant's factory, that authority shall allow the assessee to have the benefit of modvat credit, irrespective of any coverage of the Brass Tubes under sub-clause (g).

7. The Assistant Commissioner shall pass

speaking order on the remanded issues after affording a reasonable opportunity of hearing to the assessee. The orders of the lower authorities are set aside and the appeal is allowed by way of remand in the above terms.

(P.G. CHACKØ)  
MEMBER (JUDICIAL)

\*RM\*