

GRAM : CEGCANAL

REGISTERED/A.D

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

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

BENCH NBC(SM)

Appeal No. E/1874/99(NBCS)

Dated : 12/2/2001

CEGAT
NEW DELHI

To,

Commissioner, Central Excise,
CR Building, Sector 17C,
Plot No 19
Chandigarh

In the matter of :

CCE Chandigarh

Appellant

vs.

M/s B D Steel Rolling Mills

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/183/01/NBC(SM)
Dated : 29/1/2001.....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 :

LLA
Asstt. Registrar
NBC(SM)

1. M/s Bee Dee Steel Rolling Mills, Jalandhar.
2. CCE / CC / (Appeal)
3. Chief Commissioner of Central Excise / Customs.
4. Adv. / Consult. Sh. Titender Singh, Adv
D-9, Jangpura Extn.
New Delhi - 110014.
5. S.D.R. - NBC(SM)
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. Gen-Cus.

SCA
Asstt. Registrar
NBC(SM)

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

APPEAL NO. E/1874/99-NB(S) OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

722/CE/CHD/99 DATED 9.4.99

PASSED BY Commissioner (Appeals), Customs & Central

Excise, Chandigarh

Date of decision 29.1.2001

CCE, Chandigarh

..... APPELLANT (S)

Represented by Sh./Smtxxx S.C. Pushkarna,

JDR

VERSUS

B.D. Steel Rolling Mills

..... RESPONDENT (S)

Represented by Sh./Smtxxx Jitendra Singh

Advocate

CORAM :

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

To be referred to the Reporter or not ?

FINAL ORDER NO. A/183/01/NBCE/mj

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

This is an appeal filed by the Revenue against the Order of the Commissioner (Appeals).

2. I have examined the records. The respondents in this appeal had taken modvat credit

on certain quantity of inputs lying in stock as on 31.3.94, amounting to Rs.2,82,803.10. They had done so on the strength of invoices issued by the sale Depot of M/s Tata Iron and Steel Co. Ltd. (TISCO). Three out of four invoices were issued prior to 12.5.94 and the remaining one was issued by the Depot after 12.5.94. The department by show-cause notice proposed to disallow the entire credit taken on the strength of the 4 invoices, alleging that the invoices could be accepted as valid document for the purpose of availing modvat credit under Rule 57G only from 12.5.94 in terms of Notification No. 21/94-CE(NT) dated 12.5.94 and, therefore, the invoices issued prior to 12.5.94 were not valid documents for the said purpose. The adjudicating authority disallowed the entire credit. But, in the appeal filed by the assesseees against the order of the Assistant Commissioner, the Commissioner (Appeals) set aside the impugned order and held that the party was entitled to the modvat credit in terms of board's Circular No. 90/1/95-CX dated 3.1.95. The lower appellate authority further found that the Assistant Commissioner had travelled beyond the scope of show-cause notice in confirming the demand of duty. The Revenue is aggrieved by the order of the lower appellate authority.

2. I have heard both sides.

3. Ld. JDR, Sh. S.C. Pushkarna has reiterated the grounds of the appeal and has prayed for setting aside the impugned order. Ld. Advocate Sh. Jitendra Singh for the respondents has opposed the prayer and defended the impugned order by submitting that the dispute is squarely covered by the board's circular relied on by the lower appellate authority. I have examined the grounds of the Revenue's appeal. I find that the challenge against the impugned order is on the specific ground that the invoices in question had not contained all the necessary particulars as required under Notification No. 15/94-CE(NT) dated 30.3.94. I find that this ground is extraneous to the allegation contained in the show-cause notice wherein the only allegation was that the invoices in question, having been issued prior to 12.5.94, were not valid documents for availment of modvat credit in terms of Notification No. 21/94-CE(NT) dated 12.5.94. The finding of the lower appellate authority is fully sustainable. Three out of the four invoices issued by the sale Depot of TISCO were admittedly issued between 1.4.94 and 11.5.94 and the same were acceptable for the purpose of availment of modvat credit as per board's circular aforesaid. As regards the remaining invoice, it

was admittedly issued after 12.5.94 and, therefore, nobody can have a case that the said invoice was not acceptable in terms of the notification dated 12.5.94. The Revenue's case is that the four invoices did not contain necessary particulars. But, as already noted, such a case is beyond the scope of the show-cause notice and, therefore, cannot be sustained.

4. I, therefore, uphold the impugned order and reject the Revenue's appeal.

(P.G. CHACKO)
MEMBER (JUDICIAL)

RM