

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/735 & 736/00/NB(SM)

Dated : 12/2/01

CEGAT

NEW DELHI

To,

M/s Associated Engg. Inds.  
Plot NO 15, Sector 27 (B)

Faridabad-121003

In the matter of :

M/s Associated Engg. Ind. & Shri O.C. Rana Appellant

vs.

CCE Delhi Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/235-236/01/NB(SM)

Dated : 9/2/2001 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 Delhi
2. CCE / CC / (Appeal)
3. Chief Commissioner of Central Excise / Customs.
4. Adv. / Consult. Sh. Kamaljeet Singh, Adv  
7-144, Patel Nagar-I  
Ghaziabad. (UD)
5. S.D.R.-NB(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- Con-Cons.

Asstt. Registrar NB(SM)

CUSTOMS, EXCISE AND GOLD (CONTROL) APPELLATE TRIBUNAL  
NEW DELHI

1. Appeal No.E/735/2000-NB(SM)

2. Appeal No.E/736/2000-NB(SM)

[Arising out of order-in-appeal No.96-CE & 98-CE/DLH/2000 dated 27.1.2000 passed by the Commissioner of Central Excise (Appeals), Delhi.]

1.M/s. Associated Engg. Industries Appellants  
2.Shri O.C. Rana (Shri Kamaljit Singh, Adv.)

Vs.

Commissioner of Central Excise, Delhi

Respondent

(Shri M.D. Singh, S.D.R.)

FINAL ORDER NO. A/235-36 Dt. 01/08/2000 (CPM)

Per. S.S. KANG, MEMBER

Appellants filed these appeals against order in appeal passed by the Commissioner (Appeals).

2. Brief facts of the case are that appellants are engaged in the manufacture of Motor Vehicle parts and were availing the benefit of MODVAT credit. A show cause notice was issued to the appellants for recovery of MODVAT credit and for imposition of penalty on the grounds that they availed the benefit of credit on the basis of forged invoices of M/s. Steel Tubes of India Ltd., Ludhiana. The Adjudicating authority confirmed the demand and imposed the penalty on the appellants. Appellants filed appeals and the same were dismissed by the Commissioner (Appeals).

3. Learned Counsel submits that in this case benefit of MODVAT

credit was availed on the invoices issued by M/s. Steel Tubes of India Ltd., Ludhiana on 17.6.94 and 28.6.94 and a show cause notice was issued on 30.9.96 by invoking the extended period of limitation under Rule 57(I) of Central Excise Rules on the ground of fraud. He submits that after taking the credit in their RG-23A Part II on 17.6.94 and 28.6.94, the appellants filed RT-12 Return on 5.7.94 and the same was assessed by the proper officer on 19.7.94 without any objection. He submits that the goods received from M/s. Steel Tubes of India Ltd., Ludhiana were defected and the appellants on 17.10.94, wrote a letter to the Assistant Commissioner of Central Excise, Faridabad, informing him for removal of inputs under rule 57F of the Central Excise Rules and also filed the classification list showing the rate of duty. This letter was received in the office of Assistant Commissioner on 7.10.94 and, thereafter, these defective goods were sent to the manufacturer under invoices issued on 10.10.94 on payment of appropriate duty. The appellants also filed RT-12 Return on 4.11.94, and this return was assessed by the proper Officer on 22.3.95. Learned Counsel submits, in view of the above facts as the appellants informed the Revenue at the time of taking credit and at the time of returning the goods to the manufacturer, no suppression or mis-statement can be alleged against the appellants. Hence, the demand is time barred.

5. He further submits that the goods were received to one Mohan Singh of M/s. Steel Tubes of India Ltd and, thereafter, the goods were returned on payment of duty also to Mohan Singh and he requested the adjudicating authority to call for Mohan Singh for cross-examination and the adjudicating authority without examining Mohan Singh passed the

impugned orders.

6. He further submits that the appellants under bonafide belief availed the credit with due intimation to the Revenue and after giving the due intimation, the goods were returned to the manufacturer on payment of duty as the goods were found to be defected. That was done two years prior to the issuance of the show cause notice. Therefore, it cannot be held that appellants returned the goods just to prayed the defence. He, therefore, prays that the appeal be allowed.

7. Heard learned SDR who reiterated the finding of the lower authorities and submits that M/s. Steel Tubes of India Ltd. denied the issuance of invoices on the strength on which the appellants availed the benefit of MODVAT credit and also denied the receipt of the goods back from the appellants. Therefore, he submits that the appeal be dismissed.

8. Heard both sides.

9. In this case the duty is demanded and the penalty is imposed after invoking the extended period of limitation under Rule 57(I) of Central Excise Rules on the ground that appellants availed the benefit of credit on the basis of forged invoices. The credit was taken on 17.6.94 and 28.6.94 in RG-23A Part II and appellants filed RT-12 Return on 5.7.94 and the same was duly assessed by the proper Officer. There-after, appellants vide letter dated 17.10.94, informed the Assistant Commissioner for removal of the inputs as such and filed the classification list showing the rate of duty. This letter was received in the office of Assistant

Commissioner on 7.10.94. Thereafter, appellants re-turned the goods to the manufacturer on 10.10.94 under their invoices on payment of duty on 4.11.94. The appellants filed RT-12 Return and the same was assessed on 22.3.95 by the proper Officer. A show cause notice was issued on 30.9.96. As the appellants availed the credit and returned the defective goods on payment of duty after informing the Revenue, therefore, no suppression can be alleged on the part of the appellants. Hence, the demand is time barred.

9. In view of the above discussions, the impugned order is set aside and the appeals are allowed.

( S.S. KANG )  
MEMBER (JUDICIAL)

Dated : 9.2.2001

/RANA/