

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/3199/2000/NB(SM)

Dated : 12/2/2001

CEGAT  
NEW DELHI  
To,

CCE Bhopal.

In the matter of :

CCE Bhopal

Appellant

vs.

M/s Tesla Transformers Ltd.

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/237/01/NB(SM)  
Dated : 5/1/2001 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 :

AS  
Asstt. Registrar  
NB(SM)

1. M/s Tesla Transformers Ltd  
Unit - D, 23-AB, Industrial Area  
Gaundpura, Bhopal.
2. CCE / CC / (Appeal)
3. Chief Commissioner of Central Excise / Customs.
4. Adv. / Consult. Sh. S.M. Ali, Comdt  
C/O M/s Tesla Transformers Ltd.
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. Can-ews

Asstt. Registrar NB(SM)

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

APPEAL NO. E/3199/2000-NB (CF) 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

834-CE/BPL/2000 ..... DATED 28.7.2000

PASSED BY Commissioner (Appeals), Central Excise & C

Customs, Bhopal

Date of decision <sup>hearing</sup> 5.1.2001

CCE, Bhopal

..... APPELLANT (S)

Represented by Sh./Smt ~~xxxx~~ M.D. Singh, SDR

VERSUS

M/s Tesla Transformer Ltd.

..... RESPONDENT (S)

Represented by Sh./Smt ~~xxxx~~ S.M. Ali, Consultant

CORAM :

SHRI P.G. CHACKO, MEMBER (JUDICIAL)

To be referred to the Reporter or not ?

*FINAL*

ORDER NO. A/237/01/NB (CF/M)

P.G. Chacko :

Per.....

This is an appeal by the Revenue, aggrieved by the order of ld. Commissioner (Appeals) allowing the assessee's appeal against Order-in-Original dated 7.10.99 passed by the Assistant Commissioner disallowing modvat credit of Rs.1,58,071/- and imposing penalty of Rs.10,000/-.

2. The brief facts of the case are that the respondent had taken modvat credit of Rs.1,40,010/- in their RG 23A Part II on the strength of invoices issued by Steel Authority of India Ltd. (SAIL) as unregistered dealer; that the credit so taken was disallowed by the Deputy Commissioner as per order dated 14.9.95 on the ground that it had been taken on invalid documents; that, pursuant to the Dy. Commissioner's order, the credit was reversed by the party on 22.10.96; that, on 27.12.95, they had applied to the Assistant Commissioner under Rule 57H [as amended by Notification No. 64/94-CE(NT) dated 7.11.94] for permission to avail the credit on the aforesaid invoices issued prior to 31.12.94; that their application was allowed by the Assistant Collector on 7.7.98; that accordingly they took the credit in their RG 23A Part II on the same day; that, by show-cause notice [SCN] dated 1.12.98, the Range Superintendent proposed to disallow the credit; that they resisted the proposed action; that the Assistant Commissioner adjudicated the SCN by disallowing the credit to them and imposing on them a penalty of Rs.10,000/- as per order dated 7.10.99; and that the appeal by the assessee against the Assistant Commissioner's order was allowed by the Commissioner (Appeals). The respondent had taken yet another credit of Rs.18061/-. This credit was reversed by them on 17.3.99 pursuant to the SCN dated 1.12.98.

Admissibility of this credit is, apparently, not in question in the present proceedings.

3. Heard both sides.

4. Ld. SDR, Sh. M.D. Singh submitted that the documents on the strength of which the modvat credit in question was taken by the party related to the months of July and August 1994 and therefore the credit taken on 7.7.98 was far beyond the period of six months prescribed under Rule 57G (5). He submitted that, after 29.6.95, assessees were not entitled to avail inputs-credit beyond six months from the date of issue of the duty-paying documents. In this connection, he relied on the Tribunal Larger Bench decision in the case of Kusum Ingots & Alloys Ltd. [2000 (39) RLT 440]. Ld. SDR also reiterated the other grounds of the appeal and prayed for allowing the appeal.

5. Ld. Consultant, Sh. S.M. Ali defended the impugned order. He submitted that the department's proposal in the SCN was to disallow the credit on the ground of time-bar, but the adjudicating authority disallowed the credit on a different ground based on the Deputy Commissioner's order dated 14.9.95. Therefore, the ld. Commissioner was right in

interfering with the adjudicating authority's decision on the ground that the said decision was beyond the scope of the SCN. Ld. Consultant further argued that the Assistant Commissioner's order dated 7.7.98 granting permission to the party to avail the credit under the amended provisions of Rule 57H, pursuant to which they had taken the credit in question, had become final in the absence of any review of that order by competent departmental authority. The said order was binding on the Assistant Commissioner but the same was ignored by him in passing Order-in-Original dated 7.10.99 under Rule 57G. Ld. Consultant, further, submitted that the order passed under Rule 57H must prevail over one passed under Rule 57G since the former rule had overriding effect. In support of this argument, he relied on the Tribunal's decision in *Hindustan Everest Tools Ltd. Vs. Collector* [1994 (70) ELT 293].

6. In his rejoinder, ld. SDR submitted that the party did not prefer any appeal against the Deputy Commissioner's order dated 14.9.95 and that the said order became final and binding on the assessee. According to him, the respondent is estopped from challenging the Assistant Commissioner's Order dated 7.10.99 which is based on the Deputy Commissioner's order dated 14.9.95.

Excise law. Therefore, the order dated 7.7.98 was passed without jurisdiction and the re-credit of duty on inputs by the respondent pursuant to the said order was without legal sanction. The fact that the department did not seek to challenge the Assistant Commissioner's order dated 7.7.98 would hardly improve the position, for the order which was passed without jurisdiction was non est in law as rightly observed in the Assistant Commissioner's order dated 7.10.99.

8. If the matter is looked at from the angle of time-bar, then also the re-credit of duty taken on 7.7.98 appears to be inadmissible in terms of Rule 57G (5) which incorporates the provisions of the erstwhile proviso [inserted by Notification No.28/95-CE(NT) dated 29.6.95] to Rule 57G(2), inasmuch as the event of such re-credit took place beyond the period of six months from the date of issue of the relevant invoices. The invoices were issued prior to 29.6.95 but the modvat credit in question was taken as late as on 7.7.98 only. The Revenue's argument on the point is bound to succeed on the strength of the Larger Bench decision of the Tribunal in *Kusum Ingots & Alloys* (supra).

9. Ld. Commissioner (Appeals) allowed the assessee's appeal on the sole ground that the lower

authority's decision was beyond the scope of the SCN. It is manifest on the face of the record that he overlooked the fact that the Assistant Commissioner's decision was, inter alia, on the point of time-bar as well. The SCN had admittedly sought to disallow modvat credit to the party on the ground of limitation. The Assistant Commissioner's order dated 7.10.99 was, therefore, not entirely beyond the scope of the SCN.

10. In the light of the above findings, the impugned order is set aside and the Revenue's appeal is allowed.

(P.G. CHACKO)  
MEMBER (JUDICIAL)

\*\*RM\*\*