

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/2987/99/NB(SM)

Dated 15/2/2001

CEGAT
NEW DELHI

To,

M/s Dindayal Anshadhi (P) Ltd
S-ACD, Industrial Estate
Gwalior (M.P)

In the matter of :

M/s Dindayal Anshadhi (P) Ltd

Appellant

vs.

CCE Bhopal

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/243/01/NB(SM)
Dated :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. CCE Bhopal
 2. CCE / CC / (Appeal)
 3. Chief Commissioner of Central Excise / Customs.
 4. Adv. / Consult.
 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, Bhisim Pitamah Marg, opp. Sachdeva P.T. College of Defence Colony, New Delhi-110003
 13. M/s Lex Site Com. Ltd., Mumbai
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CUTOMS EXCSIE AND GOLD (CONTROL) APPELLATE TRIBUNAL,
NEW DELHI

E/Appeal No. 2987/99-NR(S)

(Arising out of Order-in-Appeal No. 1040-CE/APPL/BHOPAL/99 dated 6.8.99 passed by the Commissioner (Appeals), Central Excise, Bhopal)

M/s. Dindayal Aushadhi (P) Ltd. Appellants,
Reptd. by Sh. Ravi Holani, C.A.

Versus

CCE, Bhopal Respondent,
Reptd. by Sh. Bheema Shankar, JDR

Coram: Shri V.K. Agrawal, Member (T)

FINAL ORDER NO. A/243/01/ ^{1040 CE/99} DATED 24.1.2001 Reportable

Per V.K. Agrawal:

M/s. Dindayal Aushadhi (P) Ltd. have filed this appeal being aggrieved by Order-in-Appeal No. 1040/99 dated 6.8.99 passed by the Commissioner (Appeals), Bhopal confirming the demand of Modvat credit.

2. Shri Ravi Holani, learned C.A., submitted that the Appellants initially availed benefit of full exemption of payment of duty upto first clearance of Rs.30 lakhs and thereafter claimed the benefit of Modvat credit by filing declaration; that as declaration was filed late by one month they requested for condonation under provisions of Rule 57G(5); that as no action had ^{been} taken by the Department they had taken the Credit on 8.2.96 in their RG-23A, Part-II; that the Asstt. Commissioner under Adjudication Order No. 174/96 dated 24.10.96 disallowed the Modvat credit and imposed a penalty on the ground that the inputs were received in April, and May, 1995 the credit of which had

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been taken in February, 1996 which is after six months of the date of issue of the duty paying documents and they were also not eligible for credit as they were availing of full exemption from payment of duty under Notification No. 1/93 during the said period in terms of provisions of Rule 57-C of the Central Excise Rules; that the Commissioner (Appeals) also dismissed their appeal under the impugned Order.

3. The learned C.A., further, submitted that the inputs were lying in their stock on the day they started removal of goods on payment of duty and as such they are eligible for availing of Modvat Credit on such inputs lying in stock; that the Asstt. Commissioner had passed the Adjudication Order without considering the reply filed by them as well as without hearing them. He also mentioned that the Asstt. Commissioner's letter rejecting their request for condonation of delay in filing the declaration though is dated 19.1.96 was received by them only on 24.5.96.

4. Countering the submissions Shri Bheema Shankar, learned J.D.R., submitted that the Asstt. Commissioner had fixed personal hearing twice which was not attended by the Appellants and as such it cannot be claimed that there was any violation of Principle of Natural Justice. He reiterated the findings contained in Adjudication Order and the impugned Order.

5. I have considered the submissions of both the sides. I find that the show cause notice was issued to the Appellants on 26.8.96 through Range Suptd. which was received by them on 30.8.96. They had filed a reply dated

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30.9.96 to the show cause notice and the receipt of which has been acknowledged on the same day by the Central Excise Office. The Adjudication Order was passed by the Asstt. Commissioner on 24.10.96 in which he has mentioned that the Appellants did not file any reply to the show cause notice which is not correct. Further, I find that in the show cause notice the Appellants were directed to show cause within 30 days whereas the personal hearing itself was fixed on 17.9.96 which is before the expiry of 30 days as the show cause notice was served on 30.8.96. Letter fixing the second personal hearing on 7.10.96 was sent on 26.9.96 again before the expiry of the time given in the show cause notice for submitting their reply. All these facts go to show that the Adjudication Order was passed without observing the principle of natural justice. As held by the Tribunal in the case of CCE vs. Prestige Engg. (India) Pvt. Ltd., 1989 (41) ELT 530 (Tribunal), "this procedure, to say the least, is only a lip service to the principles of natural justice and it is no credit to the adjudicating officer." In the interest of justice, I, therefore, set aside the impugned Order and allow the appeal by way of remand with the direction to the Adjudicating Authority to decide the matter afresh after considering the reply filed by the Appellants and after affording a reasonable opportunity of hearing to them.

(V.K. AGRAWAL)
MEMBER (TECHNICAL)

Dated 8th February, 2001

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