

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/2596/2000/NB(SM)

Dated : 15/2/2001.

CEGAT  
NEW DELHI

To,

M/s Shivagrico Implements Limited  
A-38, H.M. Nagar  
Fabara (Rajasthan)

In the matter of :

M/s Shivagrico Implements Limited Appellant  
vs.  
CCE Jaipur Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/246/01/NB(SM)  
Dated : 24/1/2001: 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 :

1. CCE Jaipur

Asstt. Registrar  
NB(SM)

2. CCE / CC / (Appeal)

3. Chief Commissioner of Central Excise / Customs.

4. Adv. / Consult. Sh. Bipin Singh, Adv.  
B-I, 11738, Vasant Vihar  
New Delhi

5. S.D.R.-NB(S)

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

14. Office Copy

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Asstt. Registrar NB(SM)

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

E/2596/2000/NB9SM0

APPEAL NO.....OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

446(KDT)/VR/JPRI/2000 dt. 10-5-2000 DATED.....

PASSED BY.....COMMISSIONER (APPEALS) CENTRAL  
EXCISE, JAIPUR

Date of decision.....24-1-2001.....

.....M/S. SHIVARICO IMPLEMENTS LTD.....APPELLANT (S)

Represented by Sh./Smt.....BIPIN GARG, ADVOCATE.....

**VERSUS**

.....CCE JAIPUR.....RESPONDENT (S)

Represented by Sh./Smt.....S.C. PUSHKARNA, J.D.R.....

**CORAM :**

.....SHRI V.K. AGRAWAL, MEMBER (TECHNICAL)

To be referred to the Reporter or not ?

FINAL ORDER NO. A/244/01/NB (S/M)

Per.....V.K. AGRAWAL:.....

In this appeal, M/s Shivarico Implements Ltd. have requested for setting aside the penalty of Rs. 50,000/- confirmed by the Commissioner (Appeals) , under the impugned Order No. 446(KDT)/CE/JPRI/2000 dt. 10-5-2000.

2. Shri Bipin Garg, Ld. Advocate, submitted that the Appellants purchase waste & scrap of iron and steel from the market and under bonafide mistaken belief had taken the deemed Modvat Credit amounting to Rs. 3,09,377/- during the period from September 1998 to January 1999 under Notification No. 58/97-CE, dt. 30-8-97; that they bonafidely believed that the Modvat Credit was available to them on the basis of Board's Circular No. 331/47/97-Cx. dt. 30-8-97; that after issue of show-cause-notice, they came to know that the Modvat Credit had been availed of by them wrongly and accordingly even before the matter was adjudicated, the Appellants repaid the entire amount in June, '99.

3. Countering the submissions, Shri S.C.Pushkarna, ld. D.R., submitted that a perusal of the said Circular reveals that Heading 7204.90 of the Schedule to the Central Excise Tariff Act was not specified therein and consequently the Appellant could not be under the impression that deemed credit was available to them; that they had not paid the amount immediately on receipt of the show cause notice dt. 9-3-99; that payment was not made by them on their own and accordingly penalty is imposable.

4. I have considered the submissions of both the sides. It is not disputed by the Appellants that the Modvat Credit taken by them during September 1998 to January 1989 was not

available to them. Board's circular dt. 30-8-97 read with Notification No. 58/97-CE dt. 30-8-97 makes it clear that the goods falling under Heading No 72.04 of CETA were not specified as inputs at all. In view of this the Appellants could not have availed the deemed Modvat Credit. I find substantial force in the submission of the ld. DR that the Appellants did not reverse the Modvat Credit immediately on receipt of the show cause notice. Accordingly penalty is imposable on them for taking Modvat Credit wrongly. However, taking into consideration the fact that they repaid the amount just before passing of Adjudication Order, I reduce the amount of penalty from Rs. 50,000/- to Rs.25,000/- Appeal is thus allowed partly.

(V.K.AGRAWAL)  
MEMBER (TECHNNICAL)

RK