

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/1404/00/NB(SM)

Dated : 15/2/2001

CEGAT
NEW DELHI
To,

CCE Chandigarh

In the matter of :

CCE Chandigarh

Appellant

vs.

M/s Rine Engg. (P) Ltd

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/246/01/NB(SM)
Dated : 1/2/2001 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 :

HN
Asstt. Registrar
NB(SM)

1. M/s Rine Engineering (P) Ltd.
Baddi, Distt - Solan (HP)
2. CCE / CC / (Appeal)
3. Chief Commissioner of Central Excise / Customs.
4. Adv. / Consult. J S Agaswal, Adv
S-187, Greater Kailash-II
New Delhi-48
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
14. Office Copy
- 15 - con-cus

HN
Asstt. Registrar NB(SM)

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

E/1404/00 NB(SM)

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

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

2086/CE/CHD/99 Dt. 30-11-99

.....DATED.....

PASSED BY.....COMMISSIONER OF CENTRAL EXCISE (APPEALS)
.....CHANDIGARH

22-1-2001
Date of decision.....

.....CCE CHANDIGARH

.....APPELLANT (S)

Represented by Sh./Smt.....H.B..Bheema..Shankar.....

.....SDR

VERSUS

.....M/S RINE ENGG. (P) LTD

.....RESPONDENT (S)

Represented by Sh./Smt.....J.S.AGRAWAL, ADVOCATE

CORAM :

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

To be referred to the Reporter or not ?

FINAL ORDER NO. *A/2MB/01/NB(SM)*

V.K.AGRAWAL:

Per.....

Revenue has filed this appeal against the Order No. 2086/CE/CHD/99 dt. 30-11-99, passed by the Commissioner (Appeals), allowing the Modvat Credit to M/s Rine Engineering (P) Ltd on the strength of unauthenticated invoice and in respect of angles, channels etc., for not submitting the proof of their use in the manufacture of final product.

2. Shri H.R.Bheema Shankar, Ld. SDR., submitted that the credit cannot be availed of on the basis of unauthenticated invoice issued by second stage dealer; that the Respondents had not adduced any evidence to their claim that Channels, angles, rounds, bars & rods were melted alongwith ferrous waste and scrap to manufacture castings; that these are also not inputs under the definition of Rule 57 A of the Central Excise Rules.

3. Countering the arguments, shri J.S. Agarwal, ld. Advocate, submitted that the Respondents had duly declared channels, angles, rods, bars and rounds in their Modvat Declarations dt. 20-2-1996 and 18-6-98; that they were using these inputs in the manufacture of their final product; that they had melted these inputs for making their final product and there is no allegation from the Department that these inputs were cleared as such clandestinely. He finally submitted that the Modvat Credit cannot be denied merely because the invoice was not preauthenticated as the receipt of inputs is not challenged.

4. I have considered the submissions of both the sides. The Department has not brought anything on record to show that channel, angles, etc. were not used by the Respondents in or in relation to the manufacture of final products.

There is force in the submissions of the ld. Advocate for the Respondents that there is no charge that these inputs were cleared as such instead of being used. The burden to prove the same is on the Department which has not been discharged. Accordingly I do not find any infirmity in the impugned Order in allowing the Modvat Credit in respect of angles, channels, rounds, rods & bars.

5. It is not disputed by the Respondents that the invoice issued by the second stage dealer was not authenticated by the Central Excise Officer. The Larger Bench of the Appellate Tribunal in C.C.E., New Delhi Vs. Avis Electronics Pvt. Ltd/. 2000 (117) ELT-571 (T) has held that ^{insistence} ~~instance~~ on document evidencing payment of duty on the inputs as prescribed by Rules is not a technicality to be complied with for availing Modvat Credit. When a particular thing is directed to be ^{performed} ~~informed~~ in a manner prescribed by Rules, it should be performed in that manner itself and not otherwise." Accordingly the Modvat Credit is not available to the Respondents on the strength of unauthenticated invoice issued by a second stage dealer.

6. The appeal filed by Revenue is, thus, partly allowed.

(V.K.AGRAWAL)
MEMBER (TECHNICAL)

Sunita
1-2-2001