

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/3468/2000/NB(SM)

Dated : 15/2/2001

CEGAT  
NEW DELHI  
To,

M/s Pioneer Auto Industries  
E-2, Focal Point  
Ludhiana

In the matter of :

M/s Pioneer Auto Industries

Appellant

vs.

CCE Chandigarh

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/247/01/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 :

<sup>DK</sup>  
Asstt. Registrar  
NB(SM)

1. CCE Chandigarh
2. CCE / CC / (Appeal)
3. Chief Commissioner of Central Excise / Customs.
4. Adv. / Consult. Kulvinder Singh, Adv  
393-L, Model Town  
Ludhiana - 2.
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
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<sup>DK</sup>  
Asstt. Registrar NB(SM)

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

Appeal No. E/3468/2000/NB(SM)

(Arising out of Order-in-Appeal No. 208/DIR/P&PR/2K dated 13.6.2000 passed by the Commissioner (Appeals), Central Excise & Customs, Chandigarh)

M/s. Pioneer Auto Industries .. Appellants  
(Rep. by None)

vs.

C.C.E. Chandigarh .. Respondent  
(Rep. by Shri A.K. Jain, JDR)

FINAL Order No. A/247/01/NB (S/M) dt: 8.2.2001

Per K.K. Bhatia, Member (T):

The appellants were issued a Show Cause Notice dt. 31.12.94 by the Asst. Collector of Central Excise, Ludhiana, in which it was alleged that they had taken modvat credit of Rs.80,594/- on the strength of invoices issued by the suppliers of raw materials in respect of whom, it had not been established by providing necessary evidence that they were the wholesale dealers/distributors of the manufacturers. It was further alleged in this notice that the party had taken modvat credit of Rs.1,175.02 on the basis of invoice issued by supplier who had not got himself registered with the Central Excise Department for the purpose of issuing invoices under Rule 57G of the Central Excise Rules, 1944. It is therefore alleged that appellants had wrongly availed modvat credit totally amounting to Rs.81,769.02 in contravention of Rule 57-A and 57-G read with Notfn. No.15/94-CE(NT) dt. 30.3.94. They were therefore, called upon to show cause why the aforesaid amount of modvat credit should not be disallowed and recovered from them under Rule 57-I of Central Excise Rules, 1944 read with Section 11A of the Central Excise Act, 1944 and why penalty should not be imposed on them under Rule 1730 (i) (bb).

2. On consideration of the reply of the party the Deputy Commissioner of Central Excise, Ludhiana vide his Order dt. 21.12.95, disallowed the modvat credit of the above said amount to the party apart from imposing a penalty of Rs.15,000/- on them.

3. The appeal of the party against the above order of the Dy. Commissioner of Central Excise <sup>is</sup> filed and the Commissioner (Appeals), Chandigarh vide his Order dt. 13.6.2000 upheld the findings arrived at by the lower authority dismissing their appeal.

4. The present appeal is against the above order of Commissioner (Appeals). The appellants are not represented. Shri Kulvinder Singh, Advocate for the appellants has sent a letter dt. 6.2.2001, in which he has requested that appeal of his clients may be disposed of in the light of submissions already made in their Memorandum of Appeal. I have heard Shri A.K. Jain, JDR for the Respondents and have considered the submissions made before me. It is observed that with regard to the modvat credit of Rs.80,594/-, the allegation against the appellants in the show cause notice was that they had taken modvat credit issued by the suppliers of raw materials in respect of whom it had not been established by providing necessary evidence that they were the wholesale dealers/distributors of the manufacturers. In the absence of such evidence, it was alleged, the suppliers could not be taken as wholesle dealers/distributors of the manufacturers for the purpose of Notfn. No.15/94-CE(NT) dt. 30.3.94 and as such invoices

issued by such suppliers of raw materials are not valid documents for availing modvat credit. However, it is observed that the Dy. Commissioner in his Order has denied the modvat credit to the appellants on the ground that noticee had taken the modvat credit on the strength of the invoices which did not contain the required particulars such as rate of duty in figures, amount of excise duty in figures and reference of excise documents etc. Therefore, he has held that the present invoices issued by the suppliers of the inputs are not the valid documents for taking the modvat credit. In the show cause notice there was no allegation that the invoices on the strength of which this credit was availed, did not contain the particulars such as rate of duty and amount of excise duty etc. as held in the order in original. Therefore, the conclusion arrived at on the grounds which were not part of the show cause notice has vitiated the order of Adjudicating Authority. Besides in respect of this amount, it is not the case of the department that the wholesale dealers/distributors who issued the invoices were not registered with the jurisdictional Central Excise authorities. Once the Depot of the wholesale dealers/distributors is duly registered with the concerned Central Excise authority under Rule 174 and is authorised to issue the invoices under Rule 57GG, it is not open to the Central Excise authority at the end of the recipient of such goods to challenge the validity of the invoices issued by such depots and deny the credit. Therefore, there is no ground to deny the modvat credit of this amount to the appellants.

5. As regards the allegation that the modvat credit amounting to Rs.1,175.02 was availed on the strength of

invoices issued by the suppliers who did not get themselves registered with the Central Excise Department for the purpose of issuing modvatable invoices, it is observed from the documents on record that this fact is not controverted by the appellants at any stage of the present proceedings. Therefore, these findings arrived at by the lower authorities do not call for any interference. In view of this, the order denying the modvat credit of Rs.80,594/- is set aside and the appeal of the party is allowed. The order relating to the denial of the modvat credit of Rs.1,175.00 is upheld rejecting the appeal of the party. The penalty is also reduced to Rs.1,000/- (Rs. one thousand only).

6. The appeal is disposed of in above terms.

(Announced and dictated in the Court)

(K.K. Bhatia)  
Member (Technical)

MS.  
9.2.01