

GRAM : CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

Appeal No. E/1959/00/NB(SM) BENCH-NB(SM)

Dated : 15/2/2001

CEGAT
NEW DELHI

To,

M/s Indra Marshall Oil Engines
13/B, Industrial Area,
Sector - A, Sanwer Road
Indore - (M.P.)

In the matter of :

M/s Indra Marshall Oil Engines Appellant

vs.

CCE Bhopal Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/288/01/NB(SM)
Dated : 13/2/2001 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 :

BK
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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RK
Asstt. Registrar NB(SM)

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

APPEAL NO...E/1959/00-NB(SMOF 19 (.....))

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

30/CEX/ADC/97 dt. 29.1.97.....DATED.....

PASSED BY..... Commissioner(Appeals).....

Central Excise Bhopal(MP)
.....

Date of decision.....

..... Ms Indra Marshal Oil Engines.....APPELLANT (S)

Represented by Sh./Smt. Anil Jawaher

Partner
.....

VERSUS

..... CCE Bhopal.....RESPONDENT (S)

Represented by Sh./Smt. M.D.Singh,

JDR
.....

CORAM :

..... SHRI K.K. BHATIA, MEMBER (T).
.....
.....

To be referred to the Reporter or not ?

FINAL ORDER NO. A/218/01/NBCE/m)

Per.....SHRI K.K. BHATIA, MEMBER (T)

W.E.F 1.4.94 the Central Excise department introduced the mode of payment of duty by the assesseees on the invoices instead of Gate Passes being followed before that date. Correspondingly the assesseees could also avail modvat credit under Rule 57A read with Rule 57G on the strength of the duty paid by the manufacturers on the invoices issued by them.

2. The appellants M/s Indra Marshal oil Engines, Indore manufactured IC Engines falling under chapter 84. They were also availing modvat credit under Rule 57A. It was observed that they had availed modvat credit totally amounting to Rs.1,17,609.45 on the strength of 3 Nos GPs issued on 4.5.94, 16.5.94 and 25.5.94 By M/s Laxmi Industries, Jullunder. They were accordingly issued showcause notice dt 8.11.94 in which it was alleged that the GP ls on the strength of which they had availed the modvat credit could not be treated as valid documents for the purpose of availing credit under Rule 57G(2) since the Gate Pass system under Rule 52 A was dispensed with and it was switched over to the invoice system. They were therefore, called upon to showcause why the modvat credit of the aforesaid amount should not be recovered from them under Rule 57I read with Section 11 A of the Central Excise Act, 1944 and why penalty should not be imposed on them under Rule 173Q.

3. The above proceedings culminated in the Additional Commissioner, Central Excise, Bhopal passing an Order dt 30.1.97 in which he disallowed the modvat credit of the aforesaid amount to the appellants apart from imposing the penalty of Rs. 10,000/- on them.

4. The appeal of the party against the above order did not succeed and the Commissioner (Appeals), Bhopal vide his order dt

10.1.2000 upheld the findings of the Original Authority rejecting the appeal of the party.

5. The present appeal is against the above order of Commissioner(Appeals). I have heard Shri Anil ~~Jha~~ ~~Wart~~ Partner of the Appellants and Shri M.D.Singh, JDR for the respondents. The Ld. Representative of the appellants has made two points before me. He has stated that payment of Central Excise duty on the impugned items in respect of which the modvat credit is availed is not in dispute. He has drawn my attention to the certificate dt 1.9.94 issued by the Superintendent, Central Excise Range-II, Jullunder in which he has certified the payment of Central Excise duty of Rs. 1,17,609.45/- under the impugned GPLs by the suppliers of the inputs M/s Laxmi Industries, Mahadi Road, Jullunder. Secondly it is pleaded that alongwith GPLs the party had also filed the invoices which reflected the central excise duty element paid by the suppliers of the inputs. Therefore, he pleads that these documents would substantially satisfy the requirement under the rules for taking the modvat credit on the strength of the invoices under the new system introduced w.e.f. 1.4.94. I have considered these submissions. It is observed that the assertion by the appellants that the GPLs under consideration were also accompanied by the invoices issued by the input supplier reflecting the payment of duty element was

neither made before the lower authorities nor was it considered by them at any stage of proceedings before them. In all fairness, in my view, these submissions of the appellants merit verifications by the departmental authorities. The orders passed by the lower authorities therefore, are set aside and the matter remanded to the Original Authority to verify whether the invoices reflecting the duty element were accompanied with the GPLs on the strength of which the appellants had availed the modvat credit. If he is satisfied with payment of duty by the inputs supplier as reflected in these invoices, he should allow the modvat credit to the party. The appellants shall be afforded reasonable opportunity to state their case before taking the final decision in the matter.

6. The appeal is thus allowed by remand in the above terms.

(K.K. BHATIA)

MEMBER (T)

PW

13.2.2001