

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/2937/2000/NB(SM) BENCH-NB(SM)

Dated : 16/2/2001

CEGAT  
NEW DELHI  
To,

M/s Biola VNL Limited  
(OCM woolen Mills)  
PB NO 34, GT Road  
Chheharta, Amritsar (Punjab)

In the matter of :

M/s Biola VNL Ltd (OCM woolen Mills) Appellant

vs.

CCE Chandigarh Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/275/01/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 :

KU  
Asstt. Registrar  
NB(SM)

1. CCE Chandigarh
2. CCE/CC-1 (Appeal) Chandigarh
3. Chief Commissioner of Central Excise / Customs. Chandigarh
4. Adv. / Consult. Mr. R. Sudhinder, Adv  
B-26, Maharani Bagh  
New Delhi - 65
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, Bhishm Pitamah Marg, opp. Sachdeva P.T. College of Defence Colony, New Delhi-110003
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Asstt. Registrar NB(SM)

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

Appeal No.E/2937/2000 NB (SM)

(Arising out of Order-in-Appeal No.52/DIR/P&PR/2000 dated 13.6.2000 of the Commissioner of Central Excise (Appeals), Chandigarh).

M/s. Birla VXL Ltd. (OCM Woollen Mills)...Appellants  
Rep. by Shri R. Sudhinder, Advocate

Vs.

CCE, Chandigarh ...Respondents  
Rep. by Shri M.D. Singh, SDR

CORAM: SHRI LAJJA RAM, MEMBER (T)

*FINAL* Order No. A/275/01 / *NB CS/Am 1* Dated: 12.02.2001

PER LAJJA RAM:

In this appeal filed by M/s. Birla VXL Ltd. OCM Woollen Mills, Amritsar, the matter relates to the availment of the modvat credit on the basis of the documents, which according to the Commissioner of Central Excise (Appeals) were not the proper documents. In para-5 of the impugned order, it has been observed by the appellate authority that the assessee has taken modvat credit on the basis of the invoices, which were other than duplicate/original copy. He has confirmed the view taken by the adjudicating authority wherein the Asstt. Commissioner of Central Excise had confirmed the demand of Rs.24,570/- and also imposed a penalty of Rs. 2,500/-.

2. Shri R. Sudhinder, Advocate submits that the matter relates to the initial stages of the Scheme when the <sup>provisions</sup> possession regarding documentation on the strength of which the credit was to be taken, was ~~was~~ <sup>were</sup> not very clear. He submits that in any case, the dealer, who had issued the invoice in question i.e M/s. Sharda Chemicals of Delhi had obtained registration from the Department in 1994 itself and their registration number was 152/94 Range-I, Division-I, Central Excise Collectorate, Delhi, which is indicated on the Bill No.008813 dated 6.4.95, whose copy has been placed at page 21 of the paper book. He further submits that all the relevant particulars were in the invoice and the duplicate copy was in possession of the assessee. He also submits that if an opportunity is given, they will be able to produce the duplicate copy of the relevant invoice on the strength of which the modvat credit in the present case has been taken. He further submits that the ld. Commissioner (Appeals) has not referred to the relevant Rules 57 GG of the Central Excise Rules and had decided the matter only on the basis of Rule 52 A of the Central Excise Rules.

3. In reply, Shri M.D. Singh, SDR submits that

Rule 57 A of the Central Excise Rules is also relevant as in this case the credit according to the Department has been taken on the strength of un-authorized documents.

4. After hearing both the sides, I consider that this matter needs re-examination as according to the appellants' counsel, the duplicate copy of the relevant invoice is available and can be produced and that it was on the strength of this duplicate copy the credit was taken. This could not be explained fully at the earlier stages of the proceedings. He has also submitted that the trader, who issued the invoice, was a registered trader and has invited attention to the copy of the invoice placed on record at Annexure F in the paper book.

5. I, therefore, consider it to be a fit case for remand to the jurisdictional Asstt. Commissioner of Central Excise, who should re-examine the matter in the light of the submissions made by the appellants and then after giving an appropriate opportunity to the appellants to present their case, pass a speaking appealable order as per law. The appeal is, thus allowed by way of remand. Ordered accordingly.

Order dictated & pronounced in the Open Court on 12.02.2001.

( LAJJA RAM )  
MEMBER (T)

12.02.2001  
Ckp.