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

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

BENCH-NB(SM)

Appeal No. E/1671/00/NB(S) with
E/CO/193/00/NB(SM)

Dated : 14/2/2001

CEGAT
NEW DELHI
To,

CCE Raipur

In the matter of :

CCE Raipur Appellant
vs.
M/s Beekay Engg & Casting Ltd Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/277/01/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 :
- M/s Beekay Engineering & Casting Ltd
27/28, Right Indh. Area
Bilal, Dist Durg (MP)
 - CCE / CEI (Appeal) Bhopal
 - Chief Commissioner of Central Excise / Customs. Raipur
 - Adv. / Consult. JS Agaswal, Adv
S-187, Greater Kailash - II
New Delhi - 110048
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CUSTOMS, EXCISE & GOLD(CONTROL) APPELLATE TRIBUNAL,
NEW DELHI.

E/A.NO. 1671/00-NB(S) WITH E/C.O./193/00-NB(S)

(Arising out of Order-in-Appeal No. 1601-CE/BPL/99 dated 28.12.99 passed by the Commissioner of Customs & Central Excise (Appeals), Bhopal).

C.C.E., Raipur.

Appellant
(Sh. M.D. Singh, SDR)

vs

M/s. Beekay Engg. & Casting Ltd.

Respondent
(Sh. J.S. Agarwal, Advocate)

FINAL ORDER NO. A/277/01/NB
(Dated the 9th Feb., 2001).
(S/Pr)

PER S.S. KANG :

The revenue filed this appeal against the order-in-appeal passed by the Commissioner (Appeals).

In the impugned order, the Commissioner (Appeals) held that the Commissioner, after relying upon the decision of the Tribunal in the case of C.C.E. vs Mosanto Manufacturer (P) Ltd. reported in 1996 (87) E.L.T. 696 that the invoice, on which the credit had been taken, contain the particulars of duty payment which indicate that the dealers issued invoices, whenever they received the goods from the manufacturers. Therefore, they are the dealers of the manufacturers and fulfil the condition of the notification 15/94.

Heard both sides.

The contention of the revenue is that notification 15/94 CE dated 30.3.94 prescribes that invoices should be issued by wholesale dealers of the manufacturers as valid duty-paying documents for the purpose of MODVAT credit. Therefore, the invoices issued by the dealers should be issued by the wholesale dealers and in the present case, the invoices were not issued by the wholesale dealers,

therefore, not infirmity with the provisions of notification 15/94. Therefore, the contention of the revenue is that the invoices under consideration are issued by a person, who is not an authorised dealer of the manufacturer.

The contention of the respondents is that all the invoices were issued by the dealers and the dealers were registered with the revenue authorities. The respondents relied upon the decision of the Tribunal in the case of C.C.E. vs Uttam Ind. Engg. P. Ltd. reported in 1997 (18) RLT 613. The respondents also relied upon the definition of wholesale dealer as provided under Sec. 2(k) of Central Excise Act.

In this case the show cause notice was issued to the appellants for denial of MODVAT credit in respect of 18 invoices on the ground that the suppliers are not wholesale dealer/dealer of the manufacturer of inputs ^{inputs} and the documents are not in conformity with the notification no. 15/94. The Tribunal in the case of Uttam Ind. Engg. (P) Ltd. (supra) held that in view of the definition of whole-sale dealer under Sec. 2(k) of the Act and in view of the provisions of Notification 15/94, the invoices issued by the dealers, neither appointed or authorised by the manufacturer, are eligible for taking MODVAT Credit. The Tribunal in the case of Uttam Ind. Engg. (P) Ltd. (supra) held as under :

I have considered the above submissions. I observe that the ld. Counsel is correct in pointing out that the Not. No. 15/94 does not talk of appointment of any dealer as wholesale dealer or any particular authorisation by the manufacturer and recognised the invoices issued by a wholesale dealer in r/o goods bought either from

the manufacturer at the factory or from the manufacturer's depot and in this respect there is no dispute. Ld. Commissioner has therefore, rightly taken into account the definition of wholesale dealer as given in Section 2(K) and the above provisions of the notification which allowed the benefit. I, therefore, see no reason to interfere with his order."

In view of the above decision of the Tribunal, I find no infirmity in the impugned order. The appeal, filed by the revenue, is rejected. (Dictated in Court).

(S.S. KANG)

MEMBER (JUDICIAL)

Dt. 09.02.2001

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