

GRAM : CEGCANAL

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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/1014/96/NB(SM)

Dated : 16/2/2001

CEGAT
NEW DELHI

To,

M/s Kushal Bagh Marbles (P) Ltd
Industrial Area,
Dohad Road, Bandwara

In the matter of :

M/s Kushal Bagh Marbles (P) Ltd

Appellant

vs.

CCE Jaipur

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/282/01/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.

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1. CCE Jaipur

2. CCE/EG/ (Appeal) New Delhi

3. Chief Commissioner of Central Excise / Customs. New Delhi

4. Adv. / Consult. G.P. Srivastava, Adv
B6/69 Pasjatan Vihar
Vaandhar Enclave, Delhi-76

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
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NB(SM)

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

Appeal No.E/1014/96-NB(SM)

[Arising out of Order-in-Appeal No.89-CE/JPR/96 dated 10.4.1996 passed by the Commissioner (Appeals) Central EXcise, New Delhi.]

M/s. Kushal Bagh Marbles Pvt. Ltd.

Appellants
(Shri G.P. Srivastav, Advocate)

Vs.

Commissioner of Central Excise, Jaipur

Respondent
(Shri H.R. Bheema Shankar, S.D.R.)

FINAL ORDER NO. A/282/01/NBCE/m Dt. 1.2.2001.

Per. S.S. KANG, MEMBER

The appellants filed this appeal against the order in appeal whereby benefit of MODVAT credit in respect of their Gangshaw Machine was denied on the ground that the appellant filed declaration after 3 months from the date of receipt of the machine.

2. Learned Counsel appearing on behalf of the appellants submits that on 15.5.94 appellant filed a declaration for availing the benefit of MODVAT credit on capital goods whereby they declared parts of Gangshaw machine and vide letter dated 14.6.94, the appellant filed a detailed list of capital goods on which they intend to take credit and at Serial number 7 of the list, was the machine in question. He submits that thereafter, the Revenue wrote that the declaration is in respect of Gangshaw Machine was not proper and in response to this, appellant filed afresh declared on 15.7.94 in respect of Gangshaw machine. Learned Counsel submits that Rules 57G and 57T of Central Excise Rules is amended

vide Notification No. 7/99-CE(NT) dated 9.2.99. The amended rule provides that credit shall not be denied on the ground that the declaration filed under Sub-Rule 5(1) does not contain all the details required to be contained therein.

3. He further, relies upon the Circular No.441/7/89-CX dated 23.2.99 which provides guide lines in respect of the amending notification number 7/99-CE(NT) dated 9.2.99 and it was specified in Circular that the guide lines are applicable in the pending cases also.

4. He submits that the Larger Bench of the Tribunal in the case of Kamakhya Steels (P) Ltd. Vs. C.C.E., Meerut, reported in 2000 (40) RLT 575 (CEGAT-L.B.) held that in view of the Board Circular the amended provisions of Rules 57G and 57T are applicable in the pending cases. He, therefore, prays that the matter requires reconsideration in view of the amended Notification No.7/99-CE(NT) dated 9.2.99.

5. Learned SDR appearing on behalf of the Revenue while reiterating the finding of the lower authorities submits that proper declaration was filed in respect Ganshaw Machine after the expiry of 3 months from the receipt of the machine. He submits that the proper officer can condone the delay of 3 months in filing the declaration. His submission is that when a declaration was filed beyond a period of 3

months, the Assistant Commissioner has no power to condone the delay. He, therefore, prays that the appeal be dismissed.

6. Heard both sides.

7. In this case the benefit of MODVAT credit in respect of Ganshaw machine was denied on the ground that the proper declaration was filed after the period of 3 months from the date of the receipt of the machine. Appellants filed a declaration on 11.5.94 in respect of the parts of Ganshaw machine. This declaration was not disputed by the Revenue. The only objection of the Revenue is that in this declaration, there was no mention of Ganshaw machine and without filing any declaration the appellants are not entitled for the benefit.

8. Vide Notification No.7/99-CE(NT) dated 9.2.99, the Rules 57G and 57T is now amended and the Larger Bench of the Tribunal in the case of Kamakhya Steels (P) Ltd. (Supra) after taking into consideration the amendment to the Rule and the Circular dated 23.2.99, gave a direction to the lower authorities to re-examine the issue in the light of the amended

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rule. The Larger Bench of the Tribunal held as under :-

"Shri A.R. Madhav Rao, Id. Advocate as an intervener submitted that the question referred to the larger bench in the instant case need not be answered and matter be remanded to the Adjudicating Authority to examine the issue afresh in the light of amendment to Rules 57G and 57T as per Notification No. 7/99-CE(NT) dated 9.2.99, and the two Circulars (M.F. DR. Letter F.No. 267/6/92-CX dated 30.1.92 and Circular No. 441/7/99-CX dt. 23.2.99) [reported in 1999 (31) RLT M61]. He referred to the relevant amendment (7/99-CE(NT) dt. 9.2.99) which is as under:-

"7/99-CE(NT), dt. 9.2.1999: In exercise of the powers conferred by Section 37 of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby makes the following rules further to amend the Central Excise Rules, 1944, namely:-

1. (1) These rules may be called the Central Excise (3rd Amendment) Rules, 1944.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Central Excise Rules, 1944,-

(a) in rule 57G, after sub-rule (10), the following sub-rule shall be inserted, namely,-

"(11) Credit under sub-rule (2) shall not be denied on the grounds that -

(i) any of the documents, mentioned in sub-rule (3) does not contain all the particulars required to be contained therein, under these rules, if such document contains details of payment of duty, description of the goods, assessable value, name and address of the factory or warehouse;

(ii) the declaration filed under sub-rule (1) does not contain all the details required to be contained therein or the manufacturer fails to comply with any other requirements under sub-rule (1)."

He submitted that circulars are binding on the authorities functioning under the statute. Referring to the Circular No. 441/7/99 dated 23.2.99, he said that Circular was issued to follow certain guidelines in respect of Notification No. 7/99 dated 9.2.99 while considering the admissibility of modvat credit and further it was specified in the circular that guidelines are applicable to the pending cases and the pending cases are to be disposed of accordingly. In this context, he referred to the decision of the Supreme Court in the cases of Mathew M. Thomas Vs Commissioner of Income Tax reported in 1999 (33) RLT 227 (SC)=1999 (111) ELT 4 (SC) wherein it was held that proceedings shall include proceedings at the appellate stage. Particularly, he drew our attention to the para 8 of the said judgement which reads as under:-

"8. It is well settled that the word "Proceedings" shall include the proceedings at the appellate stage. It is sufficient to refer to the judgement of this Court in Garikapati Veeraya V.N. Subiah Choudhary & Ors. - AIR 1957 S.C. 540 wherein the Court said at page 553:-

(i) That the legal pursuit of a remedy, suit appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceedings".

Hence we are unable to persuade ourselves to agree with the view expressed by the Full Bench of the High Court in the Judgement under appeal that the Circular would apply only to proceedings pending before the Competent Authority".

We are not convinced with the arguments advanced on behalf of the Revenue that amended provisions and Circulars referred to above are not applicable to the point in issue. On going through the amendment to Rule 57G particularly with reference to sub-clause II of 2(a) of 7/99-CE(NT) dated 9.2.99 the Circulars and the case law, we find that matter is required to be re-examined as it was rightly pointed out by the intervener. In the view we have taken, the matter is remanded to the Jurisdictional Assistant Commissioner to examine the admissibility of modvat credit for the period covered under Appeal No. E/1840/95 and to pass an order in accordance with law.

9. In view of the above decision of the Tribunal, the impugned order is set aside and the matter is remanded for de novo consideration to the adjudicating authority. The adjudicating authority decide the matter afresh after affording an opportunity of personal hearing to the appellants.

(S.S. KANG)
MEMBER (JUDICIAL)

Dated : 1.2.2001.

/RANA/