

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/2264/2000/NB(SM)

Dated : 16/2/2001

CEGAT
NEW DELHI
To,

CCE Jaipur-II

In the matter of :

CCE Jaipur-II

Appellant

vs.

M/s Biola Tube & Industries Ltd

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/286/01/NB(SM)
Dated : 15/2/2001 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 Biola Corporation Ltd. (Cement factory)
Chittorgarh (Rajasthan)

Asstt. Registrar
NB(SM)

1. M/s Biola Corporation Ltd. (Cement factory)
Chittorgarh (Rajasthan)
2. CCE / CC / (Appeal) Jaipur
3. Chief Commissioner of Central Excise / Customs. Jaipur
4. Adv. / Consult. Sh. Apurva Bhattacharya, Adv.
'Bindu Bhawan' 49, Shastri Marg
Jaipur - 313001 (Raj)
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
13. M/s Lex Site Com. Ltd., Mumbai
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Asstt. Registrar
NB(SM)

Customs Excise & Gold(Control)Appellate Tribunal

Northern Bench(Single Member)

E/2264/2000-NB

(Arising out of Order-in-Appeal No.431(KDT)CE/JPR-II/2000 dt.8.5.2000 passed by the Commissioner(Appeals)Central Excise, Jipur)

CCE, Jaipur

(Rep.by Shri S.C.Pushkarna
DR) Appellant

vs

M/s. Birla Jute & Industries Ltd.

Respondent
(Rep. by none)

FINAL Order No. A/286/01/NB(CE/M) 15.2.2001

Per G.R.Sharma:

In the impugned order Ld. Commissioner(Appeals) had given the benefit of Modvat credit on Pollution Control Equipment by relying on the judgment of the Hon'ble Supreme Court in the case of IFFCO vs CCE, Ahmedabad and five other cases set out in the impugned order.

2. Being aggrieved by this order, Revenue has filed this appeal on the ground that ^{as per} definition of capital goods under Rule 57Q(1) of the Central Excise Rules,44, the credit was admissible on the capital goods which were used for producing or processing of any goods or for bringing about any change in / any substance for the manufacture of final product or on the capital goods mentioned in the explanation 1(d) of Rule 57Q(1) of the Central Excise Rules,44 during the relevant time.

3. Arguing the case for Revenue Shri S.C.Pushkarna, Ld. DR submits that Pollution Control Equipment and Cooling Equipment were neither used for producing or processing of any goods or for bringing about any change in any substance for the manufacture of final product nor were covered under the explanation 1(d) of Rule 57Q(1) of the Central Excise Rules. Ld. DR submits that capital goods scheme under went a change and the definition of capital goods was substantially modified and changed by issue of Notification No.14/96-CE/NT

dt.23.7.96. He submits that in the new scheme ~~of~~ goods specified under the Notification were entitled to Modvat on capital goods irrespective of the fact whether or not these were used in processing or producing of any goods or for bringing about any change. Ld. DR, therefore, submits that the impugned order does not take the correct view of the position as was available during the material time and prays that the impugned order may be set aside in so far as treatment of Pollution Control Equipment as capital goods is concerned and that the appeal may be allowed.

4. None appears for the respondent.

5. I have heard the Ld. DR. I have also perused the impugned order and the written submissions given by the respondent herein. I have also perused the case law relied upon by the Ld. Commissioner(Appeals) in the impugned order. I note that the Hon'ble Supreme Court in the case of IFFCO vs CCE, Ahmedabad reported in 1996(86)ELT.177 in para 9 of this judgment held as under:

"9. That leaves us to consider whether the raw naphtha used to produce the ammonia which is used in the effluent treatment plant is eligible for the said exemption. It is too late in the day to take the view that the treatment of effluents from a plant is not an essential and integral part of the process of manufacture in the plant. The emphasis that has rightly been laid in recent years upon the environment and pollution control requires that all plants which emit effluents should be so equipped as to rid to effluents of dangerous properties. The apparatus used for such treatment of effluents in a plant manufacturing a particular end product is part and parcel of the manufacturing process of that end-product. The ammonia used in the treatment of effluents from the urea plant of the appellants has, therefore, to be held to be used in the manufacture of urea and the raw naphtha used in the manufacture of such ammonia to be entitled to the said exemption".

I also note that this judgment was followed subsequently by the Tribunal in the case of Century Cements Ltd. vs CCE reported in 1997(95)ELT.655 and in a number of cases decided thereafter. I also note that Larger Bench of this Tribunal in the case of Jawahar Mills Ltd. reported in 1999(108)ELT.47 which was further examined by still Larger

Bench in the case of Surya Roshni reported in 2001(42)RLT.817 held that each case is to be examined and then a decision has to be taken. In the instant case I find that the Hon'ble Supreme Court has already rendered a finding that Pollution Control Equipment is an integral part of the process of manufacture of the products, and therefore, ^{held that it} is eligible to Modvat credit. Having regard to this finding and following the ratio of the judgment of the Supreme Court I hold that Modvat credit will be admissible on Pollution Control Equipment. In the circumstances, the impugned order is upheld and the appeal of the Revenue is rejected.

Order dictated in the open Court.

(G.R.Sharma)
Member Technical

Dt.15.2.2001
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