

BENCH-NB(SM)Appeal No. E/2691/00/NB(SM)Dated : 28/2/2001CEGAT  
NEW DELHI  
To,Siddharth - Retro Products  
28, SSI, Co-operative Ind. Estate  
GT Karnal Road  
New Delhi

In the matter of :

Siddharth Retro Products

-Appellant

vs.

CCE New Delhi

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/324/01/NB(SM)  
Dated : 28/2/2001.....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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Asstt. Registrar  
NB(SM)

1. CCE New Delhi
2. CCE/CC/(Appeal) New Delhi
3. Chief Commissioner of Central Excise/Customs. New Delhi
4. Adv./Consult. M/s. Shashi Choudhary, Adv  
C/o Appellant.
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
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In the Custom, Excise & Gold (Control) Appellate Tribunal  
New Delhi

E/2691/00-NB(SM)

APPEAL NO.....OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

597-CE/DLH/2000

24-5-2000

.....DATED.....

PASSED BY..... COMMISSIONER OF CENTRAL EXCISE (APPEALS)  
NEW DELHI

Date of decision 13-2-2001

SIDDHARTH PETRO PRODUCTS

.....APPELLANT (S)

Represented by Sh./Smt. MS. SHRUTI CHOUDHARY  
ADVOCATE

VERSUS

CCE NEW DELHI

.....RESPONDENT (S)

Represented by Sh./Smt. M.D. SINGH  
SDR

CORAM:

SH. V.K.AGRAWAL, MEMBER (TECHNICAL)

FINAL

To be referred to the Reporter or not?

ORDER NO. A/324/01/NB(CE/M)

Per V.K.AGRAWAL:

In this appeal filed by M/s Siddharth Petro Products, the issue involved is whether the modvat credit was eligible to them on the strength of invoices which were not in prescribed colour code.

2. MS. Shruti Chaudhary, Ld. Advocate, submitted, that the Assistant

Commissioner under Adjudication Order No. 152/97, dt. 4-12-97 dis-allowed them modvat credit of the duty paid on inputs as they had received the inputs during the month of August and September 1995 under the invoices which were not having prescribed colour i.e. pink as required under Notification No. 23/95 dt. 3-5-95; that the Commissioner (Appeal) also rejected their appeal by relying on the decision in the case of Suraj Foundary Vs. CCE Allahabad 1999(114) ELT 559. The ld. Advocate, further, submitted that there are catena of judgements on the issue of procedural/technical lapses in which it has been held that when inputs had been received which have suffered duty and were used in the manufacture of final products and no fraud is suspected modvat credit cannot be denied; that the requirement of invoices being in pink colour came into effect only from 1-8-95 and as the inputs were received by them during August and September 1995, this was only transtional period and, therefore, Modvat credit cannot be denied. She, further, submitted that in the case of CCE Meerut Vs. Ghaddha Pvt. Ltd 2001 (127) ELT 813 (T) the Tribunal has allowed the Modvat credit though the

invoices were not printed in paper having Pink Colour. She also relied upon the decision in the case of Nizam Tubes Ltd. Vs. CCE Shillong, 1998(104) ELT 559 (T) where the Modvat Credit was allowed by the Tribunal holding that the period ~~was~~ involved in that appeal being August and September 1995 ~~when the months~~ when the colour scheme was recently introduced.

3. Countering the arguments, Shri M.D.Singh, Id. SDR, submitted that Notification No. 23/95-CE(NT) dt. 30-5-95 was issued by the Government under Sub-Rule (4) of Rule 57GG of the Central Excise Rules prescribing in the colour of the invoices to be issued by the dealers for the purpose of availing the credit; that this Notification was issued on 30-5-95 and clearly two months period was given to the trade and industry for making the arrangements for issuing the invoices according to the provisions of law, as the provisions of the Notification were to come into effect only from 1-8-95. He, further, submitted that in Chaddha Paper case, the Tribunal had extended the benefit of doubt as the colour of the duplicate invoices in that

case could be termed as pink as well. He finally, mentioned that the Appellate Tribunal in the case of CCE Vs Avis Electronics CCE 2000(117) ELT 571 has held "that insistence on document evidencing Payment of duty on the inputs as prescribed by Rules is not a technicality to be complied for availing Modvat credit..... When a particular thing is directed to be performed in a manner prescribed by Rules, it should be performed in that manner itself and not otherwise". The ld. SDR also mentioned that the Appellants have relied upon the decision in the case of Timber Products Vs. CCE Bhubneswar 1998(24) RLT 174(T) which is not applicable to the facts of the present matter as the stamp of the Octroi on invoice clearly proved that the said copy of the invoices was 'transporters copy'. In reply the ld. Advocate submitted that there is no allegation that credit was not availed of on the strength of duplicate copy of the invoice.

4. I have gone through the submissions of both sides. The Larger Bench of the Tribunal in Avis Electronics case, supra, has clearly held that the requirements of duty paying documents as prescribed by Rules is not a technical requirement. If the law provides for a

particular thing to be performed in a specific manner it has to be done in that manner itself. As the Notification issued under Rule 57 GG (4) provides that the duplicate copy of the invoice, on the basis of which modvat credit can be availed, should be in pink colour, no other documents can substitute the same unless and until the law provides for the same. Admittedly the invoice was not in pink colour in the present matter. I am also not convinced that this was a transistional period and Department should not insist on pink colour invoice for availing of modvat credit as clear two months were provided by the Notififcation for switching over to colour scheme of the invoices I also observe from the adjudication Order that the pink colour invoices were not used as the dealer was reported to have stock of printed computerised invoices and they could implement the scheme only from October 95. The Notification has given clearly two months time for adopting the colour scheme of the invoice and it is not open to individual dealers to choose the date from which the scheme will be implemented by them. The ld. SDR had distinguished the decision in the

case of Chaddha Papers. The Tribunal in the said decision also referred to Avis Electronics decision but observed that the said decision will not apply because the colour of the duplicate invoice can be termed as pink as well. Similarly the ratio in the case of Manglam Timber is also not applicable, The Tribunal held in the said case that the invoice bore stamp of Octroi checkpost which clearly showed that the invoices was given to the transport carrier and only duplicate copies is given to the transport carrier. As admittedly the invoice is not in Pink colour during the relevant period I do not find any infirmity in the impugned Order and, accordingly, the appeal is rejected.

(V.K.AGRAWAL)

MEMBER (TECHNICAL)

Sunita  
27-2-2001