

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 | 3171 & 3172 | 98-NB(SM)

Dated : 19/1/2001

CEGAT
NEW DELHI
To,

M/s Malwa Oxygen & Industrial

Gases Pvt. Ltd., Sector - C,

Moll. Area, Ratlam - 457 001 (M.P)

In the matter of :

M/s Malwa Oxygen & Indl. Gases (P) Ltd., Appellant

vs.

CCE Indore Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/82-83/2001/NB(SM)
Dated : 15.12.2000 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 :

CCE Indore

Asstt. Registrar

NB (SM)

- 1.
2. CCE / GC / (Appeal) Bhopal
3. Chief Commissioner of Central Excise / Customs, Jaipur
4. Adv. / Consult. Shri A-C Jain, Adv.,
103, Pushangali, Vikas Marg Extn.,
Delhi - 92.
5. S.D.R
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

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

Appeal Nos. E/3171 & 3172/98-NB(S)

(Arising out of Order-in-Appeal No. 566/CE/BPL/98
dated 27.08.2000 passed by the Commissioner (Appeals)
Central Excise & Customs, Bhopal (M.P))

M/s. Malwa Oxygen & Industrial .. Appellants
Gases Pvt. Ltd.
(Rep. by Shri A.C. Jain, Advocate)

vs.

C.C.E. Indore .. Respondents
(Rep. by Shri V.M. Udhoji, JDR)

DOH: 27.9.2000

FINAL Order No. A/82-83/01 dt: NB (C/M)

Per K.K. Bhatia, Member (T):

The Asst. Commissioner of Central Excise, Ratlam vide his order dt. 20.10.97 has confirmed a differential duty of Rs.28,437/- on the appellants on the ground that they were availing the benefit of exemption under Notfn. No.1/93-CE dt.28.2.93. On crossing the exemption limit of Rs.75 lakhs, they paid Central Excise Duty at the concessional rate of 15% Advalorem where they were required to pay duty at full rate i.e., 20% advalorem. Therefore, he has held that these amounts of penalty ^(Rs. 5,334) and duty are required to be recovered from them under Section 11A of the Central Excise Act, 1944.

2. He has further disallowed the modvat credit of Rs.5,334/- to the party on the ground that they had wrongly availed the modvat credit of this amount on the strength of invoice No.2382 dt. 16.1.97 issued by M/s. Kusum Ingots & Alloys Ltd. since the modvat credit is taken on Dissolved Acetylene (D.A) Gas, but this item is not declared in the declaration filed by them. It is

further observed that the D.A. Gas has also not been entered in the RG.23A Part-I Register.

3. Another amount of Rs.12,560/- as modvat credit is denied to the party by the Asst. Commissioner in his order on the ground that this amount has lapsed in their RG.23A Part-II as on 1.3.97 under the provisions of Rule 57F 17(b). He has therefore held that this amount is recovered under Rule 57-I read with Section 11A.

3. The Asst. Commissioner has also imposed a penalty of Rs.5,000/- on the appellants. The appeal of the party is dismissed by Commissioner (Appeals), Bhopal vide his order dt. 27.8.98 upholding the order passed by the Asst. Commissioner.

4. The present appeal is against the above order of Commissioner (Appeals). I have heard Shri A.C. Jain, Advocate for the appellants and Shri V.M. Udhoji, JDR for the Respondents. The ld. Advocate for the appellants had drawn my attention to the letter dt. 23.7.97 submitted by the party before the Asst. Commissioner in reply to the Show Cause Notice. It is contended that the original authority has not considered any submission made by the party in reply to the show cause notice and therefore, the order is passed in violation of the principles of natural justice. I have considered these submissions. It is observed that the Asst. Commissioner in his Adjudication Order dt. 20.10.97 has practically extracted the entire reply of the party to the show cause notice but has not considered any of the submissions made therein before recording his findings in the order. It is therefore rightly contended that the order of the original authority is non-speaking and in violation of the principles of natural justice. I accordingly, set aside the orders

passed by the lower authorities and remand the matter to the original authority for passing a de-novo speaking order on consideration of the submissions made by the noticee party. The party shall be afforded a reasonable opportunity of hearing before taking the final view in the matter.

4. The appeal is thus allowed by remand in the above terms.

(Announced in the Court)

ms.

Dt:15.12.2k

(K.K. Bhatia)
Member (Technical)