

GRAM : CEGCANAL

REGISTERED/A.D

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

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

E/Misc/49/2001 - NB(SM) BENCH NB(SM)

Appeal No. E/2894/00 - NB(SM)

Dated : 9/3/2001

CEGAT
NEW DELHI
To,

M/s Kapo Plast (India) Ltd.,
3127, Indl. Area,
Phase-II, Chandigarh.

In the matter of :

M/s Kapo Plast (India) Ltd.,

Appellant

vs.

CCE Chandigarh - I

Respondent

Misc. order No M/62/01 - NB(SM)

I am directed to transmit herewith a certified copy of Final Order No. A/333/2001 - NB(S)
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.

Copy to :

Asstt. Registrar
NB(SM)

1. CCE Chandigarh - I
2. CCE / CC (Appeal) Chandigarh
3. Chief Commissioner of Central Excise / Customs. New Delhi
4. Adv. / Consult. Shri Gagan Kohli, Adv.,
394, Sector-30, Chandigarh,
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
14. Office Copy
15. M/s Cen. cus Publications.
16. M/s Law Infotech Resources (India) Ltd.,

Asstt. Registrar

**In the Custom, Excise & Gold (Control) Appellate Tribunal
New Delhi**

E/Misc./49/01-NB(S) in
APPEAL NO..E/2894/00-NB(S) OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

76/DIR/P&PR/2000 DATED 13.6.2000

PASSED BY..... Commissioner of Central Excise (Appeals)
Chandigarh

Date of decision..... 28.2.2001

M/s Kapo Plast (India) Ltd. APPELLANT (S)

Represented by Sh./Smtxxx...Gagan Kohli, Advocate.

VERSUS

CCE, Chandigarh RESPONDENT (S)

Represented by Sh./Smtxxx...S.C. Pushkarna, JDR...

CORAM :
SHRI P.G. CHACKO, MEMBER (JUDICIAL)

Per..... P.G. Chacko :

To be referred to the Reporter or not?
FINAL ORDER NO. A/333/01/NB (O/m)
MISC ORDER NO. mp 62/01/NB (O/m)

This appeal is against the order of the
Commissioner (Appeals), which was a common order
passed by him against a number of assesseees
including the present appellants. The present

appellants were not personally heard before the Commissioner (Appeals) passed the impugned order.

2. The Misc. application is for taking on record certain additional documents.

3. I have carefully examined the records and heard both sides.

4. Ld. Advocate, Sh. Gagan Kohli, submits that the appellants could not attend to personal hearing before the lower appellate authority on account of short notice. He further submits that ld. Commissioner (Appeals) did not at all consider their contentions with regard to availment of modvat credit on Aluminium scrap. He further submits that, in respect of modvat credit taken on the strength of 5 invoices of dealers, mentioned at Sr. Nos. 1, 2, 3, 4 and 9 in the Annexure to show-cause notice, the lower authorities did not properly consider the submissions of the party or the documentary evidence adduced by them. He further refers to the additional documents sought to be received at this stage and submits that those documents are copies of the manufacturer's invoices, which, according to ld. Advocate, would conclusively establish correlation of the particulars stated in the dealer's invoices with

those stated in the manufacturer's invoices. In addition to copies of the manufacturer's invoices, a statement of the dealer giving detailed particulars of their invoices issued to the appellant has also been brought on record under cover of the Misc. application. According to ld. Counsel, these additional documents would conclusively establish the appellant's case with regard to modvat credit taken on the strength of the aforesaid five invoices.

5. I have heard ld. JDR also, he has reiterated the findings of the lower appellate authority.

6. on a careful examination of the submissions, I find that the order passed by the lower appellate authority does not appear to be a speaking order on the definite grounds raised by the party in their appeal. The impugned order is completely silent on the party's submissions regarding the modvat credit taken on Aluminium scrap. As regards the rest of the credit taken on the strength of the aforesaid 5 invoices, ld. Commissioner (Appeals) does not appear to have applied his mind to the evidence. At any rate, if the additional documents presently sought to be

brought on record by the appellants are also considered by the Commissioner (Appeals), the same would serve the interests of justice. Therefore, I am inclined to remand the matter to that authority. Accordingly, I set aside the impugned order and allow this appeal by way of remand directing ld. Commissioner (Appeals) to decide the appellant's case afresh and pass a speaking order on all the grounds raised by them. It is also directed that the additional documents mentioned in Misc. Application No. E/M/49/2001 also be considered by the lower appellate authority before passing final order. Needless to say, a reasonable opportunity of personal hearing should be given to the appellants before passing the order.

(P.G. CHACKO)
MEMBER (JUDICIAL)

RM