

AM: 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/ 3491 / 00 - NB (SM)

Dated: 9/3/2001

CEGAT
NEW DELHI
To,

M/s Eicher Tractors

(A Unit of Eicher Ltd.)

59, NIT, Faridabad - 121 001.

In the matter of:

M/s Eicher Tractors

Appellant

vs.

CCE New Delhi

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/335/2001 - NB (SM)
Dated: 27-2-2001 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 New Delhi
2. CCE/EE/(Appeal) New Delhi
3. Chief Commissioner of Central Excise/Customs. New Delhi
4. Adv./Consult. Shri V. Swaminathan, Adv.,
G-50 (2nd Floor) Lajpat Nagar-II,
New Delhi - 24.
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
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16. M/s Law Infotech Resources (P) Ltd.,

Asstt. Registrar

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

APPEAL NO. E/3491/00-NB(SM) OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO. ~~XXXXXXXX~~

734-CE/DLH/00 DATED 10.09.2000.

PASSED BY COMMISSIONER (APPEALS)

NEW DELHI.

Date of decision 27.02.2001.

M/s EICHER TRACTORS, FARIDABAD - APPELLANT (S)

Represented by Sh./Smt. ~~Smt.~~ V. SWAMINATHAN,

ADVOCATE.

VERSUS

CCE, NEW DELHI - RESPONDENT (S)

Represented by Sh./Smt. ~~Smt.~~ SWATANTRA KUMAR,

JDR.

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

To be referred to the Reporter or not?
FINAL ORDER NO. A/335/01/NB
(CE/m)

Per P.G.CHACKO:

Carefully examined the records and heard both sides. Having regard to the fact that the applicants have been able ^{to} establish a strong prima facie case and that the issue involved in the appeal lies in a very narrow ^{compass} ~~campus~~, I allow this application and take up the appeal itself for final disposal.

2. ³ The adjudicating authority ~~disallowed~~ ² ~~Modvat~~ ² ~~credit,~~ ² the lower authorities disallowed Modvat credit to the extent of Rs.26,780/- taken by the appellants on certain inputs during the period 01.08.1996 to 31.08.1996 on the strength of two invoices, one of them issued by a dealer and the other issued by a manufacturer. The Modvat credit was disallowed on the ground that the dealer's invoice did not contain the necessary particulars and the manufacturer's invoice contained certain clerical corrections not duly authenticated. The adjudicating authority had imposed a penalty of Rs.20,000/- on the party, but the lower appellate authority reduced the quantum of penalty to Rs.10,000/-.

3. Ld. Advocate Shri V.Swaminathan for the appellants has today brought on record certain documents marked as Annexures 7,8&9. He submits that, though these documents were referred to in the memorandum of appeal as Annexures 7 to 9, the same could not be produced along with the memo of appeal. He relies on these documents and submits that the only deficiency noted in the dealer's invoice by the adjudicating authority had in fact been made good by the party by producing before the adjudicating authority an extract of the relevant entries in the RG 23D Register maintained by the dealer [the said extract is the document marked Annexure 8] and that the defect noted in the manufacturer's invoice had also been ^{cured} ₁ by way of a certificate dated 30.09.1997 issued by the ₂ input-manufacturer certifying that the clerical

corrections made by them in the invoice were authentic~~ate~~² [this certificate is the document marked Annexure 9]. Id. Advocate submits that, though these documents had been produced before the Assistant Commissioner, he did not apply his mind to the same. He submits that the lower appellate authority has also not considered the documents and the submissions made on the basis of such documents. Id. Counsel, therefore, prays for allowing the appeal.

4. Id. JDR Shri Swatantra Kumar reiterates the findings of the lower authorities and prays for upholding the impugned order.

5. I have carefully examined the above submissions. I note that the only deficiency in the dealer's invoice, on the strength of which Modvat credit to the extent of Rs.13,673/- was taken by the assesseees was that the necessary reference to entries in the dealer's RG 23D Register had not been made in the invoice. This deficiency was very well made up by the party at the stage of adjudication proceedings by producing an extract of the relevant page of the RG 23D Register. It is this extract which has been brought on record today as Annexure 8 referred to in the memorandum of appeal. It appears that both the lower authorities adopted a hyper-technical approach in examining the said documents. They did not apply their mind to the pertinent entry in the document concerning the invoice in question. I am satisfied that Annexure 8-extract of the RG 23D Register did make up ^{the} deficiency noted in the invoice by the lower authorities and, therefore, the Modvat credit of Rs.13,673/- is admissible to the assesseees.

6. The defect noted in the manufacturer's invoice was that the consignee's name as entered in the invoice had clerical corrections which were not duly authenticated by the issuing authority. I note that this defect was also rectified at the adjudication stage by the assessee by producing before the Assistant Commissioner the Annexure 9 certificate issued by the input-manufacturer. I have examined Annexure 9 and find that the said certificate did authenticate the corrections in the invoice in question but the lower authorities did not consider Annexure 9 certificate as sufficient evidence of rectification of the alleged defect. Both the authorities have committed a serious mistake. I note that the clerical corrections in the manufacturer's invoice in question were duly authenticated by the issuing authority by way of Annexure 9 certificate. In this view of the matter, the Modvat credit taken on the strength of the manufacturer's invoice, amounting to Rs.13,107/- is not deniable to the party. Consequently, there was no warrant for any imposition of penalty.

8. In view of the above, I set aside the impugned order and allow this appeal.

[Dictated and pronounced in the open Court.]

(P.G.CHACKO)
MEMBER (JUDICIAL)

27.2.01.

amk.