

Appeal No. E/2018/00 - NB(SM) BENCH NB(SM)Dated: 12/3/2019CEGAT
NEW DELHI
To,M/s Vacuum Packagings (I) Pvt. Ltd.,
B-5, UPSIDC Indl. Area,
Site - A, Sikandra, Agra (U.P)

In the matter of:

M/s Vacuum Packagings (I) Pvt. Ltd., Appellant
vs.
CCE Kanpur RespondentI am directed to transmit herewith a certified copy of Final Order No. A/240/201-NB(SM)
Dated: 20-2-2019 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 :

1. CCE Kanpur
2. CCE / CC / (Appeal) Allahabad
3. Chief Commissioner of Central Excise / Customs. Kanpur
4. Adv. / Consult. Shri J. S. Agarwal, Adv.,
S-187, Creator Kailash - II,
New Delhi - 110018
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 publication
16. M/s Law Infotech Resources Pvt. Ltd.,

AS
Asstt. Registrar
NB(SM)AS
Asstt. Registrar

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

APPEAL NO. E/3018/2000-NB(6) 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

68/CE/KNP/2000.....DATED 27.6.2000

PASSED BY Commissioner (Appeals), Allahabad

Date of decision 20.2.2001.....

M/s. Vacmet Packagings (India) P.Ltd.....APPELLANT (S)

Represented by Sh./Smt. J.S. Agarwal, Advocate

VERSUS

Commissioner of Central Excise, Kanpur.....RESPONDENT (S)

Represented by Sh./Smt. K.Panchatcharam, JDR.....

CORAM:

Shri P.S. Bajaj

Member (Judicial)

To be referred to the Reporter or not ?

FINAL ORDER NO. A/340/01/NB(6/M)

Per..... P.S. Bajaj.....

Today the appeal has been listed by the Registry for mention, but both the sides state that it has been wrongly so listed as the appeal on the last date of hearing was listed for regular hearing and they are ready for arguments. Therefore, I

proceed to hear the appeal on merits.

2. This appeal has been preferred by the appellants against the impugned order in appeal dated 27.6.2000 passed by the Commissioner (Appeals) vide which he had affirmed the Order-in-original dated 12.7.99 disallowing the modvat credit of Rs.12,038/- on the strength of Triplicate copy of the challan.

3. The facts leading to the filing of present appeal, are these:

The appellants took modvat credit of Rs.12,038/- during the month of February, 1997 on the basis of triplicate copy of the challan, in RG 23 A Part II vide entry No. 120/1887 dated 16.2.97, but the same was not infact admissible under the law, and on asking of the Customs Department, they debited the same in RG 23 A Part II vide entry No. 19/328 to 25.9.97. But thereafter they made request in writing to the Assistant Commissioner on 1.12.97 seeking permission for taking the modvat credit on the strength of triplicate copy of the challan. But their request was declined and the same was conveyed to them by the Superintendent, Central Excise. They then, challenged the order of the Assistant Commissioner before the Commissioner (Appeals) who set aside the ~~case~~^{same} and sent back the case for denovo consideration to the Assistant

Commissioner. Thereafter, the show cause notice dated 1.2.99 was issued to the appellants to show cause as to why their request for taking modvat credit on the basis of the triplicate copy of the notice be not rejected. They contested the correctness of that notice by filing the reply that since the triplicate copy of the challan was lost in transit while receiving the goods from the job workers to whom the goods were sent for doing necessary work, they were entitled to take modvat credit on the strength of triplicate copy. The Assistant Commissioner however did not accept their version and disallowed their request for taking modvat credit of the amount in dispute on the strength of triplicate copy of the challan through order-in-original dated 12.7.99.

4. The appellants however, challenged the above said order-in-original of the Assistant Commissioner before the Commissioner (Appeals) but remained unsuccessful as the Commissioner (Appeals) rejected their appeal through impugned order-in-appeal. They have come up in appeal against this impugned order before the Tribunal.

5. I have heard both the sides.

6. Ld. Counsel for the appellants has contended that modvat credit of the amount in question could be taken legally on the strength of the triplicate

copy of the challan, when the duplicate copy was lost in transit and that request of the appellants has been wrongly rejected by the authorities below. He has also referred to the trade Notice No. 35-CE(Misc -35)/96 dated 1.9.96 allowing the modvat credit on the strength of triplicate copy when the duplicate copy of the challan was lost in transit, provided the Assistant Commissioner was satisfied that the goods sent out for job work, came back in full, after processing.

7. Ld. JDR has contested this contention of the Counsel, by contending that the modvat credit on the basis of triplicate copy of the challan under Rule 57 F has been rightly disallowed to the appellants. He has reiterated the correctness of the impugned order of the Commissioner (Appeals).

8. I have gone through the record. The facts are not much in dispute. The appellants took modvat credit of Rs.12,038/- in the RG 23 A Part II ^{Vide} ~~which~~ entry dated 16.2.97 on the strength of triplicate copy of the challan. But on asking of the Excise Departments, they reversed that entry later on. So far as the loss of duplicate copy of challan is concerned, the same also finds mention in the show cause notice. It had been nowhere alleged in the show cause notice that goods sent to the job workers for processing were not received back in full after

processing, by the appellants. But both the authorities below have rejected the request of the appellants for taking modvat credit on the strength of the triplicate copy on the ground that the goods sent by them to the job workers ~~by them~~ were not proved to have been received back in full after processing by the ~~appellants~~. They have thus travelled beyond the scope of show cause notice and this fact itself is sufficient to vitiate their orders.

8. The perusal of the file also shows that the appellants did produce the copies of the challans issued by Trade tax (Sales Tax) authorities, in order to prove receipt of the goods in full from the job workers after processing. No doubt the correctness of those challans had been ~~issued~~, doubted by both the authorities below on the ground that these did not bear signature of the responsible officer of authority, although the stamp of authority was fixed thereon. But if they were not satisfied with the genuineness of the challans, they should have allowed an opportunity to appellants to prove the same, before rejecting their claim for modvat credit. The authorities had thus acted in violation of the principles of natural justice. It is ^{also} well settled that technicalities of law cannot be allowed to stand in the way of justice. Therefore, the impugned

order of the Commissioner (Appeals) endorsing the order in original of Assistant Commissioner - disallowing modvat credit to the appellants, deserves to be set aside and matter must be sent back to the adjudication authority for fresh decision.

9. In view of the discussions made above, the impugned order of the Commissioner (Appeals) is set aside and matter is sent back to the adjudicating authority for fresh decision in the light of the discussion ~~referred to~~ ^{made} above, after having both the parties and also allowing opportunity to the them to produce more evidence if they so desired. The appeal of the appellants is allowed by way of remand.

(Pronounced in the Court)

(P.S.Bajaj)
Member(Judicial)

Dt: 20.2.2001
ss