

GRAM : CEGCANAL

REGISTERED/A.D

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

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

Appeal No. E/2896/00-NB(SM) **BENCH NB(SM)**

Dated : 13-3-2001

CEGAT
NEW DELHI
To,

M/s Varun Enterprises
99, Indl. Area - I
Chandigarh

In the matter of :

M/s Varun Enterprises Appellant
vs.
CCE Chandigarh - I Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/343/2001-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.

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. Sbri - 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 Publication.
16. M/s Law Info Tech Resources (P) Ltd;

Asstt. Registrar

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

APPEAL NO. E/2896/00-NB(S) OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

76 to 102/P&PR/2000 DATED 13.6.2000

PASSED BY Commissioner of Central Excise (Appeals)

Chandigarh

Date of decision 28.2.2001

M/s Varun Enterprises APPELLANT (S)

Represented by Sh./Smtxxx Gagan Kohli, Advocate

CCE, Chandigarh VERSUS

RESPONDENT (S)

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

CORAM :

SHRI P.G. CHACKO, MEMBER (JUDICIAL)

FINAL To be referred to the Reporter or not?
ORDER NO. A/343/01/NB *cfm*

Per P.G. Chacko :

In this appeal, the order impugned is a common order passed by the Commissioner (Appeals) against a number of assesseees including ^{the 2} present appellant. That order was passed without

personally hearing the party.

2. Carefully examined the records and heard both sides.

3. The assessees had taken modvat credit of Rs.64,638/- on inputs under Rule 57A of the Central Excise Rules on the strength of dealers invoices. Out of this amount, the credit of Rs.23,806/- was taken on the strength of invoices mentioned at Sr. Nos. 1 and 2 of the Annexure to the show-cause notice and the remaining credit (Rs.40832) was taken on the strength of invoices mentioned at Sr. Nos. 3 and 5 of the said Annexure. The adjudicating authority disallowed the entire credit. The lower appellate authority upheld the order of adjudication. It is submitted by ld. Advocate Sh. Gagan Kohli for the appellants that the credit of Rs.23,806/- was disallowed on the ground that the assessable value of the goods was not stated in the dealer's invoices and, further, that the dealer's certificates stating the assessable value correctly, produced before the lower appellate authority, were not considered by that authority. As regards the modvat credit of Rs.40,832/-, ld. Advocate concedes that the said amount includes an excess credit of Rs.217/-, which the appellants are willing to reverse. The correct amount of modvat credit to which the

appellants are entitled, on the strength of the invoices mentioned at Sr. Nos. 3 and 5 of the Annexure to the show-cause notice, is Rs.40,615/-. The lower authorities disallowed this credit on the ground that the assessee had availed an extra credit of Rs.217/-. Ld. Advocate has relied on certain decisions of the Tribunal in support of his submission that the assessee was entitled to modvat credit on the correct quantity of the inputs received by them under cover of the dealer's invoices. He prays for setting aside the impugned order and allowing this appeal.

4. Ld. JDR Sh. S.C. Pushkarna, reiterates the findings of the authorities.

5. I have carefully examined the above submissions. As regards the modvat credit of Rs.40,615/-, the department has no case that the appellants are not entitled to the same. They disallowed the said credit on the ground that an extra credit of Rs.217/- was also availed by them on the strength of the relevant dealer's invoices. The action of the departmental authorities appears to be penal in nature. There can be no penalisation by way of demand of duty which is not due to the Revenue. It can be done, if at all warranted, only by way of imposition of penalty in accordance with penal provisions of law. The assessee is admittedly entitled to the credit of Rs.40,615/-. They have agreed to reverse the

extra credit of Rs.217/-. Therefore, the dispute with regard to the credit of Rs.40,832/- in this appeal will stand settled on re-credit of an amount of Rs.40,615/- being taken by the appellants in their RG 23A Part-II register. As regards the issue relating to the modvat credit of Rs.23,806/-, the lower appellate authority must certainly consider the additional evidence adduced by the appellants and decide the issue afresh in accordance with law and the principles of natural justice. The impugned order is set aside and the appeal is allowed by way of remand, directing ld. Commissioner (Appeals) to consider the issue relating to the modvat credit of Rs.23,806/- on its merits after affording a reasonable opportunity of personal hearing to the party. The appellants are allowed to take re-credit of an amount of Rs.40,615/- in their RG 23A Part-II register as above.

(P.G. CHACKO)
MEMBER (JUDICIAL)

RM