

GRAM : CEGCANAL

REGISTERED/A.D

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

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

E/S/ 1955/2000 - NB (SM) BENCH NB (SM)

Appeal No. E/ 3446/00 - NB (SM)

Dated : 16/3/2001

CEGAT
NEW DELHI
To,

M/S MALT CO (India) Ltd.,
Khandsa Road
Gurgaon, (Haryana)

In the matter of :

M/S MALT CO (India) Ltd.,

Appellant

vs.

CCE New Delhi

Respondent

stay order NO. S/ 129/2001-NB (SM)

I am directed to transmit herewith a certified copy of Final Order No. A/ 359/2001-NB (SM)
Dated : 1-3-2001 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

1. CCE New Delhi

NB (SM)

2. CCE/EC/(Appeal) New Delhi

3. Chief Commissioner of Central Excise / Customs. New Delhi

4. Adv. / Consult. Shri M.P. Devnath, Adv.,
B-4/158, Sardarjung Enclave
(Basement) New Delhi - 29.

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 Cur - eus Publication.

16. M/s Law Infotech Resources (P) Ltd.,

Asstt. Registrar

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

E/S/1955/2000/NB-SM in
APPEAL NO. E/3446/2000-NB(SM) 19 (.....)

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

724/DE/DLH/2000 DATED 30.08.2000.

PASSED BY..... COMMISSIONER OF CENTRAL

..... EXCISE (APPEALS), NEW DELHI.

Date of decision..... 01.02.2001.

^{MALT}
M/s ~~KALT~~ Co. (INDIA) LIMITED, GURGAON - APPELLANT (S)

Represented by Sh./Smt. ~~SM~~ M.P. DEVNATH,

..... ADVOCATE.

VERSUS

CCE, NEW DELHI - RESPONDENT (S)

Represented by Sh./Smt. ~~SM~~ A.K. JAIN,

..... SDR.

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

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To be referred to the Reporter or not?
FINAL ORDER NO. A/359/01/MB GPM

Per..... P.G.CHACKO :

STAY ORDER NOS 129 / 01 / MB GPM

The appellants were job workers at the relevant time. They used to manufacture Barley Malt and Malt extract on job work basis out of unprocessed malt extract supplied by principal manufacturers namely M/s

Smithkline Beecham Consumer Healthcare Ltd. The inputs for the manufacture of the said products included barrels (containers) supplied by the principal manufacturers. While clearing the above products to the principal manufacturers, the appellants paid Central Excise duty by availing Modvat credit on the barrels. The Department alleged that the cost of barrels were not included in the assessable value of the final products cleared by them to the principal manufacturers and, therefore, directed the party to reverse the Modvat credit availed on barrels amounting to Rs.1,34,430.00. They also proposed to impose penalty. The appellants contested the Department's proposed action. The adjudicating authority disallowed the Modvat credit taken on barrels to the aforesaid extent for the relevant period [1994-95] and imposed penalty of Rs.15,000/-. The party preferred appeal to the Commissioner (Appeals). A personal hearing was fixed. The party did not attend. The lower appellate authority examined the records and found the Assistant Commissioner's Order to be on sound ground based on the provisions of law and further found that the assesseees were not entitled to Modvat credit on barrels as they had not included the cost of barrels (being packing\$of durable and returnable nature) in the assessable value of the aforesaid finished products in terms of Section 4(4)(d)(i) of the Valuation Rules. Hence the present appeal before the Tribunal.

2. I have heard both sides in the appeal as well as ^{the} present application. Since the matter is fit for a

final disposal at this stage, I allow the application and proceed to dispose of the appeal itself finally.

3. Ld. Advocate Shri M.P.Devnath for the appellants submits that, due to circumstances beyond control, the appellants were not able to attend to the hearing fixed by the ld. Commissioner (Appeals). Otherwise, it would have been possible for them to adduce sufficient evidence before that authority to establish that the price of barrels was, in fact, included in the assessable value of the processed Malt cleared by the appellants to the Smithkline Beecham Consumer Healthcare Ltd. Ld. Advocate, in this connection, submits that the Chartered Accountant's certificate covering the relevant period would conclusively prove such inclusion of the price of barrels in the assessable value. Given an opportunity, the appellants would be able to establish the said position and prove the assessee's entitlement to avail Modvat credit on barrels. He, therefore, prays for a remand of the matter to the lower appellate authority to enable that authority to decide the issue afresh in accordance with law and principles of natural justice and after considering the additional evidence which the appellants propose to adduce before that authority.

4. Ld. SDR Shri A.K.Jain submits that, on a previous occasion, the Bench had specifically directed the appellants to submit the price declarations supported by Chartered Accountant's certificates so as to establish a prima facie case for the purpose of the stay application.

But such price declarations were not brought on record by the party. He, therefore, prays for rejecting the stay application for want of prima facie case and then proceed to dispose of the appeal. On the merits of the case, ld. SDR has forcefully justified the findings of the lower authorities.

5. I have carefully considered the submissions. I note that, for some reason or the other, the assessee could not attend the hearing of the appeal before the Commissioner (Appeals). It is, further, noted that the lower appellate authority rejected the appellants' plea of having included the price of barrels in the assessable value, for want of evidence. The main submission of ld. Advocate today is that, given an opportunity, the appellants will be able to satisfy the lower appellate authority by bringing on record before that authority all the necessary evidence to prove that they had actually included barrel cost in the assessable value. In the light of these facts and circumstances, I am of the view that, in the interest of natural justice, an opportunity should be given to the appellants by the lower appellate authority for proving their case. I have noted the ld. SDR's submission that the Bench had directed the appellants to file price declarations supported by Chartered Accountant's certificates for establishing a prima facie case for the purpose of stay application. As I am presently disposing of the appeal itself, I think the directions of the Bench issued in the context of hearing on the stay applications will not be relevant at present.

6. Therefore, I set aside the impugned order and allow this appeal by way of remand, directing the ld. Commissioner (Appeals) to decide the issue afresh after affording a reasonable opportunity to the appellants to adduce evidence as well as to be personally heard. The Commissioner (Appeals) will be at liberty to enforce due compliance with 35F of the Central Excise Act before hearing. Needless to say that the Commissioner (Appeals) shall carefully examine any evidence which the appellants may adduce in support of their case.

[Dictated and pronounced in the open Court].

(P.G.CHACKO)
MEMBER (JUDICIAL)

01.03.01.

amk.