

GRAM : 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/1917/95-NB (SM)

Dated : 16/3/2001

CEGAT
NEW DELHI
To,

M/s E.C.E. ~~Indore~~ Industries Ltd.,
Transformers Div., Delhi Road,
Sonepat - 131 001 (Haryana)

In the matter of :

M/s E.C.E. Indore

Appellant

vs.

C.C.E. New Delhi

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/361/2001-NB (SM)
Dated : 19-3-2001 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

NB (SM)

1. CCE New Delhi
2. CCE/EE (Appeal) NBW Delhi
3. Chief Commissioner of Central Excise / Customs. New Delhi
4. Adv. / Consult. Shri Shekhar Vyas 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 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. ⁹⁵E/1917/NB(SM) OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

152/CE/DLH/95 dt. 19.9.95.....DATED.....

PASSED BY Commissioner of Central
Excise(Appeals) New Delhi

Date of decision.....20.11.2000.....

industries
M/s E.C.E. Indore *Utd.*.....APPELLANT (S)

Represented by Sh./Smt. Shekher Vyas, Adv.....

VERSUS

C.C.E. New Delhi.....RESPONDENT (S)

Represented by Sh./Smt. K. Panchat Charam, JDR.....

CORAM: SHRI K.K. BHATIA, MEMBER(T)

FINAL To be referred to the Reporter or not?
ORDER NO. A/361/01/NB(S/M)
dt: 12.3.2001

Per...SHRI K.K. BHATIA, MEMBER(T)...

The brief facts of the case are that appellants M/s ECE Industries Ltd., Sonapat, manufacture of Electrical Transformers and components falling under sub heading No. 8504. They are also availing modvat credit facility. They received back defective electrical transformers in their factory for repairs within and beyond warrantee/gurantee period under Rule 173 H. During the checking of form-V register maintained under Rule 173 H, it was observed that the party was using modvat credit availed on the inputs in

the repair of such defective transformers received by them for repairs. These transformers after repairs were being cleared at nil rate of duty. The party was neither reversing the modvat credit taken on such inputs used in the repair nor the duty was being paid on these inputs. Accordingly the proceedings were initiated against them and they were issued show cause notice dated 4.4.94, calling upon them to show cause why the duty amounting to Rs. 63,007.41 on inputs used in such defective transformers received for repairs during the period from 5.10.93 to 7.1.94 should not be recovered from them under Rule 57-I read with Section 11 A of the Central Excise Act 1944.

2. The above proceedings culminated in the Additional Collector of Central Excise, Gurgaon passing an order dated 31.10.94 in which she ordered for recovery of the aforesaid amount from the appellants.

3. The party filed an appeal, but the same stood rejected by Commissioner (Appeals), New Delhi vide his order dated 20.9.95.

4. The present appeal is against the above order of Commissioner (Appeals). I have heard Shri Shekher Vyas, Adv. for the appellants and Shri Panchat Charam, JDR for the respondents. The Ld. Advocate for the appellants very fairly submitted that the issue stands already settled against them vide Final Order No. A/458/99-NB(DB) dated 4.3.99 passed by the CEGAT, a copy of which^{is} also filed. In the cited proceedings, the duty was demanded from the present appellants for

the period from 1.6.89 to 20.11.92 on the same facts. In that case a sum of Rs. 15,93,833/- was ordered to be recovered from them by the Original Authority and a penalty of Rs. 4,00,000/- was also imposed on them. The Commissioner(Appeals) upheld the order of the original authority and second appeal of the party before the CEGAT also stood rejected vide the cited order dated 4.3.99.

The operative portion of this order is as follows:

"7. We have heard the rival submissions. We find that in the instant case the transformers were coming to the factory for repairs within warranty or beyond warranty period. They were being cleared without payment of duty. In the repair of these transformers, inputs on which modvat credit was taken were being used. The department alleged that since on the inputs modvat credit was taken, therefore, at the time of clearance of repaired transformers an equivalent amount of duty on the inputs used in the repairs of transformers should have been reversed as no duty was paid on the transformers and the activity of repair did not amount to manufacture. We note that there is a Form-V register meant for the purpose. Entries in Form-V were kept blank. Form-V register did not indicate that the transformer after repair was being cleared without payment of duty nor did it indicate the quantum of inputs and modvat credit thereon used in the repair of transformer. The appellants contended that they had submitted part-II price list; that assessable value shown was much higher than the actual value of the transformers in as much as the value charged was

inclusive of warranty repair etc. However, though this contention was made but no evidence was brought on record to prove that higher value was charged or to what extent the higher value was charged and whether the higher value equivalent or more or less amount of duty taken as modvat credit on the inputs than the used in the repairs of the transformers. Thus the contention of the appellants that the price declared in part-II of the price list included the future repairs during the warranty period, is not sustainable in law. Thus the appellants fail on merits of the case."

"8. Ld. Counsel submits that the demand is hit by limitation. In the instant case the SCN was issued 18 months after last date of demand. We note that the goods received under provisions of Rule 173H are required to be entered among other records in Form-V. Categorical findings are there in the order that the relevant entries in Form-V register were left blank. Though different SCNs were being issued from time to time but these SCNs are not relevant for the present enquiry. Thus there was suppression and mis-statement. There is force in the contention of the Ld.SDR that there was intent to evade payment of duty. Therefore plea of the appellant on limitation failed."

"9. Having regard to the above discussions and findings, the impugned order is upheld and the appeal is rejected. (Operative part of this order was already pronounced in the court)."

5. While not disputing the above findings, the Ld. Counsel for the appellants would refer to an earlier Final Order A-642/97-NB dated 10.4.97 of CEGAT passed by a Ld.single member. Ld. Counsel for appellants is pleading for the relief as provided to the appellants

in paras 10 and 11 of this order extracted below:

"10. In so far as the computation of the duty on the coils is concerned, we find that there is no evidence placed before us as to whether the classification list was approved or price list was approved and what would be the approved price. We consider it a fit case for remand on this issue alone. The Additional Commissioner concerned is directed to examine only this aspect and pass the appropriate order after observing the principles of natural justice. Needless to say that the counsel for the appellants undertakes to deposit the differential duty, if any, arising out of the approval of the price list, etc."

"11. The impugned order is modified to the extent stated above and the appeal is disposed of accordingly."

6. I have carefully considered the submissions made before me. It is observed that there is no relief given to the party in the order dated 4.3.99, by following the earlier decision dated 10.4.97. It is further observed that question of computation of duty on the coils and the consequent relief is neither a point raised by appellants before any of the lower authorities at any stage of the present proceedings nor is it considered by them. It therefore, cannot be allowed to be raised at the second appeal stage as the same is not relevant to the issue for consideration.

7. In the result the appeal fails and the same is rejected by upholding the order passed by the lower authority.

(K.K. BHATIA)
MEMBER (T)