

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

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

Appeal No. E/ 557/99-NB (SM) BENCH NB (SM)Dated : 16/3/2001.CEGAT
NEW DELHI
To,CCE, Chandigarh.

In the matter of :

CCE, Chandigarh.

Appellant

vs.

M/s Groz Backrest Asia Ltd.

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/365/2001-NB SM
 Dated : 2/3/2001 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 :

BU
 Asstt. Registrar
NB SM

1. M/s Groz Backrest Asia Ltd.
123-34 Inall. Area,
Phase-I, Chandigarh.
2. CCE / CC / (Appeal) Chandigarh.
3. Chief Commissioner of Central Excise / Customs. New Delhi
4. Adv. / Consult. Shri, K.K. Anand Ariv.
o/o M/s Groz Backrest Asia Ltd.,
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.
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BU
 Asstt. Registrar

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

APPEAL NO. E/557/99-NB(S) OF 19 (.....)

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

1031/CE/CHD/98 DATED 1.12.98

PASSED BY Commissioner (Appeals), Central Excise,
Chandigarh.

Date of decision 2.3.2001

CCE, Chandigarh APPELLANT (S)

Represented by Sh./Smt ~~xxxx~~ Swatantra Kumar, JDR

VERSUS

M/s. Groz Backert Asia Ltd. RESPONDENT (S)

Represented by Sh./Smt ~~xxxx~~ K.K. Anand, Advocate

CORAM :

SHRI P.G. CHACKO, MEMBER (JUDICIAL)

To be referred to the Reporter or not?
ORDER NO. A/365/01/NB(S/m)

FINAL

Per P.G. Chacko :

This appeal by the Revenue is against the order of the Commissioner (Appeals) allowing modvat credit on lubricating oils as inputs and plastic strapping machine as capital goods. In the appeal,

the Revenue has not challenged the finding of fact that Premium MG and Cutting Oil/Halpasol/Ensis N Oil are lubricating oils used by the respondents for the purpose of lubrication of their capital goods. But they have a definite case that these oils cannot be treated as eligible inputs for modvat credit under Rule 57A of the Central Excise Rules. In respect of Cutting Oil/Halpasol/Ensis N Oil (different brand names of the same product), the Revenue has raised a further ground that the Tariff Heading for the product was not correctly declared by the party in the declaration filed under Rule 57G of the Rules. In respect of plastic strapping machine, the Revenue has contended that the said machine did not come within the definition of capital goods under Rule 57Q of the Rules during the material period (February-March, 1996) as allegedly the machine was not used for bringing about any change or for producing or processing of goods during the course of manufacture of the final products in the assessee's factory. The appellant has further contended that the apex Court's decision in the case of Eastend Paper Industries Ltd. [1989 (43) ELT 201 (SC)], relied on by the lower appellate authority, is not applicable to capital goods like plastic strapping machine.

2. I have heard ld. JDR Sh. Swatantra Kumar who has reiterated the grounds of the appeal. I have also heard ld. Advocate Sh. K.K. Anand for the

respondents.

3. Id. Counsel submits that it has since been decided by a larger bench of this Tribunal that lubricating oils were eligible inputs for modvat credit under Rule 57A for periods prior to 1.3.97. The period involved in the present case is prior to 1.3.97. Therefore, the challenge of the Revenue against the decision of the lower appellate authority holding the lubricating oils to be eligible inputs for modvat credit cannot be sustained in view of the larger bench decision in the case of Commissioner Vs. Modi Rubber Ltd. [2000 (38) RLT 718]. As regards the appellant's plea of erroneous declaration in relation to Cutting Oil/Halpasol/Ensis N Oil, Id. Counsel submits that the change of Tariff Heading was satisfactorily explained by the party before the adjudicating authority, but such explanation was not accepted. The lower appellate authority accepted the explanation. Id. Counsel submits that the Tariff Heading was mentioned as 3403 in the modvat declaration on account of change of classification. As regards the Revenue's challenge in relation to plastic strapping machine, Id. Advocate submits that the decision of the Supreme Court in Eastend Paper Industries is squarely applicable inasmuch it was held in that case that anything required in the manufacturing process so as to make the final product marketable must be considered to have been used in the process of manufacture. It is the further contention of Counsel that the plastic

strapping machine was used in the packing of final products (hosiery needles) and, since packing is recognised to be a part of the manufacturing process, the machine was definitely used in the manufacturing process by the assessees and, therefore, the plastic strapping machine was capital goods eligible for modvat credit under Rule 57Q. Ld. Advocate has, therefore, prayed for upholding the impugned order.

4. I have carefully examined the submissions. Lubricating oils were eligible inputs for modvat credit under Rule 57A during the period of dispute as held by the Tribunal's larger bench in the case of Modi Rubber Ltd. (supra). The grounds raised by the Revenue in relation to eligibility of the oils for inputs-credit are no longer sustainable. As regards the plea of erroneous declaration, I note that the Tariff Heading was mentioned as 34.03 instead of 27.10 in the modvat declaration on account of change of classification of the goods. The assessees' explanation to this effect was accepted by the lower appellate authority. But since the Revenue has not challenged such acceptance in the present appeal, the ground raised on that count also collapses. As regards plastic strapping machine, the same was used in the packing of the finished products. Such packing was a part of the manufacturing process. These facts are undisputed. Therefore, the Revenue cannot be heard to say that the plastic strapping machine was not used in the manufacture of the final products. The

packing was definitely a process which was performed for rendering the final products marketable. Therefore, it cannot be validly contended by the Revenue that the Supreme Court's decision in Eastend paper Industries is not applicable to the issue. The appellant's ground of challenge in relation to the plastic strapping machine cannot be sustained.

5. In view of the above findings, the Revenue's appeal has no merits and the same is dismissed.

3 [Dictated & pronounced in open court] 3

(P.G. CHACKO)
MEMBER (JUDICIAL)

RM