

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/2123/00-NB(SM) BENCH NB(SM)

Dated : 20/3/2001

CEGAT
NEW DELHI
To,

CCE Kanpur

In the matter of :

CCE Kanpur

Appellant

vs.

M/s Dayal Anand Sand Coating Co.

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/375/2001-NB(S)
Dated : 7-3-2001 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 : M/s Dayal Anand Sand
Coating Co.
Agra (U.P.)

BC
Asstt. Registrar
NB(SM)

- 1.
2. CCE / ~~CC~~ (Appeal) Allahabad
3. Chief Commissioner of Central Excise / Customs. Kanpur
4. Adv. / Consult.

→ None →

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-ens Publication.
16. M/s Law Infotech Resources (P) Ltd.

BC
Asstt. Registrar

CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,
NEW DELHI.

E/APPEAL NO. 2123/2000-NB(S)

(Arising out of Order-in-Appeal No. 330-341-CE/KNP-1/99 dated the 31st Dec., 1999 passed by the Commissioner of Central Excise (Appeals), Allahabad).

C.C.E., Kanur.

Appellant
(Sh. M.D. Singh, SDR)

vs

M/s. Dayal Anand Sand
Coating Co.

Respondent
(None)

FINAL ORDER NO. A/375/01/NB
(Dated the 7th March, 2001) (CS/m)

PER S.S. KANG :

When the case was called, none appeared on behalf of the respondents, in spite of notice. The notice issued to the respondents was received back unserved. Therefore, the appeal is being taken up for disposal in the absence of the respondents.

Revenue filed this appeal against the order passed by the Commissioner (Appeals). In the impugned order, Commissioner (Appeals) held that the requirements under notification nos. 32/94 and 33/94 both dated 4.7.94 are merely procedural requirement. By holding so, the benefit of MODVAT Credit was allowed to the respondents.

Heard ld. D.R., who relied upon the Larger Bench of the Tribunal in the case of Balmer Lawrie & Co. Ltd. & Ors. vs C.C.E., Kanpur & Ors. reported in 2000 (36) RLT 666.

The Tribunal in the case of Balmer Lawrie &

Co. Ltd. (supra), relied upon by the revenue, held that the provisions of notifications issued under the MODVAT Scheme are mandatory in nature and the conditions under the notifications shall be strictly followed. Another Larger Bench of the Tribunal in the case of C.C.E. vs Avis Electronics Pvt. Ltd. reported in 2000 (117) ELT 571 held that when a particular thing is directed to be performed in a manner prescribed under rules, it should be performed in that manner itself and not otherwise. In view of the above decisions of the Tribunal, the observation of the Commissioner, in the impugned order, that requirements under notification nos. 32/94 and 33/95 are merely procedural requirements, is set aside and the matter is remanded to the adjudicating authority for de novo adjudication. The adjudicating authority will decide the matter afresh after affording an opportunity of personal hearing to the respondents. the appeal is disposed of by way of remand. (Dictated in Court).

(S.S. KANG)
MEMBER (JUDICIAL)

Dt. 07.03.2001)
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