

Dated: 09/11/2016

Asstt. Registrar

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SINGAPORE TELEGRAPH COMPANY
CUSTOMERS' CREDIT ADVISORY BOARD
PUBLISHED WEEKLY
28, RAFFLES PLACE, SINGAPORE 05

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.E/344/2008-EX[DB]

(Arising out of Order-in-Appeal No. 195-CE/MRT-I/2007 dated 30/10/2007 passed by Commissioner of Central Excise & Customs (Appeals), Meerut)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
and
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Commissioner of Central Excise, Meerut-I

Appellant

Vs.

M/s Modi Rubber Ltd.

Respondent

Appearance:

Shri Rajeev Ranjan, Joint Commissioner (AR),
Shri Ajay Aggarwal, Advocate,

for Appellant
for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 27/10/2016
Date of Decision : 27/10/2016

FINAL ORDER NO.: 3105/1/2016.....

Per: Anil G. Shakkarwar

The present appeal is filed by the revenue against Order-in-Appeal No. 195-CE/MRT-1/2007 dated 30/10/2007 passed by Commissioner of Central Excise & Customs (Appeals), Meerut.

2. The brief facts of the case are that respondent were issued with a show cause notice dated 28.10.1980 for demand of Central Excise duty amounting to Rs.77,83,663.31/- on 75000 tyres & tubes cleared availing benefit of notification No.142/78 dated 14.07.1978. The respondent vide their letter dated 27.03.2003 informed the jurisdictional Central Excise authorities that Hon'ble Delhi High Court vide its ruling dated 14.08.2002 in CWP No.1816/83 scraped the said show cause notice dated 28.10.1980. In the meantime on 05.12.1986 respondent deposited Rs.77,40,123.52/- through TR-6 Challan No.194. Respondent vide their said letter dated 27.03.2003 requested for refund of the amount of Rs.77,40,123.52/-. The Original Authority through Order-in-Original No.101/06 dated 14.07.2006 rejected the said refund on two grounds, 1st ground was that respondent could not produce documentary evidences to the effect that the amount paid through the said TR-6 Challan was not used to take credit in their

account current which is also called PLA and 2nd ground was that respondent could not establish that the incidence of the duty paid on 05.12.1986 was not passed on to the customers. The respondent preferred appeal before Commissioner (Appeals). Learned Commissioner (Appeals) through Order-in-Appeal No. 195-CE/MRT-I/2007 dated 30/10/2007 held that the original authority has not adduced any evidence to show that the appellants have taken credit on amount paid through the said TR-6 Challan in their PLA. Therefore, the said ground was found by learned Commissioner (Appeals) to be unsustainable. Further, the learned Commissioner (Appeals) held that the goods were cleared at reduce rate of duty and therefore, it was not possible to pass on the incidence of duty on the customers. In view of such findings learned Commissioner (Appeals) allowed the appeal. Aggrieved by said Order-in-Appeal revenue has filed this appeal before this Tribunal.

3. The only ground of appeal filed by the revenue is that the respondent could not prove through their Balance Sheet that the duty incidence was not passed on the customers.

4. Heard the learned A.R. for revenue who was taken us through the grounds of appeal.

5. Heard the learned Counsel for respondent who has argued that the amount sought for refund was paid during

the pendency of their writ before the Hon'ble Delhi High Court wherein show cause notice was challenged. Therefore, such payment was not in the form of duty and it was only pre-deposit and therefore, there was no need to apply the principles of unjust-enrichment.

6. Having considered the rival contentions, we find that the amount sought for refund was pre-deposit of revenue paid pending disposal of respondents' petition before Hon'ble High Court of Delhi. The said deposit was not paid as duty at the time of clearance. The said amount was also not paid as duty determined payable by them through the process of adjudication. Therefore, the principles of unjust-enrichment are not applicable to such deposit. We further observed that the amount was credited to exchequer in 1986 and provisions for unjust-enrichment were enacted in 1991 without any retrospective effect. As a result, the subject deposit was not admissible to be brought under the principles of unjust-enrichment. In view of these observations, we dismiss the appeal filed by the revenue. The respondents shall be admissible for consequential relief, if any, as per law.

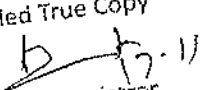
(Dictated in Court)


(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)


(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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