CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH AT CHANDIGARH

COURT NO.I

Appeal No.C/61573 to 61577/2018-Cus (DB)

(Arising out of OIA No.LUD-CUS-001-APP-1304-1308-18 dt.21.06.2018 passed by the Commissioner of Central Excise Central Revenue Building, Plot No.19, Sector 17C, Chandigarh)

Monte Carlo Fashion Limited **Appellant**
(G.T.Road, Sherpur, Ludhiana)

M/s.Oswal Woolen Mills Limited
(G.T.Road, Sherpur, Ludhiana)

Vs.

CC, Ludhiana **Respondent**
(Revenue Building, Plot No.19, Sector 17C, Chandigarh)

Present for the Appellant: Shri Surjit Bhadu, Advocate
Present for the Respondent: Shri M.S.Dhindsa, AR

Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr.C.L.Mahar, Member (Technical)

FINAL ORDER No.60376-60380/2019

Date of hearing/Decision: 02.04.2019

PER.AHSOK JINDAL

The appellants are in appeal against the impugned orders rejecting their refund claims as the appellants have failed to pass the bar of unjust enrichment.

2. The facts of the case are that the appellants are engaged in the import of polyester blankets/polyester mink blankets made out of 100% polyester spun yarn. During the period May 2013 to July, 2015, these imports were made by the appellant from China. The

goods were assessed to basic excise duty and CVD leviable under Section 3 of Central Excise Tariff Act, 1975 along with other duties payable under the Act. The appellant was of the view that the goods imported by them does not attract Countervailing Duty (CVD) leviable under Section 3 of the Tariff Act because the excise duty on the like articles if manufactured in India is exempted by Notification No.30/2004-CE dt.9.7.2004. But for clearance of the goods, the appellant paid CVD under protest and later on contested the same before this Tribunal. This Tribunal held that the appellants were not required to pay CVD. Consequent to the order of this Tribunal, the appellants have filed refund claims of CVD paid by them for clearances of the imported goods. As during the period in question, the appellant debited the CVD in the Profit and Loss Account and in the books of accounts not shown recoverable from the department, therefore, the refund claims were rejected holding that the appellants have not passed the bar of unjust enrichment. Therefore, the appellants are in appeal before us.

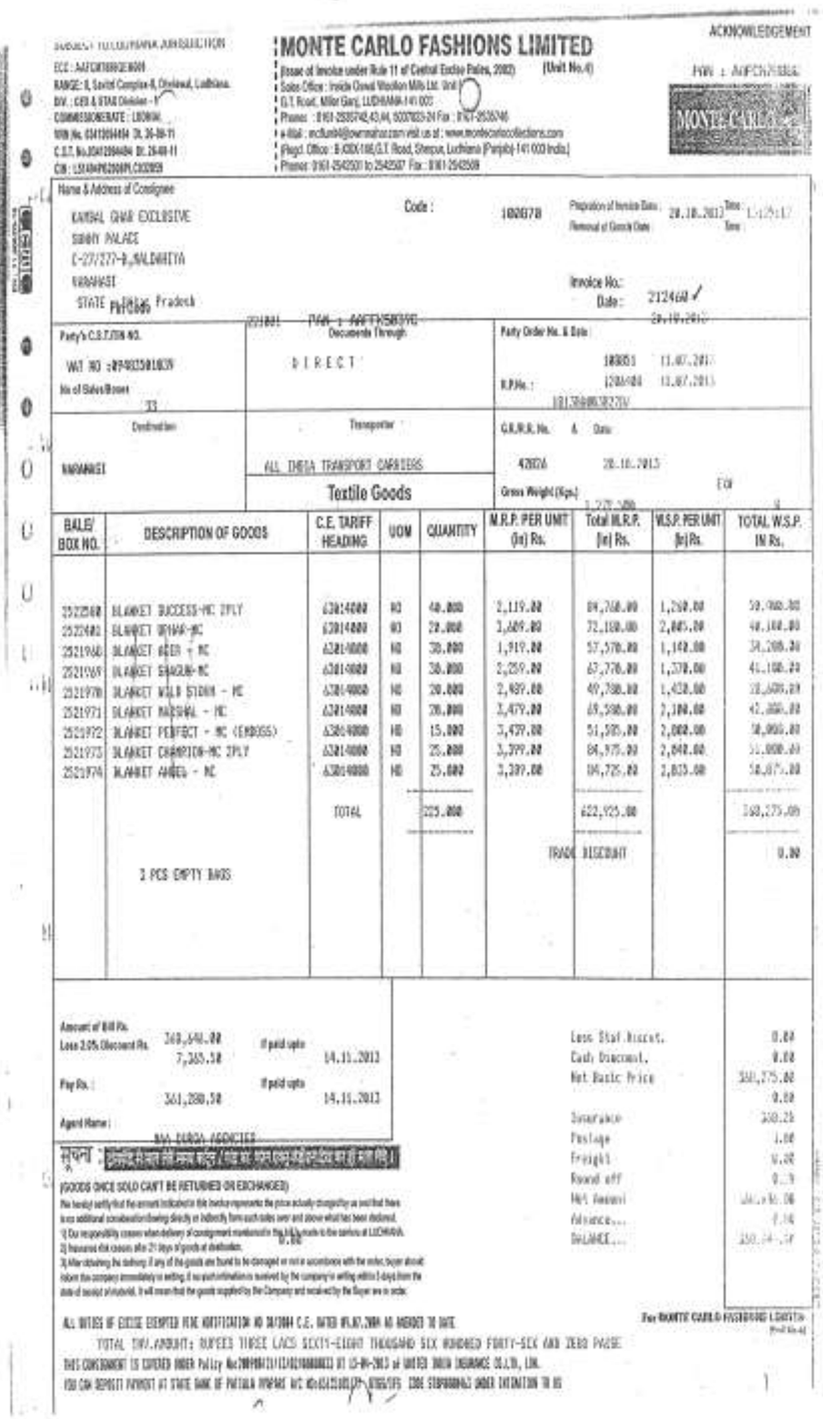
3. Ld. Counsel for the appellant submits that the appellants have paid duty under protest and a protest letter has been filed in the month of May, 2013 relying on various judicial pronouncements that they are not liable to pay duty but the Revenue forced to pay the same. He further submits that the appellant has not recovered duty on account of CVD from the buyers. Moreover, in the invoice itself shown that all duties of excise exempted vide Notification No.30/2004-CE dt.9.7.2004, therefore, the question of recovery of duty from the buyers does not arise. The only reason to hold that the

appellant has not passed the bar unjust enrichment is the amount of duty paid by the appellant has been debited in the Profit and Loss Account as expenditure and not shown in the balance sheet as dues recoverable from the department. That cannot be the reason that the appellant has not passed the bar of unjust enrichment. In fact, they have got favourable order from this Tribunal that the amount is recoverable from the department. In that circumstance, they have passed the bar of unjust enrichment and entitled to claim refund. To support his contention, he has relied upon the decision of this Tribunal in the case of Yamuna Gases & Chemicals Ltd.-2017 (347) ELT 291 (Tri.-Chd.) and CCE, Pune vs. Sandvik Asia Ltd.-2015 (323) ELT 431 (Bom). Therefore, prayed that the appellant has passed the bar of unjust enrichment.

4. On the other hand, the Ld.AR supported the impugned orders.

5. Heard the parties and considered the submissions.

6. On careful consideration of the submissions made by both sides, we find it is a fact on record that the appellants have paid CVD and under protest and the letter of protest has not denied by the Revenue. Moreover, the invoice also confirms that they have not charged any CVD from the buyer. Moreover, it is also mentioned in the invoice itself that all duties of excise exempted vide Notification No.30/2004-CE dt.9.7.2004 and invoice is extracted below:-



MONTE CARLO FASHIONS LIMITED

ACKNOWLEDGEMENT

Name & Address of Consignee

KANSAL GHAR EXCLUSIVE

SUNNY PALACE

VARANASI

Invoice No.: 212460

Documents Through: DIRECT

Destination: VARANASI

Transporter: ALL INDIA TRANSPORT CARRIERS

G.R./R.R. No. & Date: 42026 28.10.2013

Textile Goods

BALE/ BOX NO.	DESCRIPTION OF GOODS	C.E. TARIFF HEADING	UOM	QUANTITY	M.R.P. PER UNIT (in) Rs.	Total M.R.P. (in) Rs.	W.S.P. PER UNIT (in) Rs.	TOTAL W.S.P. IN Rs.
2522540	BLANKET SUCCESS-MC 2PLY	63014000	NO	40.000	2,119.00	84,760.00	1,260.00	50,400.00
2522402	BLANKET [illegible]-MC	63014000	NO	20.000	3,609.00	72,180.00	2,005.00	40,100.00
2521968	BLANKET ACER - MC	63014000	NO	30.000	1,919.00	57,570.00	1,142.00	34,260.00
2521969	BLANKET SHAGUN-MC	63014000	NO	30.000	2,259.00	67,770.00	1,370.00	41,100.00
2521970	BLANKET WILD STORM - MC	63014000	NO	20.000	2,489.00	49,780.00	1,430.00	28,600.00
2521971	BLANKET MARSHAL - MC	63014000	NO	20.000	3,479.00	69,580.00	2,100.00	42,000.00
2521972	BLANKET PERFECT - MC (EMBOSS)	63014000	NO	15.000	3,439.00	51,585.00	2,000.00	30,000.00
2521973	BLANKET CHAMPION-MC 2PLY	63014000	NO	25.000	3,399.00	84,975.00	2,040.00	51,000.00
2521974	BLANKET ANGEL - MC	63014000	NO	25.000	3,389.00	84,725.00	2,035.00	50,875.00
		TOTAL		225.000		622,925.00		368,375.00
	2 PCS EMPTY BAGS				TRADE DISCOUNT			0.00

Amount of Bill Rs. 368,646.00

Less 2.0% Discount Rs. 7,365.50 If paid upto 14.11.2013

Pay Rs.: 361,280.50 If paid upto 14.11.2013

(GOODS ONCE SOLD CAN'T BE RETURNED OR EXCHANGED)

TOTAL INV. AMOUNT: RUPEES THREE LACS SIXTY-EIGHT THOUSAND SIX HUNDRED FORTY-SIX AND ZERO PAISE

For MONTE CARLO FASHIONS LIMITED

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7. We further take note of the fact that the chartered accountant also certifies that the amount of CVD has not recovered from the customers and to that effect, the appellant has produced a certificate dt.25.03.2017 on record.

8. We further take note of the fact that the Commissioner (Appeals) in the impugned order has also confirmed that the CVD has

been paid and the same was recoverable from the department when the appellant got a favourable order from this Tribunal.

9. We also take note of the fact that in the case of Yamuna Gases & Chemicals Ltd (supra), this Tribunal has observed that as the invoice itself clearly shows that the appellant has not recovered duty from the buyers and the buyers have not paid duty, therefore, the appellant has passed the bar of unjust enrichment.

10. Further, we take note of the fact that the decision of Hon'ble Bombay High Court in the case of Sandvik Asia Ltd. (supra), wherein the Hon'ble Bombay High Court has observed as under:-

> "4**.** On perusal of the impugned order and considering the arguments of both learned counsel, we are unable to agree with Mr. Kantharia. The Tribunal was not concerned with the treatment given to the amount and as deposited in the Assessee's profit and loss account. It is immaterial and irrelevant for the Tribunal and equally for us as to what the Assessee terms this amount in his Books of Account. Even if it is shown on the 'expense side' that does not mean that the presumption that the burden has been passed to the consumer can be raised."

11. Admittedly at the time of clearance of the imported goods, the appellants have paid CVD under protest as the said duty was not recovered from the customers evidencing invoiced issued by the appellants. Therefore, we hold that the appellants have passed the bar of unjust enrichment. Merely, the appellants have made debit entry in the Profit and Loss Account as expenditure and not shown in the balance sheet as dues recoverable from the department cannot be the reason to deny the refund claim for the reason that the appellants have not passed the bar unjust enrichment as held by the

Hon'ble Bombay High Court in the case of Sandvik Asia Limited (supra).

12. Further, we find that the certificate issued by the chartered accountant certifying that the appellants have not passed the duty incidence to the customers. Therefore, we hold that the appellants and have passed the bar of unjust enrichment and they are entitled to claim refund of CVD paid under protest at the time of clearance of the imported goods.

13. In the result, we set aside the impugned orders and allow appeals with consequential relief, if any.

(dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(C.L.MAHAR)
MEMBER (TECHNICAL)

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