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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/995 /2004 - CU[DB] Date 25/11/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. INDORE

MANIK BAGH PALACE, POST BOX NO. 10,
INDORE 452001 (M.P.)
C.C.E. INDORE Appellant

Vs

M/S MIDLAND PLASTIC LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/613 2008 CU[DB] dated 18.11.08

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent

M/S MIDLAND PLASTIC LTD

SABOO BHAWAN, NAYA BAZAR, GWALIOR(MP)
2. Adv. / Consult MR. L.P. ASTHANA, ADV.
R-163, S.F. G.K. PART-II,
NEW DELHI – 48.

3 S.D.R
4 J.C.D.R.
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 Office Copy
16 Guard file

Assistant Registrar

(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI
COURT NO.III

Customs appeal No. 995 of 2004-Cus

(Arising out of order in appeal No. IND-I/257/2004 dated 28.06.2004 passed by the Commissioner (Appeals-I), Customs & Central Excise, Indore)

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical),
Hon'ble Mr.P.K. Das, Member(Judicial))

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1. Whether Press reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? — No
2. Whether it should 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 Departmental authorities? — Yes

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CCE, Indore — Appellant
Reptd. By Shri Fateh Singh, D.R.

Vs

M/s. Midland Plastics Ltd., — Respondent
Rep. by Ms. Reen Khair, Advocate

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical),
Hon'ble Mr. P.K. Das, Member (Judicial)

Date of Hearing: 18.11.08

Final **Order No.** C/613/08 **/2008**

Per M. Veeraiyan:

This is an appeal by the department against the Order of the Commissioner (Appeals) No. IND-I/257/2004 dated 28.6.2004.

2. Heard both sides.

3. Three issues are involved which have a bearing on the order relating ~~to lead~~ to the order on refund which are as follows.

a) The original authority sanctioned a sum of Rs. 5,39,106/- as refund accepting the claim for eligibility of benefit under Notification No. 4/97 which granted exemption from C.V.D. for granules made from reprocessed waste and scrap material, but ordered credit of the same to the welfare fund holding that they have not crossed the bar of unjust enrichment. On merits of the case, the department has not agitated against the order of the original authority before the Commissioner (Appeals). The party came on appeal before the commissioner (Appeals), who allowed cash refund on the ground that the said amount was shown as receivables in the balance sheet and that they produced a certificate from C.A. to the effect that the imported product have been sold incurring loss and therefore they have crossed the bar of unjust enrichment..

b) A sum of Rs. 1,14,584/- was not sanctioned as refund by the original authority holding that the value enhancement proposed from US$ 325 per M.T. to US$ 375 per M.T. was justified. The Commissioner (Appeals) did not uphold the enhancement and allowed cash refund also holding that bar of unjust enrichment shall not apply on the above mentioned grounds.

c) Another sum of Rs. 2,39,446/- was found paid in excess which has been 'paid' debiting from DEPB scrip dated 30.12.1997. The original authority ordered re-credit in DEPB scrip. The Commissioner (Appeals) has modified/enlarged the scope of the order by permitting cash refund in the event of re-credit being not possible.

4. The Ld DR submits that this case clearly attracts the bar of unjust enrichment and cites the following decision in support of his submission.

a) Elgi Ultra Industries 2002(146)ELT396.

b) Solar Pesticide Pvt Ltd 2000(116)ELT401(SC).

The order of the Commissioner (Appeals) permitting cash refund of DEPB has been challenged relying on the decision of the Tribunal in the case of Milton Laminates Ltd. vs. C.C., Kandla, reported in 2006 (76) RLT 52 (CESTAT-Del.) wherein it has been held that excess debited in DEPB scrip can not be refunded in cash even if the validity of scrip had expired.

5. The Ld Advocate seeks upholding the order of the Commissioner (appeals). The learned Advocate submits that the decision regarding non applicability of unjust enrichment is correct and the decision regarding payment of refund of duty paid by using DEPB scrip is also coreect and relies on the decision of the Tribunal in the case of Polyhose India Pvt. Ltd. vs. CCE, Chennai, reported in 2003 (152) EL 361 (Tri.-Chennai)

where such refund of duty paid by using DEPB scrip has been has been allowed.

6. We have carefully considered the submissions from both sides. The Commissioner (Appeals) relying on the factual details in the balance sheet regarding duty amount shown as receivables and certificate of Chartered Accountant indicating sale at price lower than the landed cost, has come to the conclusion that the cash refund is permissible and said decision cannot be faulted. The judgments relied upon by the learned D.R. are not relevant to the facts of the present case. However, the decision of the Commissioner (Appeals) in permitting cash refund in the event of credit not possible in DEPB scrip is erroneous. We are in agreement with the view expressed in the case of Milton Laminates Ltd. (supra). Therefore, we hold that the appellant is eligible for credit of the excess amount paid only in DEPB credit and no cash refund is permissible.

7. The learned advocate submits that the DEPB scrip has been issued in 1997 and the validity of the same expired long back and the re-credit may not be of any use. We appreciate the difficulties pointed out by the learned advocate. However, this issue may have to be dealt with and sorted out between the appellant and the DGFT authorities as per law.

8. Appeal is disposed of in above terms.

(Dictated & pronounced in the open Court).

(M. VEERAIYAN)
Member (Technical)

(P.K. DAS)
Member(Judicial)

Dated 18th November, 2008
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