

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

Appeal No. E/3798 - 3800 / 2006 -SM[BR]

Date 05/12/2008

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

1. SHREE RAJASTHAN SYNTEX LTD
 2. M/S SHREE RAJASTHAN SYNTEX LTD
 3. M/S SHREE RAJASTHAN TEXCHEM LTD
- SRSL HOUSE, PULLA-BHUVANA MARG, N.H.8,
UDAIPUR, RAJASTHAN.

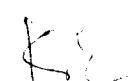
SHREE RAJASTHAN SYNTEX LTD

Appellant

Vs
Respondent

C.C.E. JAIPUR II

I am directed to transmit herewith a certified copy of Final order No. 1590- 1592 / 2008 SM[BR] dated 14.11.2008 passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. JAIPUR II

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.

2. Adv. / Consult

MR.V.LAKSHMI KUMARAN

B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

- 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 Publications (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), Thyagarava Road, T. Nagar, Chennai

- 13 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kuni, New Delhi - 110070

- 14 Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-1

- 15 Office Copy

- 16 Guard file


Assistant Registrar
(SM Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.III**

E/Appeal No. 3798-3800/2006 -SM

(Arising out of order in appeal No. 473-475(HKS)CE/JPR-II/2006 dated 30.8.2006 passed by the Commissioner (Appeals-II), Central Excise & Customs, Jaipur)

For approval and signature:

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

1. Whether Press reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?
3. Whether Their Lordships wish to see the fair copy of the Order ?
4. Whether Order is to be circulated to the Departmental authorities?

M/s. Shree Rajasthan Syntex Ltd.

Appellants
Reptd. By Shri Ravi Raghavan, Advocate

Vs

CCE, Jaipur-II

Respondent
Rep. by Shri A.K. Rastogi, D.R.

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

Date of Hearing: .14.11.08

final **Order No. 1590-1592/2008-SM(BR)**

Per P.K. Das:

Common issue involved in these appeals and, therefore, all are being taken up for disposal.

2. After hearing both sides and on perusal of the records it is seen that the appellants are engaged in the manufacture of man-made yarn classifiable under Chapter 55 of the Schedule to the Central Excise Tariff Act, 1955. There was a demand of duty in respect of freight, insurance and forwarding charges which are to be included in the assessable value. The adjudicating authority confirmed the demand of duty, which was deposited by the appellants. The Commissioner (Appeals) set aside the Adjudication Order. So, the appellant filed refund claim in respect of amount deposited in PLA. Further, the ^{learned} amounts ^{have} ~~party~~ debited from CENVAT account, ^{and} they availed suo moto credit in CENVAT credit. A proceeding was initiated against avilment of suo moto credit in CENVAT account. Adjudicating authority disallowed suo moto credit and confirmed duty and imposed penalty, which was upheld by the Commissioner (Appeals). Hence, the appellant filed this appeal.

3. The learned Advocate on behalf of the appellant submits that the Asst. Commissioner of Central Excise vide order dated 13.12.2004 granted refund and held that the claim is not hit by unjust enrichment. So, the suo moto credit taken by the appellant is also not hit by unjust enrichment.

4. Learned D.R. relied upon the decision of the Larger Bench of the Tribunal in the case of M/s. BDH Industries Ltd. vs. CCE (Appeals), Mumbai-I, reported in 2008-TIOL-1211-CESTAT-MUM-LB. The relevant portion of the said decision is reproduced below:-

“..... We also note that the law relating to refund has been fully analyzed by the Apex Court in the case of Mafatlal Industries (cited supra) which makes it very clear that all types of refund claim be there of excess duty paid or otherwise are to be filed under section 11B and have to pass the proof of not passing on the incidence of duty to others. The recent decisions of Hon'ble Supreme Court in the case of Sahakari Khand Udyog and Others clearly laid down that all refunds have to pass through doctrine of unjust enrichment, even if it is not so expressly provided for in the statute. From these decisions it clearly emerges that all types of refund have to be filed under section 11B of the Central Excise Act and no suo motu refund can be taken unless and until the department is satisfied that the incidence of duty has not been passed on.

13. In view of the above, we answer the reference made to us by holding that all types of refund have to be filed under Central Excise Act and Rules made thereunder and no suo moto credit of the duty paid in excess may be taken by the assessee. The matter is now sent back to the referral bench for passing appropriate orders on the appeal before it.”

5. The Larger Bench of the Tribunal in the case of BDH Industries Ltd. (supra) held that no suo-motu of the duty paid in excess may be taken by the assessee would be allowed unless and until the department is satisfied that the incidence of duty has not been passed on. In the present case, it is seen that part of the amount deposited by the appellants in their PLA account was refunded by the Assistant Commissioner vide Order dated 13.12.2004 with the observation that it is not hit by Principle of Unjust Enrichment. Therefore, the matter is required to examine by the adjudicating authority in respect of admissibility of suo-motu credit in view of the Larger Bench decision. Accordingly, the impugned orders

are set aside and the matters are remanded back to the adjudicating authority to decide afresh after considering the decision of the Larger Bench of the Tribunal in the case BDH Industries (supra) as well as order-in-original dated 13.12.2004 passed by the Asst. Commissioner of Central Excise. All the appeals are allowed by way of remand.

(Operative part pronounced in the open Court).

(P.K. DAS)
Member(Judicial)

Dated 18th November, 2008
RK