

GRAM : CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

BENCH NB(SM)

Appeal No. E/3078/2000-NB(SM)

Dated : 16.1.2001.

CEGAT
NEW DELHI
To,

M/s. J.C.T.Ltd.,

Srikaranpur Road

Sriganganagar, Rajasthan-335 001.

In the matter of :

M/s. JCT Ltd.,

Appellant

vs.

C.C.E. Jaipur-I.

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/63/2001-NB(SM)
Dated : 12.1.2001.....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 :

Asstt. Registrar
NB(SM)

1. C.C.E. Jaipur-I.
2. CCE / CA (Appeal) Jaipur
3. Chief Commissioner of Central Excise / Customs, Jaipur
4. Adv. / Consult. Shri K.K. Nageshwari, Deputy Manager
C/o M/s. JCT Ltd.,
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-Cus Publication

Asstt. Registrar

**In the Custom, Excise & Gold (Control) Appellate Tribunal
New Delhi**

APPEAL NO...E/3078/2000/NB/SM 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

.....707(KDT)CE/JPRI/2000.....DATED.....

dated 12.7.2000
PASSED BY.....

.....Commissioner (Appeals) Central Excise

.....Jaipur

.....Date of decision...6.12.2000.....

.....J.C.T.....APPELLANT (S)

.....Represented by Sh./Smt. K.K. Maheshwari, Deputy
.....Manager (Commercial)

VERSUS

.....C.C.E. Jaipur.....RESPONDENT (S)

.....Represented by Sh./Smt. A.K. Jain, JDR

CORAM: Shri V.K. Agarwal, Member (T)

To be referred to the Reporter or not?
FINAL ORDER NO. A/ 63/ 0/ NB (S/M)

Per..... Shri V.K. Agarwal, Member (T)

The issue involved in the appeal, filed by M/s J.C.T. Ltd is whether refund of excise duty paid by them is admissible to them.

2. Shri K.K. Maheshwari, Deputy Manager, Commercial, submitted that the appellant manufacture cotton yarn and cotton fabrics; that no duty is leviable on woven cotton fabrics when

not subjected to any process as per Notification No.25/95-CE., dated 16.3.1995; that the Superintendent directed them under letter dated 18.1.96 to deposit duty amounting to Rs. 58335/- on grey calandered fabrics cleared during the period from 1.4.1995 to 23.4.1995 which was paid by them through their P.L.A. on 30.3.1996; that they filed a refund claim on 29.4.96 on the ground that the duty was not chargeable on the grey calandered cotton fabrics; that the process of calendering is not mentioned in Note 3 to Chapter 52 of the schedule to Central Excise Tariff Act in relation to products of Heading Nos 5s2d.07, 5208 and 52.09 and as such the process of calendering does not amount to manufacture. Reliance has been placed on the decision in the case of Japan Dying Works Vs CCE, 1992(61) ELT 289(T) wherein it was held that process of clendering done with calendering machine having plain rollers not having engraved bowls does not amount to manufacture. He also relied upon the decision in the case of Mafatlal Fine Spinning and Manufacturing Co. Ltd Vs C.C.E., 1989(40) ELT 218(S.C.) wherein it was held that fabrics continue to be unprocessed(grey) even after calendering and shearing. The learned representative of the appellant also relied upon the decision in the case of Siddeshwari Cotton Mills (P) Ltd. Vs U.O.I., 1989(39) ELT 498 (S.C.) wherein it was held that process must be which impart a change of lasting character to the fabrics by either the addition of some chemical into the fabric or otherwise. He finally submitted that refund claim is not liable to be rejected merely on the ground for non submission of original of relevant document; that they had

submitted the photo copies of all the relevant documents which could have been got verified from the original documents already submitted to the Department alongwith monthly RT 12 returns.

3. Countering the arguments, Shri A.K. Jain, (learned) D.R., reiterated the findings as contained in the impugned Order to the effect that since the duty was rightly leviable, refund of duty was not available to the appellant. He also mentioned that the claimant of refund of duty has to produce the duty paying documents so that necessary endorsement of refund can be made thereon. He finally submitted that it is also to be seen as to whether the principle of unjust enrichment applies to the refund of duty in the present case..

4. I have considered the submission of both the sides. Note 3 to chapter 52 specified certain process which would amount to manufacture. Calendering does not find place in the said Note 3. It is not the case of the Revenue that the appellants had undertaken any of the process maintained in the Note. In view of the decisions relied upon the appellants' process of calendering cannot either be treated as a process of manufacture or covered by the term "or any other process". Accordingly the duty paid by them is refundable to the appellants subject to the condition that they produce the copy of P.L.A. under which the duty was debitted on 30.3.1996. I find substance in the submission of the learned D.R. that the copy of PLA which remains with the assessee has to be endorsed so that no refund

could be claimed again. The appeal is thus allowed in above terms.

(V.K.AGARWAL)

Member (T)

PW

12.1.2001