

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/ 439 / 00 - NB (SM)

Dated: 30-1-2001

CEGAT
NEW DELHI
To,

M/s SPL Ltd.,

P.O. Kassar,

Maryana - 124 507.

In the matter of :

M/s SPL Ltd.,

Appellant

vs.

CCE Delhi - III

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/ 140 / 2001 - NB (SM)
Dated : 22-1-2001 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

1. CCE Delhi - III
2. CCE/EE/(Appeal) New Delhi
3. Chief Commissioner of Central Excise / Customs. New Delhi
4. Adv./Consult. Shri M.P. Devnath, Adv.
B-4/158, Satdarjung Enclave,
(Basement) New Delhi - 29,
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, Bhisim Pitamah Marg, opp. Sachdeva P.T. College of Defence Colony, New Delhi-110003
13. M/s Lex Site Com. Ltd., Mumbai
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Asstt. Registrar

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

E/439/00NB(SM)

APPEAL NO.....OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

1131-CE/DLH/99 dt 4-11-99.....DATED.....

PASSED BY..COMMISSIONER OF CENTRAL
EXCISE(Appeals) NEW DELHI.....

Date of decision.....16-1-2001.....

.....M/s. SPL Ltd.....APPELLANT (S)

Represented by Sh./Smt. M.P. Devnath,
Advocate.....

VERSUS

.....CCE Delhi-III.....RESPONDENT (S)

.....S.C. Pushkarna
Represented by Sh./Smt. JDR.....

CORAM:
SH. V.K.AGRAWAL, MEMBER (TECHNICAL)

To be referred to the Reporter or not?

FINAL ORDER NO. A/140/OI/NB(C/M)

Per..... V.K.AGRAWAL:.....

In this appeal, filed by M/s
S.P.L. Ltd., the issue involved is
whether refund is admissible to them of
the Modvat Credit debited by them in

1994-1995 and the refund claimed submitted in 1997.

2. Shri M.P.Devnath, Ld. Advocate, submitted that the Appellants manufacture ceramic tiles; that they were operating under the Value Based Advanced Licence (VBAL) Scheme that: in 1994 a licence was issued to them for duty free import of certain inputs worth Rs. 22.5 lakhs with an obligation to export goods worth Rs. 62 Lakhs; that as they had also taken modvat credit of the duty paid on the inputs, they had reversed a sum of Rs. 5,18,722/- on 24-12-1994, 15-6-95 ~~24-6-~~ 1995; that they had written a letter dt. 19-6-95 to the Supdt Central Excise in which they pointed out that the modvat credit reversed by them was in excess of the modvat credit involved in the goods imported and used in the manufacture of good exported; that they had given a sufficient indication that they had paid amount in excess of what was required to be paid by them; that they wrote another letter dt. 21-8-95 again pointing out that they had reversed an amount of Rs. 5,18,722/- whereas they were required to reverse only Rs. 1.52 lakhs; that the Appellants had also given a synopsis indicating that more credit had been

reversed by them than required; that the Central Board of Excise and Customs issued a Circular dt. 10-1-97 prescribing formula for quantification of Modvat Credit required to be reversed; that under their letter dt. 31-1-97 they intimated the fact of reversing of Modvat Credit in 1944 and 1995 and depositing of interest on 30/31 January, 1997 amounting to Rs. 61,733; that in the said letter it was mentioned by them that they were debiting the amount under protest and if they succeed, they would take credit; that again on 10-2-97 they addressed a letter to the Supdt. in which they said that excess amount paid by them is refundable to them; that finally they filed a refund claim in proper form on 1-7-97. The Ld. Advocate, further, submitted that both the lower authorities have rejected the refund claim holding that refund is time barred as they had filed the same after expiry of six months; that the various letters written by them should be considered as letters by which the claim had been staked by them and the refund claim filed by them on 1-7-97 is merely a formal claim providing the quantification details with supporting documents; that the staking of

claim by them on 19-6-95 and 21-8-95 was done within a period of six months from the date of payment of duty and as such refund is admissible to them in terms of section 11B of Central Excise Act. He also referred to a Trade Notice No. 43/97-CE dt. 31-3-1997 issued by CCE Bholpur wherein it was mentioned that in cases where an exporter has made an excess reversal than the amount of modvat wrongly availed (including interest) then he can apply for refund of the reversed amount. The Ld. Advocate contended that it is evident from this Trade Notice that they are eligible for the refund of the amount of modvat credit reversed by them in excess. He also mentioned that the Appellants, under their letter dt. 31-1-97, had indicated that the amount debited was made under protest; that the Supreme Court in the case of India Cement Ltd. VS. CCE, 1989 (49) ELT 358 SC wherein a letter, raising all of possible contention against the levy of duty on the value of packing material was stated, was treated as a letter of protest. He also relied upon the decision in the case of Executive Engineer Workshop Division

Vs. CCE Raipur, 1997(94) ELT 445(SC) and Maruti Udyog Ltd. Vs. CCE New Delhi, 1998 (98) ELT 209 (T), wherein the Tribunal relied on decision of Tribunal in ^{the} case of Rajasthan Glyoxal Vs. CCE in which the Tribunal held that as the assessee claimed exemption from payment of duty mentioning Notification No. 55/75 or to consider a Nil rate of duty, the letter was treated as ~~to~~ contain a request for refund of duty. The Ld. Advocate, therefore, contended that the refund is admissible to them as the letters sent by them were letters of protest.

3. Opposing the arguments, Shri S.C. Pushkarna Ld. DR, submitted that the protest was made for the first time by the Appellants under their letter dt. 31-1-97 which can only be considered in respect of interest amounting to Rs. 61,733/- paid by them. This letter cannot be considered a letter of protest for reversal of Modvat Credit in 1994 and 1995; that no protest was lodged by them earlier and as such no refund claim is admissible to them.

4. I have considered the submissions of both the sides. Provisions of section 11 B of the Central Excise Act are very clear in as

Much they provide that any person claiming refund of any duty of excise has to make an application of refund of duty within the period of 6 months from the relevant date. According to Explanation (B) to Section 11 B, relevant date in the present case is the date of payment of duty. It is not in dispute that the amount of modvat credit ~~the~~^{was} reversed on 24-12-94 15-6-95 and 24-6-95. No doubt the appellants, in their letter dt. 19-6-95 and 21-8-95 had indicated that they had reversed more amount than required, they had no where even mentioned or giving any communication that they are filing any refund claim. On the other hand mere mention of reversal of more amount in these letter will neither amount to protest nor it will amount to filing of refund claim under the provisions of Section 11B of the Central Excise Act. This is apparent from their letters itself. For example, para-4 of letter dt. 19-6-95 is reproduced below.

" Annexure 'G'-Statements of assessable Value of Export under VABAL and the Modvat Credit involved therein. From this statement, it may be observed that the Modvat involved is Rs. 1.52 lacs only whereas we have already reversed Rs. 3,86,797/- and thus there is no loss of Revenue on this account." Similarly in letter dt. 21-8-95

they had written as under "In terms of the notification we should not have taken modvat credit for Rs. 1,52.050/- whereas we have reversed an amount of Rs. 5,18,722/- makes our intentions clear. From the letters written to the Supdt. Bahdurgarh, you will also observe that we were ready to comply with any more instructions so that any unintended loss created could be made goods by us."

5. Trade Notice issued by CCE Bholpur is of no use to the Appellants as it nowhere says that the time limit prescribed under the law will not apply in case any exporter has made an excess reversal. The decisions relied upon by them are also not applicable to the facts of the present matter as in all these decision the appellants had opposed the levy of the duty. For instance in the case of India Cement Ltd, the letter written by the Appellants had raised many objections against the levy of packing charges and it was stated that the duty on packing charges on Superfine Cements was not leviabale and as the Department feels that the duty was leviabale they had no option, but to suggest the rates fixed by the Government from quarter to quarter, as packing charges. In view of this language of the letter, the Apex

Court considered the said letter as a letter of protest. Similar was the situation in Executive Engineer Workshop Division, as they had also in their letter clearly mentioned that the provisions regarding payment of excise duty might not be applicable to the Central Workshop MP Electricity Board. In view of this there is no merit in appeal which is rejected.

(V.K.AGRAWAL)

MEMBER (TECHNICAL)

Sunita

22-1-2001