

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/1642/00/NB(SM)

Dated : 20/2/2001

CEGAT
NEW DELHI
To,

M/s Modern Syntex (P) Ltd
M1 Dyes, Delhi Road,
Alwar, (Raj)

In the matter of :

M/s Modern Syntex Ltd

Appellant

vs.

CCE Jaipur

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/292/01/NB(SM)
Dated : 12/2/2001 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 :

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Asstt. Registrar
NB(SM)

1. CCE Jaipur
2. CCE / CC / (Appeal) - Jaipur
3. Chief Commissioner of Central Excise / Customs.
4. Adv. / Consult. Sh. K.K. Anand, Adv
A-5, Rajpath Aparment
New Delhi - 24
5. S.D.R - NB(SM)
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
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Asstt. Registrar NB(SM)

In the Custom, Excise & Gold (Control) Appellate Tribunal
New Delhi
E/1642/00/NB(SM)

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

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

86(KDT)/CE/JPR-I/2000 dt. 2-2-2000.....DATED.....

PASSED BY COMMISSIONER CENTRAL EXCISE (APPEALS)

JAIPUR

12-2-2001

Date of decision.....

M/S MODERN SYNTAX LTD. APPELLANT (S)

Represented by Sh./Smt. K.K. ANAND,
ADVOCATE

VERSUS

CCE, JAIPUR RESPONDENT (S)

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

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

To be referred to the Reporter or not?

FINAL ORDER NO. A/292/01/NB CPM

Per V.K. AGRAWAL:

In this appeal filed by M/s Modern
Syntax (I) Ltd, the issue involved is
whether refund of excise duty paid in
excess by them is hit by Principle of

unjust enrichment.

2. Shri K.K.Anand, Ld. Advocate, mentioned that the Appellants had sold six machines, during period July 1998, to October 1998 to M/s Modern Threads (India) on payment of Central Excise Duty amounting to Rs. 14,32,376/- which was equivalent to the modvat credit already taken by them at the time of purchase of these machines; that as per the provisions of Rule 57 S(2) (b) of the Central Excise Rules, the duty on the capital goods was to be calculated by deducting 2.5% of the credit taken for each quarter; that accordingly they requested the Assistant Commissioner for refund of Rs. 5,01,334/- under their letter dt 22-12-98; that in the meantime the Assistant Commissioner, incharge of the factory of their customer, under Order-in-Original No. 106/98 dt. 16-3-99, disallowed excess MODvat credit amounting to Rs. 4,75,744/- taken by them which was debited by Modern Threads in their PLA; that accordingly the Appellants re-imburssed the said amount to M/s Modern Threads by way of credit note dt. 27-5-99; that a cheque dt. 9-6-99 was also issued to M/s Modern Threads for the said amount; that the payment for the machines had not been received by them from M/s Modern Threads

Ltd,; that the cheque issued by them was therefore cancelled; that they also revised their refund claim to Rs. 4,75,744/- in place of Rs. 5,01,344/- The Ld. Advocate, further, mentioned that the Assistant Commissioner rejected the refund claim under Adjudication Order No. 22/99 dt. 22-7-99 on the ground of unjust enrichment by relying on the decision in the case of CCE Madras Vs. Addison and Co. 1997(93) ELT 490 (T); that their appeal was also rejected by the Commissioner (Appeal) under the impugned Order. The Ld. Advocate submitted that M/s Modern Threads had never paid them the entire amount of duty paid by them and as such their claim for the refund of excise duty is not hit by the principle of unjust enrichment; that as per adjudication order Passed by Assistant Commissioner Bhilwara, M/s Modern Threads had deposited Rs. 4,75,744/- and accordingly they had not taken the Modvat Credit of the entire duty paid by the Appellants; that M/s Modern Threads has never paid the entire amount of duty to them which is clear from the fact that even the cheque issued by them for reimbursement was cancelled subsequently; that it is also apparent from the ledger account maintained by them that Modern Threads has not paid the entire amount of duty and, therefore, it cannot be said that the incidence of duty was entirely passed

by them to the customer. The ld. Advocate said that the decision of the Tribunal in the case of CCE Chandigarh Vs. Oswal Cotton Spg. Mills 1999 (108) ELT 841 is squarely applicable to the facts of the present matter; that the decision in the case of Addison and Company is not applicable as facts are different in both the matters; that in the said case the assessee has passed on the duty burden at the time of the clearance of the goods which is not so in the present matter as the customer had never paid the entire amount of duty to them.

3. Opposing the appeal, Shri A.K.Jain, ld. DR, submitted that the Assistant Commissioner has clearly given his findings that the decision in the case of CCE vs Oswal Cotton Spinning Mill, is not applicable to the facts of the present matter; the said decision was in respect of the case where the assessee had not collected duty from the buyer but only adjustment was made by way of the credit notes, whereas in the present matter not only credit note was issued by the Appellant but also amount was actually collected from the buyer on 28-5-99, as

mentioned in their ledger; that further, efforts were made by the Appellant to repay the amount by issuing cheque to their customer.

4. I have considered the submissions of both the sides. It has not been controverted by the Revenue that the Assistant Commissioner, Incharge of Modern Threads, has held that the credit amounting to Rs. 4,75,744/- was wrongly availed which was recoverable from them under Rule 57Q of the Central Excise Rules. The Revenue has also not disputed the fact that M/s Modern Threads had paid the said amount by debiting the same in their PLA. It has been emphasised by the Appellants that they issued the credit note for the said amount to M/s Modern Threads India Ltd, who had never paid the entire amount of duty to them; that the payment was not made by cheque ~~which~~ as the same subsequently cancelled; that this is evident from the certificate dt. 3-7-99 given by M/s Agrawal S. Lal Company, Chartered Accountant, and the Affidavit dt. 3-7-99 of Shri S. N. Tapadia, Vice President of M/s Moderan Threads Ltd. Shri Tapadia has clearly mentioned that out of excise duty amounting to Rs. 14,32,376/- they had paid only Rs. 7 lakhs to the Appellants and only Rs. 2,56,632/- ¹² ~~are~~ outstanding against them as on 30-6-1999. I, therefore, observe from

these facts that the Customer has never paid the entire amount of duty to the Appellants and accordingly it cannot be claimed the entire incidence of duty was passed on to customer. It was held by the Tribunal in Oswal Cotton Spg. Mills case that once the Respondents has rebutted the presumption that every person who has paid duty of excise on any goods shall be deemed to have passed on the full incidence of such duty to the buyers of such goods, the principle of unjust enrichment will not apply as the Supreme Court in the case of Mafatlal Industries Vs. U.O.I. 1997(89) ELT 247(SC) has held that such presumption is a rebuttable presumption of law and not a conclusive presumption. In view of these facts that the Appellants therein was held to have rebutted the presumption of passing of the incidence of the duty initially shown in the invoice to their customer. Accordingly, refund of the excise duty paid by them i.e. Rs. 4,75,744/- will be admissible to them. The appeal is thus allowed.

(V.K.AGRAWAL)

MEMBER (TECHNICAL)