

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.

Dated : _____

CEGAT
NEW DELHI
To,

M/s Venkateshwar Synthetics (P) Ltd
60-61, Sudarshanpura Indl. Area
Jaipur - 302006

In the matter of :

M/s Venkateshwar Synthetics (P) Ltd Appellant
vs.
CCE Jaipur Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/234/01/NB(SM)
Dated : 8/2/2001 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 :

plc
Asstt. Registrar
NB(SM)

1. CCE Jaipur
2. CCE / CC / (Appeal)
3. Chief Commissioner of Central Excise / Customs.
4. Adv. / Consult. Sh. A.L. Mishra, Asstt.
15-A, Kamla Bhawan
Tejaji Mandir, Marg. Sodala
Jaipur - 302019
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
14. Office Copy
- 15- Can-enc.

plc
Asstt. Registrar NB(SM)

CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL
NEW DELHI:

Appeal No. E/2050/99-NB(SM)

(Arising out of Order-in-Appeal No. 59(KDT)CE/JP I/99 dated 5,8,99 passed by the Commissioner (Appeals) Customs & Central Excise, Jaipur)

M/s. Venkateshwar Synthetic (P) Ltd. .. Appellants
(Rep. by Shri A.L. Mathur, Advocate)

vs.

C.C.E. Jaipur .. Respondent
(Rep. by Shri Rajeev Tandon, SDR)

DOH: 20.10.2000

FINAL Order No. A/234/01 / NB (CE/M)
dt:

Per K.K. Bhatia, Member (T):

The appellants availed modvat credit amounting to Rs.53,630/- on an endorsed Bill of Entry vide entry No.115 dated 30.7.94 in their RG.23A Pt.II on 4.10.94. The Headquarter's Anti-Evasion Party of Central Excise Commissionerate, Jaipur visited their unit and on their advise, the appellants reversed the modvat credit. However, they filed a refund claim of this amount on 18.9.98. The only ground on which the refund is claimed is that the amount was debited by them under the pressure of the Anti Evasion party of Headquarters' Office on 4.10.96. They contended that since the amount was got debited on the spot, no letter of protest was required to be filed. They contended that at the time of debiting the amount, they had endorsed a note that the same was being made under protest. Their claim is however, rejected by the Asst. Commissioner, Central Excise, Jaipur vide his Order dt. 15/18.1.99, in which it is observed that the party had contended before him that the said amount was subsequently been regularised in view of the assessed RT 12 Return for the quarter ending September, 1994. The Asst. Collector

in his Order has observed that in the absence of valid protest letter in terms of Rule 233B of the Central Excise Rules, 1944, the claim filed on 18.9.98 is time barred. He has also stated that mere noting of the words "Under protest" in the RG 23A Pt.II is not a valid form of protest. The Asst. Commissioner in his order has relied on the following decisions for rejecting the refund claim of the party:

- (i) DCM Data Products vs. CCE 1993 (66) ELT 653 (CEGAT) and
- (ii) CCE vs. Ex.Engg. KSEB: 1997 (96) ELT 283 (CEGAT).

2. The appeal of the party against the above orders did not succeed and the Commissioner (Appeals), Jaipur rejected their appeal vide his Order dt. 5.8.99 upholding the order passed by the lower authority. The present appeal is against the above order of Commissioner (Appeals). I have heard Shri A.L. Mathur, Advocate for the appellants and Shri Rajeev Tandon, SDR for the respondents. The uncontraverted facts in this case are that the appellants debited the said amount in their RG 23A Pt.II account on 4.10.94 and made an endorsement 'under protest'. They however did not follow the procedure prescribed under Rule 233B to record their protest. They filed the refund claim of the amount so debited, on 18.9.98 after about four years of making the above stated debit entry. This refund claim has been rejected as time barred by the original authority. It is the case of the appellants that the amount stood regularised on assessment of the RT 12 Return for the quarter ending September, 1994. This RT 12 Return was finally assessed by the Range Supdt., on 27.1.95. The appellants are placing great emphasis on the finalisation of this Return. Therefore, once the RT 12 Return had been

finalised on 27.1.95, the protest if any having been made while debiting the amount on 4.10.94 stood automatically vacated. The appellants thereafter should have filed the refund claim within six months of this date as prescribed under Sub-rule 4 of Rule 173-I which is as follows:

"(4) If on scrutiny by the proper officer or otherwise, he is of the opinion that the duty assessed by the assessee is paid in excess than what was payable, the said duty shall be refunded in accordance with Section 11B of the Act".

3. Under Section 11B, there is no provision for suo-moto refund and since the appellants have filed the refund claim not in conformity with these provisions, the claim has rightly been held to be time barred. The ld. Advocate for the appellants relied on the decision of Tribunal in the case of M/s. Andhra Cement Co. Ltd. vs. C.C.E. Guntur reported in 1986 (7) ECR 352 (CEGAT Ms.) and M/s. Advani Oerlikon Ltd. vs. CCE Madras reported in 1992 (38) ECR 44 (CEGAT-SRB). In these decisions, it is held that the protests can be filed even before the completion of assessment; that the provisions regarding endorsements on Gate Passes and RT 12 Return in the rules are directory in nature and that the endorsement of protest on Gate Passes is adequate form of protest. As we can see, the stand taken in the present case by the appellants is altogether different than what is dealt in the case laws cited by the ld. Advocate for the appellaants. Therefore, the ratio of these cases cannot be made applicable to the facts of the present case.

4. In the result, the appeal fails and the same is accordingly rejected.

(Announced in the Court)

(K.K. Bhatia)
Member (Technical)