

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/2423/00/NB(SM)

Dated : 14/2/2001

CEGAT
NEW DELHI

To,

M/s. Rajasthan Spg & Wvg Mills Ltd
Mandpasa, Distt- Bhilwara

(Rajasthan)

In the matter of :

M/s Rajasthan Spg & Wvg Mills Ltd

Appellant

vs.

CCE Jaipur - II

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/258/01/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.

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BU
Asstt. Registrar
NB(SM)

1. CCE Jaipur - II
2. CCE / CC / (Appeal)
3. Chief Commissioner of Central Excise / Customs.
4. Adv. / Consult. Sh. K.K. Bhand, Adv
A-5, Lajpat Nagar - II
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, Bishm Pitamah Marg, opp. Sachdeva P.T. College of Defence Colony, New Delhi-110003
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Asstt. Registrar NB(SM)

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

E/2423/00NB(SM)
APPEAL NO.....OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

394(KDT)CE/JPRII/2000 dt. 24-4-2000DATED.....

COMMISSIONER (CENTRAL)
PASSED BY.....
EXCISE , JAIPUR

12-2-1001
Date of decision.....
M/S RAJASTHAN SPG & WIV MILLS LTD.

.....APPELANT (S)

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

VERSUS

CCE JAIPUR IIRESPONDENT (S)

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

JDR JDR

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

.....
.....

To be referred to the Reporter or not ?
FINAL ORDER NO. A/258/01/NB(C/M)

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

In this appeal, the issue involved is whether the refund of duty is sanctionable to M/s Rajasthan Spg. & Wvg Mills Ltd; when the excisable goods received under Rule 173L of Central Excise Rules are removed at Nil rate of duty to 100% EOU.

2. Shri K.K.Anand, Ld. Advocate, submitted that the Appellants cleared 10453Kgs of Yarn for home consumption on payment of Central Excise duty amounting to Rs. 66,288/-; that a quantity of 4176.2 kgs of yarn invoicing duty amounting to Rs. 26035 was received back as the yarn was found defective by the Customer; that after following the procedure under Rule 173L, they re-processed the yarn and cleared it against CT-3 form to a 100% EOU on 8-5-95; that refund filed by them for Rs. 26,035/- was sanctioned by the Assistant Commissioner initially, that, subsequently a showcase notice was issued for demanding the duty erroneously refunded; that the Assistant Commissioner confirmed the demand on the ground that the goods after re-processing were cleared at Nil rate of duty and no refund was payable as per clause (IV) of proviso to Rule 173 L (1); that Commissioner (Appeals) also, under the impugned Order, rejected their appeal holding that as no duty had been paid subsequently at the time of clearance, they were not eligible to any refund. The ld. Advocate submitted, that the ratio of the decision in the case of CCE Vs. Metazinc (India) Ltd. 1991 (53) ELT 402(T) is applicable squarely to the facts of the present matter as in that case also the goods after, re-processing were cleared at Nil rate of duty and

the Tribunal held that the refund is admissible to the Respondents therein. I also heard Shri A. K. Jain, Ld. DR.

3. I have considered the submissions of both the sides. Rule 173L provides for refund of duty if the excisable goods are received back for being remade, refined, reconditioned or subjected to any other similar process in the factory. One of the conditions prescribed in the proviso to Rule 173 L (1) is that the amount of refund payable shall in no case be in excess of the duty payable on such goods after being remade, refined etc. the Appellate Tribunal, in the case of Metazine (India) Ltd, supra, held that restrictions placed under proviso (IV) is only in respect of the duty payable on such goods after being re-processed and not to duty paid. "It does not contemplate a situation that the re-processed goods should actually be cleared on payment of duty. So long as it is not disputed that the goods initially removed were cleared on payment of duty and ~~returned~~^{refund} amount claimed under Rule 173L does not exceed the duty payable on re-processed goods, refund is admissible." Following the ratio of this decision and fact that it has not been disputed that initially the goods were cleared on payment of duty, the refund is admissible in the present matter to the Appellants. However, it has

not been brought on record by the Appellants what was the amount of duty "payable" on the yarn in question when it was cleared after re-processing as the refund of the duty cannot be in excess of the duty payable on the goods removed after being re-processed. I, therefore, set aside the impugned Order and remand the matter to the Adjudicating Authority with the direction to determine the amount of duty payable on the yarn after it was reprocessed and if the refund sanctioned is not in excess of the duty payable on yarn after being reprocessed, there can be no demand of duty from the Appellants. In case the duty "Payable" is less than the amount sanctioned, the Appellants shall be liable to pay the duty to the extent. The appeal is thus allowed by way of remand.

(V.K.AGRAWAL)
MEMBER (TECHNICAL)

Sunita
12-2-2001