

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/726 /2006 - EX[DB]

Date 15/06/2011

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
CCE-LUDHIANA

THE COMMISSIONER, CENTRAL EXCISE
COMMISSIONERARE, CENTRAL EXCISE HOUSE
RISHI NAGAR, LUDHIANA(PUNJAB).
CCE-LUDHIANA

Appellant

Vs
Respondent

**ORIENTAL TEXTILE PROCESSIONG CO.(P)
LTD.LUDHIANA.**

I am directed to transmit herewith a certified copy of Final order No.486/ 2011 EX[DB] dated 07-6-11
passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

b L

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

ORIENTAL TEXTILE
PROCESSIONG CO.(P) LTD.LINK
ROAD, SAMRALA BYE PASS,
LUDHIANA.

2. Adv. / Consult

NONE

3. C.D.R
4. Bar association. CESTAT, New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd., No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House, 1-8, Sector - 10, Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. HON'BLE PRESIDENT.

b L
ASSISTANT REGISTRAR
(EX APPEAL BRANCH)

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi**

COURT NO. I

DATE OF HEARING : 07/06/2011.

DATE OF DECISION : 07/06/2011.

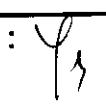
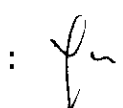
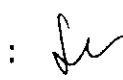
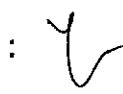
Excise Appeal No. 726 of 2006

[Arising out of the Order-in-Appeal No. 319/CE/Appeal/LDH/2005 dated 17/06/2005 passed by The Commissioner (Appeals), Central Excise, Ludhiana.]

For Approval and signature :

Hon'ble Shri Justice R.M.S. Khandeparkar, President

Hon'ble Shri Rakesh Kumar, Member (Technical)

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|----|--|---|
| 1. | Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | :  |
| 2. | Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | :  |
| 3. | Whether their Lordships wish to see the fair copy of the order? | :  |
| 4. | Whether order is to be circulated to the Department Authorities? | :  |

CCE, Ludhiana

Appellants

Versus

M/s Oriental Textile Processing Co. (P) Ltd.

Respondent

Appearance

Shri R.K. Verma, Authorized Representative (DR) – for the Appellants.

None – for the Respondent.

**CORAM : Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Member (Technical)**

Final Order No. 486/2011-EX Dated : 07-06-2011

Per. Shri Justice R.M.S. Khandeparkar :-

Shri R.K. Verma, DR present for the appellants and none present for the respondent though served. The present appeal arises from the order dated 17th June 2005 passed by the Commissioner (Appeals), Ludhiana. By the impugned order, the appeal filed by the appellants against the order of the Adjudicating Authority has been dismissed. The Deputy Commissioner, Ludhiana by his order dated 14th May 2004 had dropped the proceedings which were sought to be initiated against the respondents under show cause notice dated 28th February 2003 and had ordered refund of Rs. 1,71,919/- by cheque and deemed credit not availed at the time of clearance and Rs. 44,922/- by cheque of the amount of AED excess paid to the respondent.

2. The challenge to the impugned order is on the ground that the respondent had not established that the duty element was not passed over to the customers. While assailing the impugned orders placing reliance in the decision of the Tribunal in the matter of **Sangam Processors (Bhilwara) Ltd. vs. CCE, Jaipur** reported in **1994 (71) E.L.T. 989 (Tribunal)**, the Departmental Representative submitted that the records clearly disclosed that the invoices issued to the buyers included the duty element and it was recovered from the buyers by the respondent and only later on it was claimed to have been recovered by way of debit notes issued by the buyers. Such a procedure is not

permissible and, therefore, according to the Department, the authorities below erred in dropping the proceedings and ordering the refund.

3. Bare perusal of the impugned order as well as the order passed by the Adjudicating Authority clearly disclosed that the fact that duty element was included in the price of the goods cleared on the invoices to the buyers was never disputed by the respondent. Rather it was specifically admitted and it was sought to be contended that subsequent to issuance of such invoices and payment having been received in terms of the amount disclosed in the invoices that the buyers issued debit notes in relation to the duty element.

4. The Tribunal in **Sangam Processors (Bhilwara) Ltd.** case while dealing the similar issue had held thus :-

"4. The submissions made by both the parties, herein, have been carefully, considered. In all these appeals, the question to be determined is whether the appellants can be said to be eligible for refund of the duty claimed by them in terms of Sec. 11C of Central Excises & Salt Act, 1944, which reads as under :

* * * * *

Sub-section 2 of Sec. 11C provides for refund of duty that has been paid on the goods in respect of which Notification under Sec. 11C has been issued. Therefore, the refund claim under sub-sec. (2) should flow from the 11C

Notification, and as a consequence thereof, which is, further, indicated by the requirement therein that the application should be made to the Assistant Collector within six months from the issue of the Notification. The provisions of Sec. 11C and sub-sec. (2), thereof cannot come into play in the case of any other refund application made under Sec. 11B for reasons other than the issue of 11C Notification. In the present appeals, appellants had filed refund claims in the year 1986 whereas the 11C Notification 35/88 was issued much later on 21-12-1988 when sub-sec. (2) was already on the statute. Moreover, sub-sec. (2) was inserted and came into effect on 1-7-1988 and was in force when the refund claim was disposed of by the Assistant Collector for the first time in his orders in these cases issued in January, 1989 rejecting their claims for non-fulfilment of condition in sub-sec. (2) that the duty should not have been passed on to any other person. The appellants do not deny the fact that during the relevant period they had passed on the duty incidence to the customers and their claim is that the incidence of duty so passed on had since been made good by the appellants granting credit notes to the customers as verified by the Assistant Collector in his second order during *de novo* proceedings and that thereby they have fulfilled the condition in Sec. 11C(2). It is not possible to accept the contention because a plain reading of Sec. 11C(2) would show what is required thereunder is that the person claiming refund should apply within six months of the issue of 11C Notification with satisfactory proof to show that duty incidence has not been passed on to 'any other person'. Such is not the case here because in these cases the appellants have admittedly passed on the incidence at the time of clearance of the goods on payment of duty and had filed the refund claims under Sec. 11B in 1986 and at much later stage, apparently, after the insertion and coming into

force of sub-sec. (2) to Sec. 11C from 1-7-1988, and even before the issue of notification under Sec. 11C on 21-12-1988 in respect of their goods, the appellants have sought to show that the duty incidence passed on had been remedied by issue of credit notes to customers. It is not possible to interpret sub-sec. (2) of Sec. 11C to accommodate such situations and to say that even when duty has been passed on to the customers at the time of clearance the assessee can still claim refund under Sec. 11C(2) of Central Excises and Salt Act by issuing credit notes. The Tribunal decision in the case of *Collector of Central Excise v. Mahavir Spg. Mills* (supra) does not also advance the case of the appellants as it was a decision relating to a demand of duty and not a refund claim rendered in the context of Sec. 11C prior to introduction of sub-sec. (2) thereto. In the result, there is no reason to interfere with the order passed by the Collector (Appeals) and the appeals are rejected."

5. The appeal filed against connected matter involving similar issue was dismissed by the Apex Court and that is reported in **Rajasthan Processors (India) Ltd. vs. Collector - 1994 (70) E.L.T. A182** as well as in **Rajasthan Spinning & Weaving Ltd. vs. Collector - 1999 (112) E.L.T. A115 (S.C.)**. Once the law having been clearly laid down that mere issuance of the credit notes or debit notes subsequent to the collection of the duty incidents in terms of the invoices issued at the time of the sale of the goods do not amount to discharging the burden which is required to be discharged by the assessee, to come out of the principle of unjust enrichment applicable in such cases, merely because the buyers of the respondent had issued the debit notes

and had made reference to such debit notes in their ledger books that itself cannot be sufficient to say that the respondent had discharged their burden in that regard. The appellants, therefore, are justified in contending that consequent on the failure on the part of the respondent to establish the duty incident has not been passed over to the customers, the authorities below erred in dropping the proceedings. Being so, the order passed by the authority below are not sustainable and are liable to be set aside with consequential relief. Accordingly, the appeal succeeds. The impugned order alongwith the order of the Adjudicating Authority is set aside with consequential relief.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

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