

**Modison Metals Ltd. Vs. Commissioner of Central Excise**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Sep-30-1997

**Reported in :** (1998)(60)ECC126

**Appellant :** Modison Metals Ltd.

**Respondent :** Commissioner of Central Excise

**Judgement :**

1. The appellants herein manufacturer of Silver Alloy Contacts' falling under Chapter 85 sub-heading 8538.00 CETA. They supplied the goods numbering 5338 to M/s. Kirlosker System Ltd. under various gate passes during the period October 1988 and March 1989. These were however, received back because the customer did not release the documents from the bank. The receipt of the goods back at the factory was duly verified on 12-12-1989 by the Departmental Officers on the basis of D-3 intimation given by the appellant. They were taken into their accounts and after such verification in terms of Rule 173L of the Central Excise Rules, 1944. This rule empowers the Collector to grant refund of duty paid on manufactured excisable goods issued for home consumption from a factory, which are returned to the factory for being remade, refined, reconditioned. The appellant cleared 2,274 pieces of the returned Silver Alloy Contacts after re-polishing, re-testing and re-packing to another customer on payment of duty. The balance 3,064 pieces were taken up for remelting and further manufacture on 21-5-1990 under permission from the Departmental Authorities. This material after re-processing was cleared again on payment of duty on 15-6-1990. The appellant thereafter filed

a refund claim under Rule 173L of the duty paid goods originally received back into the factory. The amount of refund claim was Rs. 28,308/-. The jurisdictional Assistant Commissioner of Central Excise, Vapi Div. II by his order dated 31-1-1991 rejected the claim on the ground that the terms under Rule 173L for the grant of the refund have not been fulfilled. This order of the Assistant Commissioner was upheld by Commissioner (Appeals).

2. We have heard Shri V.S. Sejpal the Id. Chartered Accountant for the appellants and Shri V.K. Puri the Id. SDR. It is seen that in this case it is not disputed that the appellants had followed the prescribed procedure for intimating the returned of the goods cleared back to the factory; the goods have been returned within the time limit prescribed under Rule.

The materials were stored separately before taking for processing and appellant had also maintained the prescribed accounts for the purpose under the Rule, the duty had been paid once again at the time of clearance of the goods second time. Therefore, admittedly the appellants have complied with the procedural requirement for the purpose of refund under Rule 173L. The question is whether the terms of that rule have been satisfied. It is seen that in respect of 2,200 pieces of silver alloy contacts, they had found another customer and they have subjected to goods to re-polishing, re-testing and re-packing as per the requirement of that customer and cleared them on payment of duty. In respect of the balance of the goods, the appellants have carried out the process of melting, remelting etc. with the permission and under the supervision of the Central Excise Range Officers. These processes carried out by the appellant are clearly covered by the ambit of the Rule 173L as has been held by the Tribunal in the case of Taylor Instrument Co. (I) Ltd. v. Collector of Central Excise, New Delhi - 1995 (77) E.L.T. 149 (Tribunal). The Tribunal had found that the processes of retesting, rechecking would be covered by the scope of Rule 173L which covers also any other similar process in the factory.

It is further observed that the term remade which occurs under the rule is of wide import and it can cover a process of transformation. In the present case therefore the appellants will be still within the ambit of Rule 173L when the returned Silver

Alloy Contacts were remade by remelting and reprocessing into silver alloy contacts to suit the specification of another customer. Therefore, it is held that the appellants in this case are eligible for refund under Rule 173L of Central Excise Rules, 1944. The appeal is allowed.

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