

**Commissioner of Central Excise Vs. Texplast Engineers Ltd.**

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

**Decided On :** Oct-27-2003

**Judge :** S T S.S.

**Appellant :** Commissioner of Central Excise

**Respondent :** Texplast Engineers Ltd.

**Judgement :**

1. Revenue has filed this appeal as the Commissioner appeals found as follows - "8. I do not find any legal infirmity in the reasoning given by the Assistant Commissioner. Classification in respect of the subject item was revised in Oct. 1992. The claim for refund of duties had been claimed by the appellants under Section 11B of the Act in the month of February, 1993. There is no legal basis in the appellant's claim for application of General Law Limitation when there exists a specific limitation with regard to refund of Central Excise duty under the Act itself. Therefore, it was incumbent upon this authority to have examined the appellant's case for refund in accordance with the requirement of Section 11B of the Act. There is no dispute on the point that after 12.10.92, the appellants were eligible for credit of duties paid on the Intermediate products - HDPE Tapes. It was accordingly required that any benefit which may have become available within the period of limitation and claimed by the appellant should have been extended to them. In the present case, the benefit of refund was required to be regulated under the requirement of Rule 57E read with Section 11B of the Act. The said Rule provides that 'If duty paid on any inputs in respect of which credit has been

allowed under Rule 57A is varied subsequently due to any reason, inter alia, resulting in payment of refund, the same should be allowed by adjustment in credit account maintained under Rule 57G or under Rule 9 or Rule 173G, or by refund to the manufacturer. Since the appellants were already working under the modvat scheme, when the disputed duties were paid, their claim for refund filed under Section 11B was liable to be entertained subject to limitation prescribed under this Section. Refund of credit of duties paid on excisable goods used as the inputs in accordance with the Rule made, or any notification issued under this Act, is also liable to be refunded to the applicant under sub-proviso {c}, Sub-section 2 of Section 11B. Accordingly, on receipt of the application of refund, the duty is paid on HDPE Tapes used captively in the manufacture of fabrics and sacks have been regulated by adjustment in R.G.23 Part-II account after issue of an order for refund under Section 11B of the Act.

9. I accordingly, modify the impugned order and direct that the duty paid within the limitation of six months from the date of application for refund prescribed under Section 11B of the Act shall be returned to the appellants by adjustment in R.G.23 account. The duty paid beyond the period of six months will be barred by limitation. Appeal is accordingly, disposed off." i) The assessee did not opt for Rule 574 for availing credit on HDPE Tapes, therefore credit on tapes is not eligible.

ii) Relying on Madras High Court decision in {1992 (59) ELT 345} it is pleaded that incidence of duty has been passed, therefore refund is not eligible.

i) Consequent to order No. 8/92 dt 24.09.1992 of Government of India, HDPE Tapes were to be classified under chapter 39 and the respondents filed a Classification List and declared to avail credit under Rule 57A. on that date for the stock on hand of inputs and final products and balance credits in R.G.23A Part II was to be determined under Rule 57H. ii) After 12.10.1992, the duty paid on intermediate goods was claimed as refund.

b) Respondents have pleaded unjust enrichment as a new ground taken in this appeal.

a) Revenue appeal as regards denial of credit cannot be allowed since Rule 57H entitlement is eventual. Impugned order upheld on that aspect.

b) The refund in this case is found to be not eligible since duty paid on earlier approved Classification List under 5408 was not challenged by taking the approved Classification List in appeal.

Impugned order granting refund not upheld. c) The Revenue's plea as regards input enrichment cannot be raised at this stage.

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