

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH**

O-20, Meghani Nagar, New Mental Hospital Compound Ahmedabad - 380 016.
(Tel. : 079-22683202)

26/11/08
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F.O.
N. Par

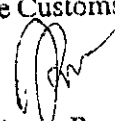
File No. C-1 3364/08 Dated 17.11.08

From : THE ASSISTANT REGISTRAR, Cestat, Ahmedabad

To. C.C.O.P.
Ah'bad-1

In the matter of : C.O.P., Ah'bad-1 Appellant
V/S.
M/s. G. dandi Leimer (P) Ltd. Respondent

I am directed to transmit herewith a certified copy of Order
No. A/1166/2008/Ah'bad/08 dated 9.11.08
passed by the Tribunal under Section 35(1) of the Central Excise Act, 1944, Section 129 (B) of the Customs Act,
1962 and Finance Act, 1994.


Asstt. Registrar

Copy to :

1. Respondent M/s. G. dandi + Leimer (P) Ltd.
Survey No. 320, Odhav,
Ah'bad
2. Advocate / Consultant Shilpa Dave
3. Chief Commissioner, C. Excise/Customs Ah'bad
4. Comm. C.Ex. / Custom (Appeals) Ah'bad-1
5. Jt. C.D.R. CESTAT, Ahmedabad
6. Central Library, CESTAT, New Delhi
7. CESTAT Bar Association, New Delhi
8. CESTAT Bar Association, Mumbai / Ahmedabad
9. Master File
10. M/s. Lexsite Co. Limited
11. Centax Publication (P) Ltd.
12. M/s. Cen-cus Publications.
13. Deeparchie Publication.
14. M/s. Law Infotech Resources (P) Ltd.
15. Shri R. Venkatraman, Consultant.
16. M/s. Excise & Customs Cases
17. Tax India Online Ltd.


Asstt. Registrar



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**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD
COURT NO. I**

Appeal No. E/3364/01

(Arising out of Order-in-Appeal No. 419/2001(265-Ahd-I)CE/Commr(A)
/Ahd dated 10.8.2001 passed by the Commissioner of Central Excise
(Appeals), Ahmedabad).

For approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Shri M. Veeraiyan, Member (Technical)

- =====
1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
 2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : No
 3. Whether their Lordships wish to see the fair copy of the order? : Seen
 4. Whether order is to be circulated to the Departmental authorities? : Yes
- =====

CCEEx, Ahmedabad

Appellant

Vs.

M/s Erhardi Leimer (India) Ltd.

Respondent

Appearance:

Shri Ajay Saxena

SDR

for Appellant

Ms. Shilpa Dave

Advocate

for Respondent

CORAM:

**MRS ARCHANA WADHWA, MEMBER (JUDICIAL)
SHRI M. VERRAIYAN, MEMBER (TECHNICAL)**

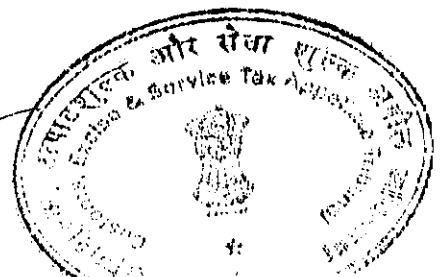
Date of Hearing: 09.11.2006.

Date of Decision: 09.11.2006

ORDER NO.

WZB/AHD/2006

(Signature)



Per: Mrs. Archana Wadhwa, Member (Judicial)

The short point involved in the present appeal of the Revenue is as to whether the notional interest on the advances received by the appellants from their customers is required to be added in the assessable value of the final product or not. While granting relief, Commissioner (Appeals) has observed as under: -

"I have gone through the case records. It is seen that the concerned Assistant Commissioner has not examined the subject goods in the light of the Board's Circular and has, thus, not arrived at the conclusion that advance receipt has influenced the assessable value. It is no reason to conclude that since the goods were tailor-made, so the burden to prove was on the appellants. Nothing prevented the Assistant Commissioner from conducting a cost analysis of the said goods and to see for herself whether advance receipt had influenced the assessable value or not. As there is no evidence in the subject Order-in-Original that assessable value got lowered due to receipt of the advance, the order of the Asstt. Commissioner is not maintainable."

2. As against the above findings, Revenue has not advanced any evidence so as to show any nexus between the advances and lowering of assessable value. We find that the issue stands decided by the Hon'ble Supreme Court in the case of CCE, Mumbai-III Vs. ISPL Industries Ltd. - 2003 (154) ELT 3 (SC), laying down that when the price is not influenced by the interest free advances, notional interest is not includable in the assessable value. Burden to prove that such advances have influenced the price is upon the Revenue, and no presumption can be drawn by mere fact of giving of advances. Inasmuch as in the instant case Revenue has not placed any evidence on record to show that such interest free advances have influenced the price, we find no merit in the Revenue's appeal and reject the same.

(Dictated and pronounced in open Court)

Sd/-
(M. Veeraiyan)
Member (Technical)

Sinha/

10/11/06
आदेश को प्रति निम्न अवस्थित
Copy of the Order Forwarded and
प्रमाण/कमिश्नर/विभागीय प्रतिनिधि
The Assesses/The Commissioner/The
DR., C.E.S.T.A.T.
सत्यापित प्रतिलिपि
TRUE COPY

Sd/- 10/11/06
(Archana Wadhwa)
Member (Judicial)

सहायक रजिस्ट्रार
Assistant Registrar
of Customs and Excise and
Service Tax
Appellate Tribunal

6 DEC 2006