

तार सी ई जी सी ए एन एल रजिस्ट्री (ए.डी.)

सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपीलीय अधिकरण

पश्चिमी खण्ड-2 रामाकृष्णापुरम, नई दिल्ली-110066

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

West Block No.2, R.K. Puram, New Delhi-110066

केन्द्रीय उत्पाद एवं नमक अधिनियम 1944, सीमा शुल्क नियम 196/35 (सी) (I) के खण्ड 130 (I) के अर्न्तगत सूचना ।

E/2947/04 NB(C)

न्याय पीठ / BENCH NB(C)

दिनांक / Date 22.2.05 200.....

अपील संख्या

प्रेषक :-

सहायक पंजीकार / Assistant Registrar

सीस्टेट, नई दिल्ली / C.E.S.T.A.T, New Delhi

सेवा में M/S Banmore Foam Pvt. Ltd.

105-106, Indl. Area Banmore
Distt. Morena (M.P.)

अपीलकर्ता / Appellant

बनाम / VS

C.C.E. Indore

प्रतिवादी / Respondent

मैं, केन्द्रीय उत्पाद अधिनियम 1944, सीमाशुल्क नियम 1962/35 (सी) (I) के खण्ड 129-बी के अर्न्तगत न्यायधिकरण द्वारा पारा
किए गए दिनांक..... के अन्तिम आदेश संख्या.....

की प्रमाणित प्रति प्रेषित करता हूँ ।

I am directed to transmit herewith a certified copy of Final Order No. 175/05 NB(C)
Dated : 8.2.05 passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944/Section 129, (B) of
the Customs, Act, 1962

सहायक पंजीकार / Assistant Registrar

प्रतिलिपियाँ :-

1. प्रतिवादी / Respondent C.C.E. Indore

2. सी० सी० ई० / सी० सी० / CCE/CC (Appeal) Gwalior

3. वकील / परामर्शदाता / Adv. / Consult

4. एस० डी० आर० / S.D.R

5. जे० सी० डी० आर० / J.C.D.R.

6. बार एसोशिएसन, सीस्टेट, नई दिल्ली / Bar Association, CESTAT, New Delhi

7. मैसर्स डिपार्ची पब्लिकेशन, एम-93, मार्ग-46, साकेत, नई दिल्ली / M/s. Deeparchi Publications, M-93, Marg. 43, Saket, New Delhi.

8. मैसर्स सैन-कस, पब्लिकेशन / M/s Cen-cus Publications

9. मैसर्स सैन-कस, पब्लिकेशन प्रा० लि० 1512 भीष्मपितामह मार्ग डिफेन्स कालोनी, नई दिल्ली ।

M/s Centax Publications (P) Ltd., 1512-E, Bishm Pitamah Marg, Opp. Sachdeva P.T. College of Defence Colony, New Delhi-110003

10. कैपिटल ला हाउस 500/7, एन पांडव नगर, नई दिल्ली-91 / Capital Law House.

11. श्री आर वैकटरमन, परामर्शदाता 44-बी, एस सनसीटी, गाजियाबाद-201010, उ०प्र०

R. Venkatraman Constt. 44B, S. Suncity, Ghaziabad-201010 U.P.

12. निदेशक पब्लिकेशन, सीमा शुल्क एवं केन्द्रीय उत्पादशुल्क, आई पी स्टेट, नई दिल्ली ।

13. कार्यालय प्रति / Office Copy

14. गार्ड फाईल / Guard File

15. Tax India

(G.N. Ghosh)

सहायक पंजीकार / Assistant Registrar

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Customs, Excise and Service Tax Appellate Tribunal,
New Delhi.

No.E/2947/04-NB(C).

(Arising out of Order-in-appeal No.GWL/124-125/2004
dated 15.3.2004 passed by the Commissioner(appeals), Customs
& Central Excise, Gwalior).

Date of Hearing:8.2.2005.

Date of Decision:8.2.2005.

M/s. Banmore Foam Pvt. Ltd.

Appellants

(Rep. by Shri Satish Kumar, Representative.)

Versus

CCE, Indore.

Respondent,

(Rep. by Ms. N.L. Butalia, SDR)

CORAM: SHRI S. S. KANG, VICE PRESIDENT.

SHRI K.C. MAMGAIN, MEMBER (TECHNICAL).

FINAL ORDER No. 175/05-e

PER S.S.KANG:

Heard both sides.

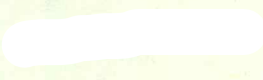
2. Appellants filed this appeal against the Order-in-appeal
passed by the Commissioner(appeals) whereby the refund claim

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filed by the appellants was rejected on the ground of unjust enrichment.

3. The brief facts of the case are that the appellants filed refund claim in respect of the duty paid under protest on the clearance of waste packages/containers in which the inputs; were received by them. Appellants filed the refund claims in view of the judgment of the Hon'ble Supreme Court in the case of West Coast Industrial Gases Ltd. Vs. CCE – 2003 (155) ELT-111 (SC). The Adjudicating Authority allowed the refund and directed the same to be credited in the Consumer Welfare Fund on the ground that the appellants failed to prove that the burden of duty has not been passed on to their customers.

4. The only contention of the appellants is that they have not charged duty from their customers and also relied upon the two certificates issued by their customers to show that duty has not been paid by their customers. The Revenue relied upon the invoices where duty element has been ^{separately} ~~correctly~~ mentioned and



there was no evidence that that duty element mentioned in the invoices was not recovered by the appellants from their customers and in some cases, consolidated price was mentioned. Revenue has also relied upon the decision of in the case of CCE, Mumbai-II Vs. Allied Photographics India Ltd. – 2004 (166) ELT-3 (SC).

5. We find that in this case the issue involved is whether the burden of duty has been passed on to the customers. The ~~onus~~ ^{onus} ~~burden~~ is on the appellants to prove that the incidence of duty has not been passed on to their customers. The Adjudicating Authority in the adjudication order after examining the accounts of the appellants gave a finding on facts that duty has been recovered from the customers by the appellants. The Hon'ble Supreme Court in the case of CCE, Mumbai-II Vs. Allied Photographics India Ltd. (Supra) held that the principles of unjust enrichment are applicable even in case where duty was paid under protest and the onus is on the assessee to prove that the burden of duty has not been passed on to the customers. In the

present case, the assessee has failed to do so. Therefore, we find no merits in the appeal and the same is dismissed.

(Pronounced and dictated in open court).

(K. C. MAMGAIN)
MEMBER(T).

(S. S. KANG)
VICE PRESIDENT.

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