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

Appeal No. E/3598/2004-3601/2004 Date 30/04/2008

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

To :
M/S PEACOCK INDUSTRIES LTD.
KODIYAT ROAD, SISRAM, UDAIPUR.
M/S PEACOCK INDUSTRIES LTD. Appellant
Vs
C.C.E. JAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 201-204/08 **Excise** dated 3-4-08 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. JAIPUR
   N.C.R. BUILDING, JAIPUR (RAJASTHAN)
2. Adv. / Consult SH. BIPIN GARG, ADV.,
   B-1/1289-A, VASANT KUNJ
   N.DELHI-70
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise 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. II
Excise Appeal Nos. 3598-3601 of 2004

[Arising out of the Order-in-Appeal No. 35-38 (RM)/CE/JPR-II/2004 dated 05/02/2004 passed by The Commissioner (Appeals-II), Customs & Central Excise, Jaipur.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Rakesh Kumar, 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 would 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?	:	[illegible]
4.	Whether order is to be circulated to the Department Authorities?	:	No

M/s Peacock Industries Ltd. Appellant

Versus

CCE, Jaipur Respondent

Appearance

Shri Bipin Garg, Advocate – for the appellant.

Shri C.S. Rajput, Authorized Representative (DR) – for the Respondent.

CORAM:**Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 03/04/2008.

Final Order No. 201-204/04-EX. Dated : ___________

Per. S.S. Kang :-

The appellant filed this appeal against the common impugned order, whereby the refund claim were rejected on the ground of unjust enrichment. Appellants are engaged in the manufacture of plastic moulded furniture and they were given prompt payment discount to their distributors. In the impugned order, Commissioner (Appeals) held ~~that after~~ relying upon the Larger Bench decision of the Tribunal in the case of S. Kumar's Ltd. vs. CCE reported in 2003 (153) E.L.T. 217 (Tri. LB) that once the incidence of duty was passed on to the buyer, ~~therefore~~ then, even in the case subsequently credit note was issued by the appellant the claim is hit by unjust enrichment.

2. The contention of appellant is that the prompt payment discount was known to their customers and the customers

who made payment promptly, the payment was made after deducting the discounted amount and the credit notes were ~~only~~ issued only for accounting purposes only.

3. The appellant relied upon finding of the Adjudicating Authority in the adjudication order dated 31/08/2001, whereby the Adjudicating Authority admits this fact. The Adjudicating Authority held that from the record, it is proved ~~from the record~~ that the distributors of the appellant ~~after~~ themselves deducted the amount of said cash discount from the bill amount and subsequently credit notes have been raised to clear up the accounts of the distributors and this fact is also noted by the Commissioner (Appeals) in the impugned order. The contention is that as the incidence of duty has not been passed to the customers, therefore the appellants are entitled for refund and bar of unjust enrichment is not applicable. The appellant also relied upon the decision of the Larger Bench decision of the Tribunal in the case of S. Kumar's Ltd. (Supra), whereby the Tribunal in para '9' held that in case there is no dispute ~~of~~ about the fact that this amount of duty had not been collected by the appellant, then the bar of unjust

enrichment is not applicable. Appellant also relied upon the decision of the Tribunal in their own case, whereby Tribunal vide final order No. A/1551/05 – SM Branch dated 26/07/2005 allowed the appeal filed by the appellant and held in similar circumstances that bar of unjust enrichment is not applicable.

4. The contention of revenue is that appellant are issuing credit notes ~~and~~ subsequent to the issuing the invoices, and therefore, the incidence of duty has been passed, and therefore, the principle of unjust enrichment are applicable and the subsequent issuance of credit notes will not help the case of the appellant.

5. We find that in this case the prompt payment discount is given by the appellant to their distributors and the distributors themselves deducted the cash discount from the bill amount and made the payments accordingly. The appellants were issuing credit notes to clear the accounts of the distributors in the account books, this fact is not disputed. In these circumstances, we find that as the incidence of duty has not been passed to the distributors, the bar of unjust enrichment is not

applicable. The Larger Bench of the Tribunal in the case of S. Kumar's Ltd. (Supra) which is relied upon both the sides, the Tribunal held that in case the incidence of duty has been passed to the customers and subsequently credit notes has been issued in such a case, the bar of unjust enrichment is applicable. However, where the burden of the duty has not been passed to the customers, the bar of unjust enrichment is not applicable. In the present case, it is clear that the incidence of duty has not been passed on to the distributors of the appellant, therefore, the bar of unjust enrichment is not applicable. Similar view has been taken by the Tribunal in appellant's own case. In view of the above, the impugned orders are set aside and appeals are allowed.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

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