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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/3610/2004-3613/2004 Date 21/05/2008

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

To :
M/S PEACOCK INDUSTRIES LTD.
M/S PEACOCK INDUSTRIES LTD., KODIYAT ROAD,
SISARMA, 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.261-264/2008 **Excise** dated 21-4-08 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
   THE COMMISSIONER (APPEAL-II) CENTRAL EXCISE & CUSTOMS, NEW 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)

1 M/S PEACOCK INDUSTRIES LTD.
M/S PEACOCK INDUSTRIES LTD., KODIYAT ROAD, UDAIPUR.

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. 3610-3613 of 2004

[Arising out of the Order-in-Appeal No. 593-596 (RM)/CE/ JPR-II/2003 dated 12/12/2003 passed by The Commissioner (Appeals), 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?	:	Yes
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 Sanjay Kumar, 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 : 21/04/2008.

Final Order No. 261-264/08-Ex Dated :

Per. S.S. Kang :-

Heard both sides. Appellant filed this appeal against the impugned order, whereby refund claim under Rule 173L of the Central Excise Rules was rejected on the ground that the value of the damage goods received in the factory is less than the duty paid on the goods at the time of clearance and also on the issue of time bar.

2. The main contention of the appellant is that while rejecting the refund claim the authorities relied upon the market enquiry conducted in respect of the goods in question which reveals that the goods were of the value of Rs. 8/- per kg. It is also held that on the request of the appellant, the market survey was conducted afresh and it was found that the rate of broken/defective furniture is around Rs. 8 to 10/- per kg.

3. The contention of appellant is that the Adjudicating Authority as well as Commissioner (Appeals) while rejecting the refund claim relied upon the market enquiry to give a finding that the value of returned goods is less than the duty paid on the goods at the time of clearance. In absence of the copy of market enquiry, the appellant are unable to put their proper defence before the lower authority. The contention of appellant is that in reply to show cause notice, the appellant specifically asked for the basis for adoption of the value of Rs. 8/- per kg. in respect of defective goods received in the factory. In spite of this the copy of market enquiry was not supplied. The Tribunal in the case of **CCE, Pondicherry vs. Supreme Industries** reported in **2005 (185) E.L.T. 185 (Tri. – Chennai)** upheld the order passed by Commissioner (Appeals) whereby the refund claim of respondents was allowed for the different period which was on the same facts.

5. The contention of revenue is that the Tribunal in the following decisions in appellant's own case :-

(i) **2001 (129) E.L.T. 476 (Tri. – Del.)**

(ii) **2002 (148) E.L.T. 929 (Tri. – Del.)**

on the same issue dismissed the appeal filed by the appellant.

6. We find that in this case in the impugned orders, the Commissioner (Appeals) relied upon on market enquiry conducted in respect of value of defective goods received in the factory of the appellant. The appellant even in the reply to the show cause notice asked for basis for adoption of the value at Rs. 8/- per kg. in spite of this, the copy of market enquiry which shows that value of defective goods between Rs. 8 to 10/- is not supplied to the appellant. In these circumstances, the impugned order is set aside and the matter is remanded back to the adjudicating authority to decide afresh after supplying the copy of the market survey/enquiry and after granting an opportunity of hearing to the appellant. The appeal allowed by way of remand.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK