TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Appeal No. E/4731/2004 Date 16/07/2008

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

To :
M/S PUNJAB DIGITAL INDL. SYSTEMS LTD.
A-38, INDL. AREA, PH. VIII, MOHALI, DISTT. ROPAR

M/S PUNJAB DIGITAL INDL. SYSTEMS LTD. Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 468/2008 **Excise** dated 14-7-08

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. CHANDIGARH
   PLOT NO 19, SEC 17-C, CHANDIGARH
2. Adv. / Consult
   MR.JOY KUMAR
   FLAT NO 261/1,SEC 45-A,CHANDIGARH.
3. C.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)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,**
**West Block No.2, R.K.Puram, New Delhi-110066**

Court No.III

Date of hearing: 10.7.2008
Date of pronouncement : .7.2008

Central Excise Appeal No.4731 of 2004

Arising out of the order in appeal No.467/CE/CHD/04 dated 30.6.04 passed by the Commissioner (Appeals), C.Excise, Chandigarh.

For Approval and Signature:

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

| | | |
|---|---|---|
| 1 | Whether Press Reporter 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 CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | Yes. |
| 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 |

Appellants | Respondent

M/s Punjab Digital Industrial Systems Ltd. vs. C.C.E. Chandigarh

Appearance:

Shri Joy Kumar, Advocate for the appellants and
Shri S. M. Tata, Authorized Departmental Representative (SDR) for the Revenue

Coram: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M, Veeraiyan, Member (Technical)

FINAL Order No. 968/08-EX

Per Archana Wadhwa:

The short issue involved in the present appeal is as to whether subsequent reduction in price of the goods, after the clearance of the same would result in lowering the assessable value of the goods, thus making the assessee entitled to refund claim. Both the authorities below have held that such lowering of price subsequent to the clearance of the goods would not result in any change in assessable value adopted at the time of clearance of the goods. For the above proposition, reliance stands placed on the decision of the Hon'ble Supreme Court in the case of MRF Ltd.vs C.C.E. – 1992 (97) ELT 309 (SC) wherein it has been held that -

> " *Fluctuation of prices subsequent to clearances of goods not to effect the liability of excise duty. Reduction in prices subsequent to the clearances of goods on payment of duty for whatsoever reason not to effect the liability for payment of excise duty.* "

2. Learned Advocate Shri Joy Kumar appearing for the appellant does not dispute the above legal position but submits that refund in the present case was originally granted and the present proceeding for recovery of the same as erroneously granted refund. By drawing our attention to the show cause notice issued on 12.6.02, the learned Advocate submits that the only ground for recovery of such erroneously granted refund was on account of unjust enrichment. As such, submits the learned Advocate that both the authorities below have travelled beyond the scope of the show cause notice, inasmuch as, the dispute stands decided by them on merits and not on the ground of unjust enrichment.

3. Having considered the above argument and after hearing the learned SDR, we find that the dispute is in respect of the refund granted to the appellant, which according to the Revenue, is erroneous. No doubt, the ground adopted in the show cause notice for recovery of such erroneously granted refund was unjust enrichment but nevertheless, the admissibility of the refund on merit is required to be examined at the first instance. This is what the lower authorities have done. If the refund is not admissible on merits, the issue of unjust enrichment becomes futile. Learned Advocate has not disputed the fact that the refund is not admissible on merits itself as per the Apex Court decision in the case of MRF Ltd. (supra). The law of the land as declared by the Apex Court is required to be applied to the facts of a particular case. It is not a case where the show cause pertained to a different issue and allegation, whereas the impugned order is passed in respect of altogether different issue and allegation, in which case, it cannot be said that the impugned orders have travelled beyond the show cause notice. The issue in the show cause notice as also in the impugned order is the same, that is, recovery of erroneously granted refund in which case, the law as declared in MRF decision, stands correctly applied by the authorities below. We do not find any merits in the appeal and accordingly reject the same.

(Pronounced in the open Court on 15 .7.2008)

14/7/08

(Archana Wadhwa)
Member (Judicial)

14/7/08

(M. Veeraiyan)
Member (Technical)