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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/4246/2004 - EX[DB]

Date 24/10/2008

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

To :
M/S STANDARD ELECTRICALS LTD.
NAKODAR ROAD, JALANDHAR

M/S STANDARD ELECTRICALS LTD. Appellant

Vs

C.C.E. JALANDHAR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 827/08- **EX[DB]** dated 23-10-08 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. JALANDHAR
   (HQ AT CHANDIGARH) PLOT NO 19, SEC 17-C, CHANDIGARH
2. Adv. / Consult SH. VINOD AGARWAL & SH. AMANDEEP SINGH, ADV.,
   388, ADARSH NAGAR,
   JALANDHAR CITY (PB)
3. E.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 - 3
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
13. Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
15. Office Copy
16. Guard file

Assistant Registrar
(Excise Appeal Branch)

# CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

**COURT-I**

**Date of hearing: 15.10.2008**
**Date of pronouncement: 23-10.2008**

**Central Excise Appeal No.4246 of 2004**

Arising out of the order in appeal No.269/CE/JAL/04 dated 31.5.04 passed by the Commissioner (Appeals), Central Excise,Jalandhar.

For Approval and Signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technic

| | | |
|---|---|---|
| 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 |

Appellant — Respondent

M/s Standard Electricals Limited vs. C.C.E., Jalandhar

Appearance:

Shri Vinod Agarwal and Shri Amandeep Singh, Advocates for the appellant
Shri Anil Khanna, Authorized Departmental Representative (DR) for the Revenue
Coram: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Order No. 827/08-EX

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 269/CE/JAL/04 dated 31.5.04

2. Heard both sides.

3. The relevant facts, in brief, are as follows:

a) There was a dispute about whether the appellant and their marketing firms were related persons and the matter was decided in favour of the appellant by the Tribunal vide their order dated 17.3.98.

b) Consequent to favourable order from CEGAT, the appellant filed application dated 2.7.98 claiming refund of Rs.57,77,614/- relating to the period November 1986 to December 1989.

c) A show cause notice dated 30.9.98 was issued proposing rejection of the refund on the ground that " from the perusal of the bill /invoices of the period under reference that the noticee has charged less from the buyer both in terms of assessable value and the corresponding duty compared to the GP1s against which the bills were issued/raised".

d) Refund was rejected by the original authority vide order dated 19.10.01 on the ground that appellant failed to produce ledger/cash books of the relevant period so as to enable the Department to carry outscrutiny of the transaction of the money flow between the parties for the purpose ruling out unjust enrichment.

e) On appeal, the Commissioner (Appeals) upheld the order of the original authority dated 19.10.01.

4.1 Learned Advocate submits that the presumption under Section 12B is a rebatable presumption. Commissioner (Appeals) has rejected the appeal on the ground that the appellant "failed to conclusively prove that the burden of differential excise duty was not passed on to the buyer."

4.2 The appellant has produced the relevant invoices which indicated lower value and lower duty; the gate passes indicated the higher assessable value as approved by the Department and the higher amount of duty paid by them. Only amounts as mentioned in the invoices were recovered from the buyers. The cash book/ledgers are consolidation of sales invoices and balance sheet is a further consolidation of details available in cash books/ledgers. The turnover as per balance sheet tallies with the total value of sales as per sales invoices. The assessed sales tax returns also indicate the sales turnover corresponding to the invoices. Under these circumstances, their inability to produce cash book and ledgers cannot be held against them and refund rejected. The cash book and ledgers are not required to be maintained beyond 8 years. They had no reason to anticipate that such cash books and ledgers shall be required for the purpose of processing the refund claim.

5. The learned DR reiterates the findings of the Commissioner (Appeals) and submits that it is the responsibility of the appellant to prove that they have not passed on the burden of duty to the buyers.

6.1 We have carefully considered the submissions. It is not in dispute that the appellant is entitled to refund on merits. The only issue in dispute is whether the appellant has proved that they have not passed on the duty burden to the buyers. The appellant was not able to produce cash books and ledgers. However, they have produced the following documents as noted by the Commissioner (Appeals):

> *(a) Copy of all invoices which show the amount of excise duty recovered from the buyer is on the lower side than the excise duty paid by the appellants.*
>
> *(b) All the GP1s which show payment of excise duty on the higher side to the Department as per unfavourable adjudication/appellate orders.*
>
> *© Copies of sales tax returns showing the amount of sales returned to the Sales Tax Department tallies with the total of the sale amount as per the sale invoices.*
>
> *(d) Copies of sale tax assessment orders which were passed by the Sales Tax Authorities after scrutiny of all the account books which includes cash book and ledger also apart from the sale invoices and other account books. The sales assessed by the Sales Tax Department tallies with the sales returned by the appellants.*
>
> *(e) Copies of balance sheets for all the relevant years.The sale figures shown therein tallies with the sale assessed by the sales tax department.*

6.2 The appellant has claimed that they have not passed on the burden of duty. The direction of the Department to produce cash book and ledgers at a distant date may not be practicable. No doubt that the cash books/ledger could indicate whether there was any further payment to the appellant by way of any debit notes etc. The reason for their inability to produce them is also understandable. They are not prescribed documents for the purpose of ascertaining the bar of unjust enrichment. The claim that the sale value as per invoices correspond to the balance sheet figures and also the assessed sale tax returns appears relevant to consider the bar of unjust enrichment. However, this has not engaged the attention of the authorities below. Under these circumstances, we set aside the orders of the Commissioner (Appeals) and original authority and remand the mater to the original authority to consider the plea regarding unjust enrichment in the light of documents produced and decide the eligibility of the refund claim afresh. The appellant is directed to furnish the evidence to show how the value of clearances as per invoices/balance sheet and sale tax returns are tallying to enable the original authority to come a a decision regarding unjust enrichment .The original shall decide the matter after granting a reasonable opportunity of hearing to the appellant.

7. The appeal is allowed by way of remand.

(Pronounced in the open Court on 23 .10.2008)

(Justice S.N. Jha)
President

(M. Veeraiyan)
Member (Technical)

scd/