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

Appeal No. C/969 /2005 - CU[DB] Date 10/11/2008

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

To :
M/S METHODEX SYSTEMS LTD
35-A, FORT INDUSTRIAL ESTATSE INDORE (M.P.)

M/S METHODEX SYSTEMS LTD Appellant

Vs

THE COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS, INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order** No. C/567/08-CUS DATED 07.10.08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
   THE COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS,
   POST BAG NO.10, MANIK BAGH PALACE. INDORE (M.P.)
2. Adv. / Consult
   MR.RAMESH NAIR, ADV., LAKSHMI VIHAR,
   AG- 192, SCHEME NO. 54, VIJAYNAGAR, INDORE(MP)

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 - 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
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

CUSTOMS APPEAL NO. 969 OF 2005

[Arising out of Order-in-appeal No. IND-I/266/2005 dated 19.08.2005 passed by the Commissioner (Appeals-I), Central Excise & Customs, Indore]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. 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?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	

M/s. Methodex Systems Ltd. — Appellants

Vs.

CC, Indore — Respondent

Appearance:

Shri Alok Barthwal, Advocate for the appellants;
Shri V. Kumar, Departmental Representative, for the Revenue;

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 7th October, 2008

FINAL ORDER NO. C/567/08 **dated** 7/10/08

Per S.S. Kang:

Heard both sides.

2. Appellants filed this appeal against Order-in-Appeal passed by the Commissioner (Appeals) whereby refund claim was rejected on the ground of unjust enrichment.

3. Contention of the appellant is that at the time of provisional release of goods, amount in question, was deposited with the Revenue and subsequently final assessment was made which resulted in excess payment and the refund claim is in ~~presence~~ pursuance of final assessment. Contention of the appellant is that in this situation bar of unjust enrichment is not applicable.

4. Revenue relied upon the judgment of Bombay High Court in the case of Bussa Overseas & Properties Pvt. Ltd. vs. UOI, reported in 2003 (158) ELT 135 (Bom.) wherein the Hon'ble High Court held that refund arising from finalization of provisional assessment is governed by the ~~limitation prescribed under~~ provisions of Section 27 of the Customs Act, 1962 and Customs authorities are under no obligation to refund the amount due under Section 18(2) ibid without the application of Section 27 of Customs Act. Contention of the Revenue is that the appeal filed by the assessee against the above decision was rejected by the Hon'ble

Supreme Court. Revenue also relied upon the decision of the Hon'ble Supreme Court in the case of Sehkari Khand Udyog Mandal Ltd. vs. CCE & Cus, reported in 2005 (181) ELT 328 (S.C.).

5. We find that bar of unjust enrichment is applicable where the amount has been paid in pursuance of the provisional assessment order. We find that it decided by the Bombay High Court in the case of Bussa Overseas & Properties Pvt. Ltd. (supra) held that refund arising from finalization of provisional assessment is governed by the ~~limitation~~ provisions ~~prescribed under~~ Section 27 of the Custom Act, 1962 and Customs authorities are under no obligation to refund the amount due under Section 18(2) of Custom Act without the application of Section 27 Custom Act. Appeal filed by the assessee against the said decision was dismissed by the Hon'ble Supreme Court. Further, we find that the Hon'ble Supreme Court in the case of Sahakari Khand Udyog Mandal Ltd. vs. CCE & Cus (supra) has held as under:-

"From the above discussion, it is clear that the doctrine of 'unjust enrichment' is based on equity and has been accepted and applied in several cases. In our opinion, therefore, irrespective of applicability of Section 11B of the Act, the doctrine can be invoked to deny the benefit to which a person is not otherwise entitled. Section 11B of the Act or similar provision merely gives legislative recognition to this doctrine. That, however, does not mean that in absence of statutory provision, a person can claim or retain undue benefit. Before claiming a relief of refund, it is necessary for the petition/appellant to show that he has paid the amount for which relief is sought, he has not passed on the burden on consumers and if such relief is not granted, he would suffer loss."

In view of the above decision we find no merit in the contention of the appellants that bar of unjust enrichment is not applicable, if the amount is paid in pursuance of the provisional assessment. Appeal is dismissed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 8th October, 2008

RK