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

Appeal No. E/2228/2006-SM[BR] Date 24/03/2008

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

To :
M/S PEACOCK INDUSTRIES LTD
KODIYAT ROAD, SISARMA, UDAIPUR
313001

M/S PEACOCK INDUSTRIES LTD Appellant
Vs
C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 458 /2008 –SM[BR] dated 12.2.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E. JAIPUR II
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
   JAIPUR 302005.
   302005
2. Adv. / Consult
   MR.V K AGGARWAL
   B-82, LAJPAT NAGAR, PART-2, NEW DELHI-110024
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard File

Assistant Registrar
(SM Appeal Branch)

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

COURT – II

EXCISE APPEAL NO. 2228 OF 2006-SM

[Arising out of Order-in-Appeal No. 662(HKS)CE/JPR-II/2005 dated 22.11.2005 passed by the Commissioner (Appeals-II), Central Excise, Jaipur]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President

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. Peacock Industries Ltd. Appellants

Vs.

CCE, Jaipur-II Respondent

Appearance:

Shri Atul Gupta, C.S. for the appellants,
Shri A.K. Rastogi, SDR for the Revenue,

Coram:

Hon'ble Mr. S.S. Kang, Vice President

Date of Hearing: 12^{th} February, 2008

FINAL ORDER NO. 458/08-SM(BR) dated 15/2/08

Per S.S. Kang:

Heard both sides.

2. Appellants filed this appeal against demand of Rs. 77,792/- and penalty imposed under Rule 57 I(4) of Central Excise Rules. Demand was confirmed in respect of inputs found short on which credit has been availed. Contention of the appellants is that the adjudicating authority confirmed the demand and on appeal filed by them the Commissioner (Appeals) vide order dated 22.5.2000 remanded the matter to the adjudicating authority with the direction to consider the explanation given by the appellant in respect of shortage. Thereafter, the adjudicating authority again confirmed the demand and imposed penalty and, on appeal filed by the appellants Commissioner (Appeals) upheld the adjudication order. Contention of the appellants in respect of direction given in the impugned order is that the explanation given by them was overlooked only on the ground that at the time of visit the authorized signatory admitted the shortage. Contention is that on the day of visit Shri Vinod Gupta, Sr. Manager submitted in his statement that this small percentage of shortage is happened due to clerical mistake. Thereafter, the appellants vide letter dated 25.3.1998 gave explanation regarding

shortage of each input. Contention is that the inputs were issued for processing, however, issue slips could not be entered into relevant form IV register till the time of physical verification. In respect of FPC (input) contention is that the same was issued on 13.6.97 under the slip but could be entered into form IV register as the search was going on. In respect of PODC (input) contention is that the same was wrongly entered in form IV register which is in respect of some other chemical. In respect of shortage of FPTC (input) it is explained that the same were received under 2 slips but could not be entered in form IV register. One slip is of the year 1996. In respect of master batch contention is that in the form IV register quantity was wrongly entered whereas actual quantity was 3725 kgs. Therefore, it is only a typographical mistake. Likewise, the appellants explained that the inputs except PPCP all the inputs were issued for processing under some slips. In respect of shortage of PPCP 1020 kgs. was not properly explained by the appellants.

3. Contention of the Revenue is that the Commissioner (Appeals) in the impugned order held that physical verification was conducted in the presence of authorized signatory of the appellants who accepted the shortage. Therefore, explanation given by the appellants is an after thought. Therefore, demand is rightly made.

4. I find that physical verification conducted in the presence of Shri Vinod Gupta who in his statement submitted that these shortages are due to clerical mistake and vide letter dated 25.3,98 gave detailed explanation along with evidence that the quantity in question were issued for processing. In some cases there is some typographical mistake in entering in form IV register. The appellants unable to explain the shortage of 1020 kgs. of PPCP (input) on which credit has been taken. In view of this I find that as the appellants had explained the shortage along with evidence and some slips were even one year prior to the date of verification, the demand in respect of inputs found short except 1020 kgs. PPCP is not sustainable. Hence, the same set aside. Duty is to be re-quantify in respect of shortage of 1020 kgs. PPCP only. Keeping in view the facts and circumstances of the case and the explanation given by the appellants, it is not a case for imposition of penalty. Therefore, penalty imposed on the appellants is set aside. Appeal is disposed of in above terms.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 15th February, 2008

RK