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THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

BENCH NB(SM)

Appeal No. E/846/00-NB(SM)

Dated : 9/2/07

CEGAT
NEW DELHI
To,

M/s Peacock Industries Ltd.

Kodiyat Road, Sisarma

Udaipur (Raj)

In the matter of :

M/s Peacock Industries Ltd.

Appellant

vs.

CCE Jaipur - II

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/173/01/NB(SM)
Dated : 31-1-07 passed by the Tribunal under Section 35-C(1) of Central Excise
& Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to :

1. CCE Jaipur

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NB(SM)

2. CCE/ECT(Appeal) Jaipur

3. Chief Commissioner of Central Excise / Customs. Jaipur.

4. Adv. / Consult: Apurva Bhattacharya Adv.

Bindu-Bhanan

5. S.D.R 49, Shastri Marg

6. JCDR Udaipur - (Raj)

7. Bar Association, CEGAT, New Delhi

8. Library, CEGAT, New Delhi

9. Director (Review), C.B.E.C. North Block, New Delhi

10. Guard File.

11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.

12. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, opp. Sachdeva P.T. College of
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13. M/s Lex Site Com. Ltd., Mumbai

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CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,
NEW DELHI.

E/APPEAL NO. 846/2000-NB(S)

(Arising out of Order-in-Appeal No. 344(KDT)CE/JPT-II/99
dated 22.11.1999 passed by the Commissioner of Central
Excise (Appeals), Jaipur).

M/s. Peacock Industries Ltd. Appellant
(Sh. M.P. Devnath, Advocate)

VS

C.C.E., Jaipur-II Respondent
(Sh. Y.R. Kilaria, JDR)

FINA ORDER NO. *A/173/01/NB*
(Dated the *Nov., 2000*) *(CS/m)*

PER S.S. KANG :

The appellants filed this appeal against the order-in-appeal dated 22.11.99 passed by the Commissioner (Appeals). In this case, the refund claim filed by the appellants under Rule 173 L was rejected on the ground that the value of returned goods is less than the excise duty paid on the goods at the time of clearance.

Brief facts of the case are that the appellants are engaged in the manufacture of plastic moulded furniture and they were clearing the same on payment of duty. The appellants received certain defective plastic furniture in respect of which appellants informed the revenue. The appellants re-made the defective goods received in the factory and cleared again on payment of duty. The appellants filed a refund claim in respect of defective goods received in the factory ^{and after re-making cleared on ~~other~~ payments}. A show cause notice was issued for rejection of the refund claim on *date.*

the ground that the goods, received back by the appellants, is nothing but plastic scrap and the value of the same in local market is about Rs. 8/- per kg., which is less than the excise duty originally paid at the time of clearance of the goods.

Ld. Counsel, appearing on behalf of the appellants, submits that the damaged furniture, which is returned back to the appellants, is only in the form of seconds furniture capable of being re-sold. Therefore, the market price of the seconds furniture is more than Rs. 10/- per kg. His submission is that the revenue had not produced any evidence to fortify its claim that the value of the goods, received back, is less than the duty paid by the appellants. His submission is also that the appellants had produced the evidence to show that the value of the identical goods is more than Rs. 8/- per kg. He also relies upon the decision of the Tribunal in the case of C.C.E., Chennai vs Vanagaram Refractory Works reported in 1999 (111) E.L.T. 890 (T) and in the case of C.C.E., Kanpur vs Kothari Products Ltd. reported in 2000 (116) E.L.T. 497 (T).

Ld. D.R., appearing on behalf of the revenue, submits that in the show cause notice, it was specifically mentioned that the value of the goods, received by the appellants, is about Rs. 8/- per kg.

The appellants received no defective furniture, but plastic scrap and this finding of fact is arrived at by the lower authorities. His submission is that before the adjudicating authority, the appellants made a request to conduct a fresh marketing enquiry for ascertaining the price of defective furniture. His submission is that on the request of the appellants, a fresh market enquiry was conducted and it had been found that the rate of broken/defective furniture, being sold in the market, is around Rs. 8/- to Rs. 10/- per kg. On the basis of this market survey, the adjudicating authority held that the value of the goods, received by the appellants, is between Rs. 8/- and 10/- per kg., which is less than the excise duty originally paid. He, therefore, submits that the appeal be dismissed.

Heard both sides.

In this case, the contention of the appellants is that they had received defective plastic furniture, whereas the contention of the revenue is that the appellants had received plastic furniture scrap. The appellants relied upon the decision of the Tribunal in the case of Kothari Products (P) Ltd. (supra). In this case, there was no evidence on record to show that the value of the returned goods is less than the amount of duty originally paid at the time of clearance, whereas in the present case, there is a specific finding, based on market survey conducted on the request of the appellants that the value of the goods, received by the appellants, is less than the amount of duty paid at the time of clearance. In the case of Vanagaram Refractory Works (supra), the

manufacturer received back the defective refractory bricks not found of desired quality and the refractory bricks were received back without being broken, whereas, in the present case, there is a specific finding of fact that the appellants had received the plastic scrap. Hence, the ratio of decisions, relied upon by the appellants, is not applicable on the facts of the present case.

In view of the above discussion, I find no infirmity in the impugned order. The appeal, filed by the appellants, is rejected.

(S.S. KANG)
MEMBER (JUDICIAL)

Dt. 31-1-2000²⁰⁰¹
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