7

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

CUSTOMS APPEAL BRANCH

Appeal No. C/357 /2007 - CU[DB]

Date **27/06/2011**

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

To :
M/S VIKAS WOOD WORKS
SAYED KA GATTA, TONK ROAD, JAIPUR.

M/S VIKAS WOOD WORKS Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/265/ 2011 CU[DB]** dated 23.06.2011 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
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult **MR.JATIN MAHAJAN,**
157, IIIRD FLOOR, VINOBHA PURI,
LAJPAT NAGAR-II, NEW DELH – 24.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:22.06.2011
Date of decision:22.06.2011

Customs Appeal No.357 of 2007-Customs

[Arising out of Order-in-Appeal No.3(GRM)CUS/JPR-I/2007 dated 16.03.2007 passed by the Commissioner of Customs, Jaipur].

M/s. Vikas Wood Works — Appellant

Vs.

CC, Jaipur-I — Respondent

For approval and signature:

Hon'ble Shri M.V. Ravindran, Member (Judicial)
Hon'ble Shri M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.	NO
2. Whether it should 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?	Seen
4. Whether Order is to be circulated to the Departmental authorities?	Yes

Appearance: Rep. by Shri Jatin Mahadev, Advocate.
Rep. by Shri Fateh Singh, SDR for the respondent.

CORAM: Hon'ble Shri M.V. Ravindran, Member (Judicial)
Hon'sble Shri M.Veeraiyan, Member (Technical)

Final Order No.C/265/11..../Dated:22.06.2011

Per M.V. Ravindran:

This appeal is directed against the Order-in-Appeal No.3(GRM) CUS/JPR-I/2007 dated 16.03.2007.

2. The brief facts involved for consideration in this case are that the appellant filed a refund claim consequent to the Final Order of the Tribunal in their favour, as regarding classification of the Sawn Timber. The appellant consequent to the final order filed a refund claim with the adjudicating authority for refund of customs duty, redemption fine and penalty paid by them. The adjudicating authority sanctioned the refund claim of customs duty and ordered to credit the sanctioned amount to the Consumer Welfare Fund, on the ground that the appellant was not able to cross the hurdles of unjust enrichment. He sanctioned refund of the amount paid as redemption fine and penalty, to the appellant. Aggrieved by that portion of the order which rejected the refund claim of the customs duty, the appellant preferred an appeal before the ld. Commissioner (Appeals) and ld. Commissioner (Appeals) also upheld the order of the adjudicating authority. Hence this appeal.

3. Ld. Counsel takes us through the order-in-appeal and also draws our attention to the Chartered Accountant's certificated produced before the ld. Commissioner. It is his submission that the Chartered

Accountant has given a certificate which. indicates that the value of the goods imported, approximately is Rs.14,677.22 CBM and they have sold the goods at the value of Rs.12,000/- and Rs.13,000/- per CBM.

4. Ld. Departmental Representative reiterates the findings of the Commissioner (Appeals).

5. On careful consideration of the submissions made by both the sides, we find that the refund claim of an amount of Rs.2,83,255/- has been rejected by the adjudicating authority and upheld by the ld. Commissioner on the ground of unjust enrichment. While coming to the conclusion that rejection of the refund claim was correct, the ld. Commissioner (Appeals) has recorded the following findings:-

> "5. I have gone through the Appeal written submissions made by the Appellant and arguments made at the time of Personal Hearing by the Advocate. I observe that, the refund claim amounting to Rs.2,83,255/- in respect of Basic Customs duty has been rejected on the ground that the Appellant failed to produce any evidence to prove that burden of excess duty was not passed on by them to any other person/party. In this regard, I find that the Appellant has contended that, the cost price of the goods worked out to Rs.14,677/- , they have sold the said goods on loss. In support of their contention they submitted CA certificate and cash credit memo regarding sale of the goods. In this regard, I find that, the CA certificate only certifies cost of the goods @

> 14677.22/CBM, it also refers that the cost includes Customs duty as per Bill of Entry of Rs.445840/-. I also find that the Cash/credit memo submitted by the Appellant does not specify, the volume of customs duty passed on to the customer. In view of these facts, it could not be ensured that excess duty paid by the Appellant was not passed on to the customers. Therefore, I find that the denial of refund claim on the ground of unjust enrichment is sustainable in law. Accordingly, I hold that, in absence of documentary evidence evidencing that the excess duty was not passed on by the Appellant to other persons, the refund claim has rightly been rejected."

6. It can be seen from the records that the Chartered Accountant while giving certificate to the appellant had categorically specified at Sl.No.4 as to "Customs duty as per Bill of Entry". This would indicate that Chartered Accountant has considered the duty paid by the appellant on the Bill of Entry. The perusal of the Bill of Entry clearly indicates that the Assessing Officer has enhanced the rate of duty from 5% to 15% and the said amount was paid by the appellant. It would indicate that the appellant had collected the amount of duty as per Bill of Entry in the invoices and which also indicate that the appellant were charging Rs.15,000/-per CBM for few of the consignments sold by him. We also find that some of the invoices also indicate a price of Rs.12,000/- and Rs.13,000/- per CBM as submitted by the ld. Counsel. If the assessee's

own evidence in form of Chartered Engineer's certificate indicates the inclusion of the customs duty paid as per Bill of Entry, then there is no case for assessee appellant.

7. In view of the foregoings, we are of the considered opinion that the findings of the ld. Commissioner (Appeals) is correct and does not require any inference. In view of this, we hold that the appellant has not passed the hurdle of unjust enrichment. Hence, the appeal filed by the appellant is rejected.

(Dictated in the open court)

(M.V. Ravindran)
Member (Judicial)

(M. Veeraiyan)
Member (Technical)

Ckp.