

**Peico Electronics and Vs. Cc**

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**SooperKanoon Citation :** [sooperkanoon.com/13293](http://sooperkanoon.com/13293)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Apr-20-1998

**Reported in :** (1998)(77)LC260Tri(Mum.)bai

**Judge :** U Bhat, S T K.

**Appellant :** Peico Electronics and

**Respondent :** Cc

**Judgement :**

1. Appellant is absent in spite of notice of hearing, but has sent a request for decision of the appeal on merits. We have heard Shri K.Srivastava, SDR and perused the papers.

2. Appellant imported a consignment of electronic components from Holland as per invoice No. 5801212 dt. 16.11.1987, filed Bill of Entry dated 25.11.1987 and paid duty and cleared the goods. Subsequently, appellant filed a refund claim alleging that the supplier had overcharged the appellant and when this was pointed out, supplier had returned the amount of price overcharged and, therefore, the transaction value was less than what was shown in the original invoice.

Refund was claimed on the basis that the correct price was the amount shown in the original invoices less the amount returned. The Assistant Collector rejected the refund claim and his order has been confirmed by the Collector (Appeals). Hence, the present appeal.

3. The main reason for rejecting the refund claim is the alleged discrepancy between the correct credit note issued by the supplier and the certificate of Bank of America showing the remittance of the excess price. The credit note bears the date of issue as 1988.04.11. This was in response to the appellant's reference telex No. 1892 dt. 29.3.1988.

The Bank certificate bears the dt 13.10.1988. It states that the supplier's bank had remitted US \$ 2975.93 and that was remitted to the appellant's bank. The amount shown in the two documents tallies. The date of credit note shown as 1988.04.11 was taken by the lower authorities as 4th November, 1988, which would be 21 days after the bank certificate. It was on this ground that the lower authorities declined to accept the case of excess price. The credit note was issued after the telex dt. 29.3.1988 of the appellant. It is evident that the date of the credit note is 11th April, 1988 and not 4th November, 1988.

The number of the credit note is 5955237 and this number is referred in the bank certificate also. In these circumstances, we are satisfied that the case of the appellant is true, namely, there was excess price charged by the supplier which, on being pointed out, was returned. The assessable value should be based on the correct price paid by the appellant. There is no question of unjust enrichment involved in this appeal, since the appellant consumed the imported articles and did not trade in them.

4. We accordingly set aside the impugned orders and allow the appeal.

Pronounced and dictated in the open court.

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