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

Appeal No. E/3588-3589/2004 - EX[DB] Date 22/07/2009

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

To :
C.C.E. INDORE
MANIK BAGH PALACE, P.O.-10, INDORE (M.P.)

C.C.E. INDORE Appellant

Vs

M/S KUBER INDUSTRIES Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 487-488/2009- **EX[DB]** dated 16-7-09

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
M/S KUBER INDUSTRIES ← 19. SH.JAGDISH CHANDRA SONI,
INDUSTRIAL AREA, RATLAM (M.P.)
2. Adv. / Consult

NONE

3 C.D.R
4 ~~J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file
18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

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CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-I

Date of hearing/decision:16.7.2009

Central Excise Appeal No.3588 of 2004

Arising out of the order in appeal No.449-450-CE/IND/APPL-II/03 dated 15.9.03 passed by the Commissioner (Appeals-II), Customs & Central Excise, Indore.

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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

C.C.E., Indore ... Appellant

Vs.

M/s Kuber Industries ... Respondent

Central Excise Appeal No.3589 of 2004

Arising out of the order in appeal No.449-450-CE/IND/APPL-II/03 dated 15.9.03 passed by the Commissioner (Appeals-II), Customs & Central Excise, Indore.

C.C.E., Indore ... Appellant

Vs.

Shri Jagdish Chandra Soni ... Respondent
(Partner)

Appearance:

Shri P.K. Singh, Authorized Departmental Representative (DR) for the Revenue and none for the respondents

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

FINAL Oral Order No. 487-488/09-EA (14)

Per M. Veeraiyan:

These two appeals by the Department are arising out of the same impugned order of the Commissioner (Appeals).

2. Heard the learned SDR. None appeared for the respondents. Perused the records.

3. The respondents are engaged in the manufacture of ginning machines and its spares and the Department issued show cause notice alleging that the said machines were cleared with the brand name of third parties based on the statement of Shri Sanjay Choudhary, Manager of the firm. Original authority confirmed the demand of Rs.4,46,706/-along with interest and imposed equal amount as penalty on the firm and also a sum of Rs.2 lakhs on Shri Jagdish Chandra Soni, partner of the firm. Commissioner (Appeals) set aside the order of the original authority and allowed the appeal of the firm as well as the appeal of Shri Jagdish Chandra Soni. Hence the Department is in appeal.

4. Learned SDR reiterates the finding and reasoning given in the order of the original authority and the grounds of appeal.

5. We have carefully considered the submissions. The Commissioner (Appeals) has given a clear finding that it was a case of mere affixing of brand name of others in the letter head and invoices which cannot held to be clearance of goods with the brand name of others. Against this factual finding, no evidence has been cited by the Revenue. While the conduct of the respondents in affixing the brand name in letter head and mentioning the brand name in the invoices may raise doubts, the same may not be considered as evidence enough to hold that the respondents have cleared the goods with the brand name of third parties. Under these circumstances, we do not find any valid grounds to interfere with the finding and reasoning

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adopted by the Commissioner (Appeals).

6. In the light of the above, we reject the appeals of the Department.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

scd/