

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

Appeal No. E/4809/2004 - EX[DB]

Date 17/09/2009

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

To :
C.C.E. JALANDHAR
(HQ AT CHANDIGARH) PLOT NO 19, SEC 17-C,
CHANDIGARH
C.C.E. JALANDHAR

Appellant

Vs

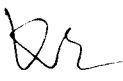
Respondent

M/S KARAN ENTERPRISES

2009 EX[DB] dated 09-9-09

I am directed to transmit herewith a certified copy of Final order No. 688

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 KARAN ENTERPRISES

193-EAST MOHAN NAGAR, AMRITSAR

2. Adv. / Consult

MR.K.K ANAND

A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

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 Publications 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), Vaithvaram 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 Kuni, New Delhi - 110070

13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

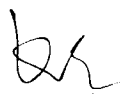
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

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)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 4809 of 2004

(Arising out of Order-in-Appeal No. 263-264/CE/AppI/Jal/2004 dated 31.05.2004 passed by the Commissioner of Central Excise (Appeals), Jalandhar).

DATE OF HEARING : 09.09.2009

DATE OF DECISION : 09.09.2009

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT
HON'BLE MR. M. VEERAIYAN, MEMBER (TECHNICAL)

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982 ?	Yes
2.	Whether it should be released under Rule 27 of the 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

CCE, Jalandhar

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Appellant

(Rep by Sh. P.K. Singh, DR)

VERSUS

M/s Karan Enterprises

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Respondent

(Rep. by NONE)

CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT
HON'BLE MR. M. VEERAIYAN, MEMBER (TECHNICAL)

FINAL **ORAL ORDER NO.** 688/09-EX

PER M. VEERAIYAN :

This is an appeal by the Department against the order of the Commissioner (Appeals) no. 263-264/CE/Apl/Jal/2004 dated 31.05.2004.

2. None appears for the respondents in spite of notice. Heard the learned DR for the Department.

3. The relevant facts in brief are that, M/s Karan Enterprises is a Proprietorship concern of Mrs. Rajini Chopra w/o Shri Vinod Chopra. Shri Vinod Chopra is one of the Partners of another firm, M/s Metal Fold Fasteners. Both the firms were apparently engaged in the manufacture of Bolts and Screw Manufacturing Machines. On the date of visit by the Officers on 17.12.1996 to the premises of M/s Metal Fold Fasteners, they found certain records relating to M/s Karan Enterprises. Shri Vinod Chopra admitted that he was looking after the work of M/s Karan Enterprises and also admitted that the goods were being cleared with the brand name 'Metal Fold'. Three of the purchasers were contacted, who admitted having received the machinery with the brand name 'Metal Fold' from M/s Karan Enterprises. Show cause notice was issued alleging that the brand name 'Metal Fold' belongs to M/s Metal Fold Fasteners and that M/s Karan Enterprises have cleared the machinery with the brand name belonging to third party and, therefore, not eligible for the exemption under Notification No. 1/93. The original authority confirmed the

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demand of duty of Rs. 3,50,369/- along with interest and imposed equal amount as penalty under Section 11-AC read with Rule 173-Q. He also imposed a penalty of Rs. 10,000/- on M/s Metal Fold Fasteners under Rule 209-A of the Central Excise Rules, 1944.

4. On appeal by the parties, the Commissioner (Appeals) set aside the order of the original authority insofar as the same relates to demand of duty and imposition of penalty on M/s Karan Enterprises. The Department is in appeal against the order of the Commissioner (Appeals).

5. Learned SDR submits that, it is a clear case of admission by Shri Vinod Chopra about the clearance of machinery from M/s Karan Enterprises with the brand name 'Metal Fold' and this has been corroborated by the versions of the purchasers of the said machinery. Therefore, the Commissioner (Appeals) should not have accepted the version given by Shri P.K. Chopra, authorized signatory of M/s Karan Enterprises, regarding the ownership of the brand name and should not have allowed the appeal. He seeks setting aside of the order of the Commissioner (Appeals) and restoring the order of the original authority.

6. We have carefully considered the submissions of the learned SDR and perused the record. It is the claim of M/s Metal Fold Fasteners that the brand name used by them was 'Metal Fold Machinery' in red colour and the claim of M/s Karan Enterprises is that they used the brand name 'Metal Fold' in blue colour. Shri Vinod

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Chopra, though husband of Mrs. Rajini Chopra, apparently is not an authorized person in respect of M/s Karan Enterprises. No such evidence has been cited by the Department to show that Shri Vinod Chopra is authorized to make a statement on behalf of M/s Karan Enterprises. The confessional statement of Shri P.K. Chopra does not prove that the brand name 'Metal Fold' belongs to the firm M/s Metal Fold Fasteners and that M/s Karan Enterprises has used the brand name belonging to M/s Metal Fold Fasteners. The admission by the three purchasers that they received the machinery with the brand name of 'Metal Fold' from M/s Karan Enterprises does not go contrary to the claim of M/s Karan Enterprises, who claimed that it is their brand name which is different from the brand name of M/s Metal Fold Fasteners. Such a claim has been made by the authorized representative of M/s Karan Enterprises. Under these circumstances, the decision of the Commissioner (Appeals) allowing the appeal of M/s Karan Enterprises cannot be found fault with.

7. In view of the above, the appeal by the Department is rejected.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(M. VEERAIYAN)
MEMBER (TECHNICAL)