

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

Appeal No. C/8 /2007 - CU[DB]

Date 09/08/2010

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

To :

C.C.E. INDORE

P.B. NO. 10, MANIK BAGH PALACE,

INDORE - 452 001

C.C.E. INDORE

Appellant

Vs

Respondent

M/S KUBER IMPEX LTD.

I am directed to transmit herewith a certified copy of **Final order No. C/123/ 2010 CU[DB]** dated 27.07.2010 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

M/S KUBER IMPEX LTD., 207, SILVER ARC PLAZA,

20/1, NEW PALASIA, INDORE (M.P.)

2. Adv. / Consult

3 S.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 Company Law Institute of India Pvt Ltd., No.2 (Old No. 36), Vaithyaram Street, T. Nagar, Chennai - 17

9 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017

10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005

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

12 LAW CRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Haryana)

13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

14 Office Copy

15 Guard file

Assistant Registrar
(Customs Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram,
NEW DELHI**

COURT No. II

CUSTOMS APPEAL NO. 08 OF 2007

[Arising out of Order-in-Appeal No. IND-I/340/2005
dated 20.10.2005 passed by the Commissioner (Appeals-
I), Customs & Central Excise, Indore]

CCE, Indore

Appellant

Reptd. By Shri M. Rastogi, DR

Versus

M/s. Kuber Impex Ltd.,

Respondent

None

Date of Hearing/decision: 27th July, 2010

Coram: Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Rakesh Kumar, Technical Member

FINAL ORDER NO. C/123/10 DATED

Per D.N. Panda:

Although adjudication was completed denying
refund, the respondent succeeded before the appellate
authority holding that there was no unjust enrichment
made by the respondent since cost of battery is Rs.
19.10 and selling price was Rs. 19.92. The adjudicating
authority found that the respondent did not provide

evidence to satisfy whether there was any unjust enrichment in respect of refund claim. The finding made by the adjudicating authority is that although name of the buyer/consignee appears but no details of address of buyer/consignee has been given in the invoice. He found invoice number is written manually and not printed. He also found discrepancy in the description of goods.

2. While the matter stood as above, learned appellate authority made exercise to examine the cost of battery and found that no duty burden was passed on by the respondent. According to him duty burden was not included in the sale price. Giving exemption of customs duty of Rs. 1,11,561/- on 25,440 pieces of battery, the cost ^{was} Rs. 4.38/- per piece. Had the customs duty loaded in the sale price the sale price would ^{have} been Rs. 24.96 per piece while the sale price was Rs. 19.92 per piece.

3. We are unhappy to notice the conclusion of the learned Appellate Authority's observation when the respondent failed to provide entire calculation to the learned Adjudicating Authority to test unjust enrichment with clean hands. We are also unhappy to notice that a person with prudence and diligence can never sell the

goods without realizing its cost including customs duty suffered by it. However, noticing that the duty demand in question was Rs. 1,11,561/- and 5 years have already expired from import and no useful purpose shall be served if we remand the matter for redoing the adjudication, we are compelled to dismiss the appeal of the Revenue. *we order accordingly*

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RK