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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/2099/2010-2128/2010 - EX[DB] WITH E/S/2008-2011,2013-2014, 2016-2017,2019-2022,2024-2025,2027-2042/2010-EX   Date **25/02/2011**

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

To :
KORES (INDIA) LTD
KORES HOUSE, PLOT NO 10, OFF. DR.E. MOSES
ROAD, WORLI, MUMBAI.
400018

KORES (INDIA) LTD — Appellant

Vs

C.C.E. INDORE — Respondent

STAY ORDER NO.287-316/2011-EX

I am directed to transmit herewith a certified copy of **Final order No. 205-234/ 2011 EX[DB]** dated 11-2-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult
MR.RAMESH NAIR
LAKSHMI VIHAR, AG- 192, SCHEME NO. 54,
VIJAYNAGAR, INDORE(MP)

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. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file
15. HON'BLE PRESIDENT.
16. M/S MARS STATIONARY PVT LTD
BM-144, HOUSING BOARD COLONY, SECTOR-1, PITHAMPUR,
DISTT- DHAR(MP)

Assistant Registrar
(Excise Appeal Branch)

P.T.O.

~~PRANAV PACKWELL PVT LTD~~
~~BM-41,HOUSING BOARD COLONY, SECTOR-1, PITHAMPUR,~~
~~DISTT- DHAR(MP)~~

17 • SHAILENDRA DAGA,DIRECTOR
BM-40, HOUSING BOARD COLONY, SECTOR-1, PITHAMPUR,
DISTT- DHAR(MP)

• ~~SPEARHEAD DIAGNOSTICS & SYSTEM (P) LTD~~
~~H-11, JAI MATA JI COMPOUND, KALHER VILLAGE, THANE.~~

18 • A.K.SODHANI,DIRECTOR
M/S NEPTUNE STATIONARY PVT LTD, BM-40, HOUSING
BOARD COLONY, SECTOR-1, PITHAMPUR, DISTT- DHAR

~~M/S KORES INDIA LTD~~
~~KORES HOUSE, PLOT NO 10, OFF DR. MOSES ROAD, WORLI,~~
~~MUMBAI.~~

19 • SANJAY GUPTA
101, GOKULSHRI APARTMENT USHA NAGAR, INDORE(MP)

20 • VINOD AGIWAL,DIRECTOR
M/S KOOL TOOLZ ART MATERIAL (P) LTD, PLOT NO 6A,
INDUSTRIAL AREA NO 1, PITHAMPUR, DISTT- DHAR(MP)

21 • V.SELAPPAN
BM-40, HOUSING BOARD COLONY, SECTOR-1, PITHAMPUR
DISTT- DHAR(MP)

22 • GOPAL NAMDEV,DIRECTOR
M/S COLOUR OF FUN ART MAT P. LTD, PLOT NO 22-23,
MHOW NEEMUCH ROAD, GRAM-BHATKHEDI, TEH- MHOW
DISTT- INDORE

~~M/S KOOL TOOLZ ART MATERIAL PVT LTD~~
~~PLOT NO 6, INDUSTRIAL AREA NO 1, PITHAMPUR, DISTT-~~
~~DHAR(MP)~~

23 • A.K.CHOPRA, DIRECTOR (FINANCE)
M/S KORES INDIA LTD, KORES HOUSE, PLOT NO. 10, OFF.
DR.E.MOSES ROAD WORLI, MUMBAI.

24 • BALAJI MULTI COLOURS PVT LTD
336/1/3, PLOT NO 15/16, VILLAGE- BHATKHEDI, MHOW
NEEMUCH ROAD, TEHSIL- MHOW, DISTT- INDORE(MP)

25 • KOOL TOOLZ ART MATERIALS PVT LTD
PLOT NO 6A, INDUSTRIAL AREA NO 1, PITHAMPUR,
DISTRICT- DHAR(MP)

26 • M/S COLOURS OF FUN ART MATERIALS PVT LTD
336/1/3, PLOT NO 22-23, MHOW- NEEMUCH ROAD, GRAM-
BHATKHDI, TEHSIL- MHOW, DISTT- INDORE(MP)

~~M/S KORES INDIA LTD~~
~~PLOT NO.10, OFF. DR.E.MOSES ROAD, WORLI, MUMBAI~~

27 • M/S NANDINI STATIONARY PVT LTD
BM-144, HOUSING BOARD COLONY, SECTOR-1, PITHAMPUR,
DISTT- DHAR(MP)

28 • M/S NEHA STATIONARY PVT LTD
CM-109, HOUSING BOARD COLONY SECTOR-1, PITHAMPUR,
DISTT- DHAR(MP)

• ~~M/S NEHA STATIONARY PVT LTD~~
~~CM-109, HOUSING BOARD COLONY, SECTOR-1, PITHAMPUR,~~
~~DISTT-DHAR(MP)~~

29 • PRANAV PACKWELL PVT LTD
BM-41, HOUSING BOARD COLONY, SECTOR-1, PITHAMPUR,
DISTT- DHAR(MP)

30 • SANDHYA SALES AGENCIES PVT LTD
CM-109, HOUSING BOARD COLONY, SECTOR-1, PITHAMPUR,
DISTT- DHAR(MP)

31 • M/S JUPITER STATIONARY PVT LTD
S-1/1, SECTOR-II, PITHAMPUR, DISTT- DHAR(MP)

32 • M/S NEPTUNE STATIONARY PVT LTD
BM-40, HOUSING BOARD COLONY, SECTOR-1, PITHAMPUR,
DISTT- DHAR(MP)

• ~~SANDHYA SALES AGENCIES PVT LTD~~
~~CM-109, HOUSING BOARD COLONY, SECTOR-1, PITHAMPUR~~
~~,DISTT- DHAR(MP)~~

33 • SPEARHEAD DIAGNOSTICS & SYSTEM (P) LTD
H-11, JAI MATA JI COMPOUND, KALEHER VILLAGE, THANA
BHIWADNI ROAD, THANE.

34 • COLOURS OF FUN ART MATERIALS PVT LTD
336/1/3, PLOT NO 22-23, VILLAGE- BHATKHEDI, MHOW
NEEMUCH ROAD, TEHSIL- MHOW, DISTRICT- INDORE(MP)

35 • M/S.BALAJI MULTI COLOURS PVT.LTD
336/1/3,PLOT NO. 15/16, MHOW-NEEMUCH ROAD, GRAM-
BHATKHDI TEHSIL-MHOW, DIST. INDORE.

36 • SANDEEP PRAPANNA,DIRECTOR
M/S JUPITER STATIONARY PVT LTD, SHED S-1/1, SECTOR-II,
PITHAMPUR, DISTT- DHAR(MP)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-I

Date of hearing/decision: 11.2.2011

Sl. No.	Stay Application No. in Appeal No.	Appellants/applicants		Respondent
1-2.	E/S/2008 &2037/10 E/2099 & 2123/10	Kores India Ltd.,	Vs	C.C.E, Indore
3.	E/S/2009/10 E/2100/10	Kool Toolz Art Material P. Ltd.,	Vs	C.C.E, Indore
4-5.	E/S/2010-2011/10 E/2101-2102/10	Pranav Packwell P. Ltd.,	Vs	C.C.E, ndore
6.	E/S/2013/10 E/2103/10	Sandeep Prapanna, Director	Vs	C.C.E., Indore
7.	E/S/2014/10 E/2104/10	Vinod Agarwal, Director	Vs	C.C.E.,Indore
8.	E/S/2016/10 E/2105/10	Colours Of Fun Art Materials P. Ltd.,	Vs	CC.E., Indore
9.	E/S/2017/10 E/2106/10	Gopal Namdev,Director	Vs	CC.E.,Indore
10.	E/S/2019/10 E/2107/10	Balaji Multi Colours P. Ltd.,	Vs	C.C.E., Indore
11.	E/S/2020/10 E/2108/10	Sanjay Gupta	Vs.	C.C.E., Indore
12.	E/S/2021/10 E/2109/10	A.K.Sodhani, Director	Vs	C.C.E., Indore
13.	E/S/2022/10 E/2110/10	Sandhya Sales Agencies P. Ltd.,	Vs	C.C.E., Indore
14.	E/S/2024/10 E/2111/10	Shailendra Daga, Director	Vs	CC.E., Indore
15.	E/S/2025/10 E/2112/10	Sandhya Sales Agencies P. Ltd.,	Vs	C.C.E., Indore
16.	E/S/2027/10 E/2113/10	Neha Stationary P. Ltd.,	Vs	C.C.E.,Indore
17.	E/S/2028/10 E/2114/10	V.Selappan	Vs	C.C.E. Indore
18.	E/S/2029/10 E/2115/10	Mars Stationary P. Ltd.,	Vs	C.C.E. Indore
19.	E/S/2030/10 E/2116/10	Neptune Stationary P. Ltd.,	Vs	C.C.E., Indore
20-21.	E/S/2031-2032/10 E/2117-2018/10	Jupiter Stationary P. Ltd.,	Vs	C.C.E., Indore

22-23.	E/S/2033-2034/10 E/2119-2120/10	Spearhead Diagnostics & System P. Ltd.,	Vs	C.C.E.,Indore
24.	E/S/2035/10 E/2121/10	Neha Stationary P. Ltd.,	Vs	C.C.E., Indore
25.	E/S/2036/10 E/2122/10	Kores India Ltd.,	Vs	C.C.E.,Indore
26.	E/S/2038/10 E/2124/10	A.K.Chopra, Director	Vs	C.C.E., Indore
27.	E/S/2039/10 E/2125/10	Nandini Stationary P. Ltd.,	Vs	C.C.E., Indore
28.	E/S/2040/10 E/2126/10	Kool Toolz Art Material P. Ltd.,	Vs	C.C.E., Indore
29.	E/S/2041/10 E/2127/10	Balaji Multi Colours P. Ltd.,	Vs	C.C.E., Indore
30.	E/S/2042/10 E/2128/10	Colours Of Fun Art Materials P. Ltd.,	Vs	C.C.E., Indore

[Arising out of order in original No.10-11/Commr.Cex/IND/2010 dated 16.4.2010 passed by Commissioner, Central Excise, Customs & Service Tax, Indore , M.P.

Appearance:

S/Shri

Joseph Vellapally, Senior Advocate with Ramesh Nair and Alok Barthwal, Advocates for the appellants/applicants
R.K. Verma, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

STAY Oral Order No. 287-316/2011-EA

Per Shri Justice R.M.S. Khandeparkar:

Heard. As we propose to dispose of all the appeals, we allow the applications without insisting for pre-deposit of the demand and direct the registry to place the corresponding appeals themselves for final disposal forthwith. The applications accordingly stand disposed of.

(Justice R.M.S. Khandeparkar)
President

Rakesh Kumar)
Technical Member

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-I

Date of hearing/decision: 11.2.2011

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1-2.	E/2099 & 2123/10	Kores India Ltd.,	Vs	C.C.E, Indore
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7.	E/2104/10	Vinod Agarwal, Director	Vs	C.C.E.,Indore
8.	E/2105/10	Colours Of Fun Art Materials P. Ltd.,	Vs	CC.E., Indore
9.	E/2106/10	Gopal Namdev,Director	Vs	CC.E.,Indore
10	E/2107/10	Balaji Multi Colours P. Ltd.,	Vs	C.C.E., Indore
11.	E/2108/10	Sanjay Gupta	Vs.	C.C.E., Indore
12.	E/2109/10	A.K.Sodhani, Director	Vs	C.C.E., Indore
13.	E/2110/10	Sandhya Sales Agencies P. Ltd.,	Vs	C.C.E.,, Indore
14.	E/2111/10	Shailendra Daga, Director	Vs	CC.E., Indore
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16.	E/2113/10	Neha Stationary P. Ltd.,	Vs	C.C.E.,Indore
17.	E/2114/10	V.Selappan	Vs	C.C.E. Indore
18.	E/2115/10	Mars Stationary P. Ltd.,	Vs	C.C.E. Indore
19.	E/2116/10	Neptune Stationary P. Ltd.,	Vs	C.C.E.,, Indore

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24.	E/2121/10	Neha Stationary P. Ltd.,	Vs	C.C.E., Indore
25.	E/2122/10	Kores India Ltd.,	Vs	C.C.E.,Indore
26.	E/2124/10	A.K.Chopra, Director	Vs	C.C.E., Indore
27.	E/2125/10	Nandini Stationary P. Ltd.,	Vs	C.C.E., Indore
28.	E/2126/10	Kool Toolz Art Material P. Ltd.,	Vs	C.C.E., Indore
29.	E/2127/10	Balaji Multi Colours P. Ltd.,	Vs	C.C.E., Indore
30.	E/2128/10	Colours Of Fun Art Materials P. Ltd.,	Vs	C.C.E., Indore

[Arising out of order in original No.10-11/Commr.Cex/IND/2010 dated 16.4.2010 passed by Commissioner, Central Excise, Customs & Service Tax, Indore , M.P.]

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
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:

S/Shri

Joseph Vellapally, Senior Advocate with Ramesh Nair and Alok Barthwal, Advocates for the appellants/applicants
R.K. Verma, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

FINAL Oral Order No. 205-234/2011-Ex

Per Shri Justice R.M.S. Khandeparkar:

These appeals are taken up for hearing in terms of the order passed today in stay applications Nos.2008, 2037 of 2010 and other connected matters. Since a common question of law and facts arise in all these matters, they were heard together and are being disposed of by this common order.

2. All these appeals arise from a common order dated 16.4.2010 passed by the Commissioner (Appeals), Indore. By the impugned order, the Commissioner (Appeals) has confirmed the duty demand against M/s Kores India Ltd. and several other appellants along with interest thereon as also has imposed penalty and ordered confiscation of the seized materials with option to redeem the confiscated goods on payment of specified fine.

3. We have heard the Advocate for the appellants and the DR for the respondent. Though the impugned order is sought to be challenged on various grounds, it is not necessary to deal with all these grounds and suffice to refer to only one ground namely non-application of mind by the Commissioner to the facts of the matter while deciding the cases. Indeed, as rightly contended on behalf of the appellants, the impugned order ex-facia discloses total non-application of mind by the adjudicating authority while levying duty against several firms.

4. M/s Kores India Ltd. were engaged in the manufacture of various stationery items including staple pins. In view of the decision of the Government of India to reserve the manufacture of staple pins by small scale industry, it is the case of the appellants that M/s Kores India Ltd. which is ceased to manufacture the said items since 1992 and allowed their ex-employees to manufacture the same in their independent unit while providing necessary guidance and help whenever required. It is however the case of the Department that under the guise of giving guidance and help to those units which was in fact M/s Kores India Ltd. itself continued to manufacture the said items with the help of those units and failed to pay the duty and wrongfully

availed the benefit of SSI exemption and, therefore, investigation was carried out and ultimately the impugned order came to be passed.

5. Plain reading of the impugned order reveals that while analysing the entire case to ascertain whether SSI units located in the rural areas are really dummy units of M/s Kores India Ltd. , the following conclusions were sought to be drawn:

(i) Rural units were working on paper till such manufacturing of staple pins.

(ii) Those units claim that they were doing packing activities in the course of search conducted on 4.4.2005, no packing materials were found even loose staple pins and even no packing activity was found in the premises occupied by those units.

(iii) Rural unit was limited to preparation of documents while actual manufacture and packing was done by the SSI units located in urban areas.

(iv) In the entire manufacturing, packing was done by the urban SSI units that the noticee No.2 to 5.

(v) The SSI units were administrative and financial controlled by M/s Kores India Ltd. through their employees and ex-employees.

(vi) There is no separate demand of duty from the dummy units.

(vii) The noticee No.2 to 5 have manufactured goods on behalf of M/s Kores India Ltd. and extended help to M/s Kores India Ltd. in removal of the same in the guise of job work and therefore, liable to penalty.

(viii) The noticee No.13 to 21 played an active role in creation of dummy units and was administrative and financial control by M/s Kores India Ltd. and were made an important link between Kores India Ltd. and the dummy units for evasion of excise duty and hence liable for penalty.

(ix) The SSI units and Kores India Ltd. with the help of noticee No.2 to 12 were intentionally involved in evasion of duty by fabricating documents and therefore, the Department correctly invoked the extended period of limitation for recovery of duty so evaded. As regards the noticee No.10, 19, 20 are concerned, they related to occupants of the premises where the goods were confiscated .

6. On the basis of the above finding, the adjudicating authority has confirmed the demand of duty against M/s Kores India Ltd. and noticee No.6 to 11.

7. The above quoted findings would apparently disclose that the adjudicating authority on one hand has arrived at the finding that no manufacturing activity was carried out by noticee No.6 to 11 but, in fact, the manufacturing activities were carried out by noticee No.2 to 5. However, while demanding duty, the same has been confirmed against noticee No.6 to 11 and there is no such duty demand against noticee No.2 to 5.

8. As regards Kores India Ltd., the finding is to the effect that administrative and financial control of those units were controlled by Kores India Ltd. through their employees and ex-employees. The discussion preceding the said finding however nowhere discloses the analysis of the materials which can justify the said findings. It is also to be noted that undoubtedly, there is some reference to the statements made by some of the Directors of some of the firms. However, it is the grievance on behalf of the appellants that reference has been made selectively to ~~a few~~ some statements and also ignoring cross-examination. Though the adjudicating authority may be empowered to reject the statement which could not be believed, the authorities could not have ignored the said statement without any justification.

9. Our attention was also drawn to the decision of the Apex Court in the matter of Gajanan Fabrics Distributors vs. C.C.E., Pune reported in 1997 (92) ELT 451 and particularly para 2 and 3 of the said decision, the same read thus-

> *"2. We find, after having heard learned counsel, that it is necessary to remand the matters to the Collector to consider the entire case afresh. The principal factor that leads us to this conclusion is the finding of the Collector, upheld by the Tribunal, that the seven units which are the appellants before us "are only a corporate facade although registered with the various authorities with a view to camouflage their actual identity and thereby avail of the exemption which, otherwise, would be inadmissible to them". The Tribunal failed to give due attention to the fact that the Collector had confirmed, in the sum of Rs. 11,84,708.51, the demand made in the show cause notices upon all seven units and their partners or Directors. Having regard to his conclusion that all units other than Gajanan Weaving Mills were fictitious units, the sequitur, one would have assumed could only be that it was Gajanan Weaving Mills which was the assessee and liable to satisfy the demand. By confirming the demand upon all the seven units the Collector appears, however, to have treated them all as assessees and, implicitly recognised their independent existence.*
>
> *3. The facts of these cases, therefore, require to be re-considered, having regard also to the law that has now been settled by judgments of this Court and the High Courts subsequent to the passing of the order under challenge."*

10. Taking into consideration the settled law that duty of excise can be demanded in relation to the manufacturing activity and, therefore, before confirming the demand, the adjudicating authority has to identify the manufacturer or manufacturers as the case may be in relation to relevant product or products and thereafter assess duty liability, we find that no such exercise has been done by the adjudicating authority in the matter in hand. Rather, the findings arrived at as quoted above disclose that the adjudicating authority has held that noticee No.6 to 11 have not carried out any manufacturing activity and were engaged only in paper work yet they have been made liable to pay the duty and at the same time though the adjudicating authority has held that actual manufacturing was done by urban units as SSI that is noticee No.2 to 5 yet they have been held liable only for penalty. There is no finding that the noticee No.6 to 11 are the dummy units of M/s Kores India Ltd.

11. It is also to be noted that the adjudicating authority has also to deal with other statements and cross-examination. Undoubtedly, if the same are unreliable, nothing prohibits the authority from rejecting the same. However, to reject the same, the reasons are to be recorded but the materials on record can not be ignored. The assessee as well as the appellate

authority is entitled to know why the adjudicating authority rejects certain material on record. When the materials on record are ignored, the reason for rejection, therefore, remains unrevealed. The order of the adjudication is appealable order and therefore, it is the duty of the adjudicating authority to pass a reasoned order which should disclose the reasons for every such decision including the decision to reject the materials on record.

12. Under these circumstances, therefore, we are left no alterative than to set aside the impugned order and remand the same to the adjudicating authority to decide the matters afresh after taking into consideration all the materials on record and of proper application of the provisions of law applicable to the facts of the case. Needless to say that parties should be given an opportunity of hearing before deciding the matters.

13. The appeals are accordingly disposed of in above terms.

(Justice R.M.S. Khandeparkar)
President

Rakesh Kumar)
Technical Member