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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/948 /2006-950 /2006 - EX[DB] Date **25/07/2011**

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

To :
C.C.E. DELHI I
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

C.C.E. DELHI I Appellant
Vs
JINDAL SANITARY WOEKS Respondent

I am directed to transmit herewith a certified copy of **Final order No.638-640/ 2011 EX|DB|** dated 22-7-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
JINDAL SANITARY WOEKS
T-5/241,PHASE-I,MONGOLPURI
INDL. AREA DELHI

2. Adv. / Consult
MR.L.P ASTHANA
R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.

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. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. SHRI RAM NIWAS JINDAL PROPRIETOR.
T/5/241,PHASE-I,MONGOLPURI, INDL. AREA,DELHI
15. SHRI R.A. SOMANI, ACCOUNTS-IN-CHARGE
M/S. HINDUSTAN SANITARYWARE INDS. LTD.
TIKRIKALAN, TIKRI BORDER, DELHI

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision 21.07.2011

For approval and signature:

Hon'ble Dr. C. Satapathy, Member (Technical)
Hon'ble Sh. M.V. Ravindran, Member [Judicial]

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 tc the Departmental authorities?	Yes

Excise Appeal No. 948 of 2006
[Arising out of common order in appeal No.124-126/CE/DLH/2005 dated 18.10..2005 passed by the Commissioner (Appeals) Central Excise, Delhi-I]

CCE, Delhi-I — Appellants

Vs.

M/s Jindal Sanitary Works — Respondent

AND

Excise Appeal No. 949 of 2006

CCE, Delhi-I — Appellants

Vs.

Sh. R.A. Somani — Respondent

AND

Excise Appeal No. 950 of 2006

CCE, Delhi-I Appellants

Vs.

Sh. Ram Niwas Jindal, Prop. Respondent

Appearance:

Rep. by Sh. K.P. Singh, SDR for the appellants.
Rep. by Sh. L.P. Asthana, Sh. Prem Ranjan, Advocates for the respondent.

Coram: Hon'ble Dr. C. Satapathy, Member (Technical)
Hon'ble Sh. M.V. Ravindran, Member [Judicial]

FINAL ORAL ORDER NO. 638-640/2011-EX

Per: Dr. C. Satapathy:

Heard both sides.

2. The issue involved in this case is whether the impugned goods manufactured by the respondents bearing the brand name of their customers can be denied small scale exemption. Learned DR Sh. K.P. Singh appearing for the department states that the impugned goods do bear the brand name of the customers whereas the learned Advocate Shri L.P. Asthana disputes the same, as such, there is no clarity on the factual aspect of the case. Further, we find that the authorities below have not taken into consideration the relevant decision of the Hon'ble Supreme Court in the case of **Kohinoor Elastics Pvt. Limited** vs. **CCE, Indore** reported in 2005 (188) ELT 3 (SC) which holds in para 7 thereof that "even if a manufacturer only manufactures as per orders of customer and delivers only to that customer, the course of trade, for him is such manufacture and sale".

3. We are of the view that this decision of the Hon'ble Supreme Court has a direct bearing on the issue involved in this case. Since the factual aspects of the case are not clear and the afore-cited decision of the Hon'ble Supreme Court has not been dealt with while passing the impugned order, we set aside the same and remand the matter to the original authority for fresh decision. All issues are kept open. The respondents shall be given a reasonable opportunity of hearing before passing a fresh order.

4. All these three appeals are allowed by way of remand in the above terms.

[Dr. C. Satapathy]
Member (Technical)

[M.V. Ravindran]
Member [Judicial]

Pant