



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE
No.1, WILLIAMS ROAD, TRICHIRAPALLI – 620 001.

TRADE NOTICE : 14 / 2008.

DATED : 16 .09.2008.

Sub:- C.Ex. – Notification No. 47/2008-Central Excise dated 01.09.2008 in F.No. 354/124/2008-TRU regarding SSI exemption to goods bearing brand name of another person for packing materials & Letter F.No.354/124/2008 – TRU dated 01.09.2008 regarding Instructions on implementation of changes carried out to notification No. 8/2003-CE dated 01.03.2003 – Reg.

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Copy of Notification No. 47/2008-Central Excise dated 01.09.2008 in F.No. 354/124/2008-TRU regarding SSI exemption to goods bearing brand name of another person for packing materials & Letter F.No. 354/124/2008 – TRU dated 01.09.2008 regarding Instructions on implementation of changes carried out to notification No. 8/2003-CE dated 01.03.2003 is communicated herewith.

2. The contents of the Trade Notice may be brought to the knowledge of all constituent members of Trade Associations / Chambers of Commerce

(Issued from file C.No.IV/16/134/2008 – C.Ex.Pol)

- Sd /-

(VASA SESHAGIRI RAO)
ADDITIONAL COMMISSIONER

Encl.: As above.

To

As per mailing list II / III

Copy to file C.No.IV/16/02/2008 - C.Ex.Pol.

Copy of the Notification No. 47/2008-Central Excise dated 01.09.2008 in F.No. 354/124/2008-TRU

G.S.R. (E). - In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the

Ministry of Finance (Department of Revenue), No. 8/2003-Central Excise, dated the 1st March, 2003 [G.S.R. 138(E), dated the 1st March, 2003], namely: -

In the said notification,

(i) in paragraph 4, after clause (d), the following shall be inserted, namely: -

“(e) Where the specified goods are in the nature of packing materials, namely, printed cartons of paper or paper board, metal containers, HDPE woven sacks, adhesive tapes, stickers, PP caps, crown corks, metal labels.”

(ii) after paragraph 4A, the following shall be inserted, namely:-

“4B Notwithstanding anything contained in the preceding paragraphs, the exemption in respect of goods specified in clause (e) of paragraph 4, contained in this notification, shall be restricted to rupees ninety lakhs for the remaining part of the financial year 2008-09.”

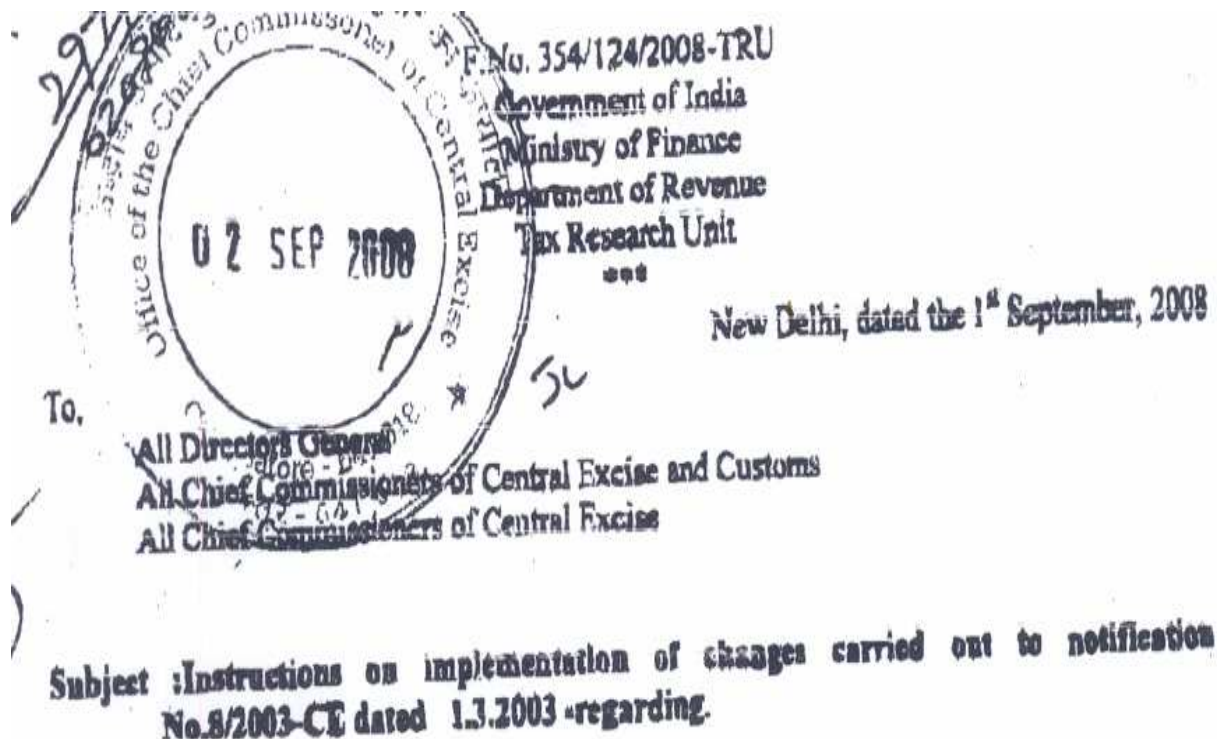
[F.No. 354/124/2008-TRU]

(Unmesh Wagh)

Under Secretary to the Government of India

Note: The principal notification No.8/2003-Central Excise, dated the 1st March, 2003 was published in the Gazette of India, Extraordinary, vide number G.S.R.138 (E), dated the 1st March, 2003 and was last amended by notification No.8/2008-Central Excise, dated the 1st March, 2008 which was published in the Gazette of India, Extraordinary [vide number G.S.R. 136(E), dated the 1st March, 2008].

Copy of the Letter F.No. 354/124/2008-TRU dated 01.09.2008



Sir/Madam,

Notification No.8/2003-Central Excise provides full exemption from Central Excise duty to goods manufactured by small-scale units i.e. units whose aggregate value of clearances did not exceed Rs.4 crore in the preceding financial year. The exemption is available for clearances up to Rs.1.5 crore in a financial year if the prescribed conditions are fulfilled. One of the conditions of this notification is that goods bearing the brand name or trade name of another person are not eligible for exemption barring a few exceptions such as goods cleared as 'original equipment', goods bearing the brand name or trade name of KVIC, or if such goods are manufactured in a factory which is located in a rural area.

2. Disputes have arisen in the past about the applicability of this condition to goods that bear the brand name of another person but which are sold under that brand name by the buyer of the goods and not by the SSI unit affixing the brand name. Such goods are normally manufactured by the SSI unit as per the orders of the customer for further use by the latter in the manufacture of the final product. Examples of such goods are elastic tapes used in the manufacture of undergarments, castings, packing materials such as printed cartons of paper, HDPE bags, Polypropylene caps, metal containers etc. On the basis of circulars/ clarifications issued by the Government, from time to time, the brand name restriction was not being applied to such goods and the benefit of the exemption was being extended on the ground that there is no nexus between the person manufacturing the goods and the brand name. In the case of Kohinoor Elastics Pvt. Ltd. Vs CCE, Indore [2005(188)ELT3(SC)], the Hon'ble Court has held that the wording of the notification does not allow the benefit of the exemption in this situation as the notification does not envisage a nexus between the manufacturer and the brand for it to attract the mischief of the brand name restriction. Accordingly, the mere affixation of brand name of another person is adequate to disqualify the goods for SSI exemption.

3. In the light of the Supreme Court decision, instructions were issued by the Board to raise protective demands in cases where the benefit of SSI exemption was being extended by the field formations in such cases on the basis of Circulars/clarifications referred to above. Board's letter F.No. 115/1/2008-CX.3 dated 16th June, 2008 refers.

4. Subsequently, representations have been received from the trade and industry particularly from the manufacturers of packing materials such as printed cartons, seeking exemption.

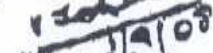
5. Notification no.47/2008-Central Excise dated 01.09.2008 has been issued to amend the SSI exemption. It provides that the benefit of the exemption shall be available to specified goods bearing the brand name or trade name of another person if they are in the nature of packing materials, namely, printed cartons of paper or paper board, metal containers, HDPE woven sacks, adhesive tapes, stickers, PP caps, crown corks and metal labels. The amendments contained in the notification come into immediate effect and would be applicable to the clearances of these goods effected on or after 1st September, 2008.

6. In pursuance of the Supreme Court decision in the case mentioned above, the following instructions/circulars/clarifications of the Board may be treated as withdrawn:-

- (i) Letter F.No. 345/35/87 -TRU dated 29.10.87 (Point 1 at paragraph 2);
- (ii) Letter F.No. 213/28/87-CX.6 dated 27.11.87; and
- (iii) Circular no. 71/71/94-CX dated 27.10.94

7. It is requested that the trade and industry may be suitably informed. Commissioners under your charge may also be advised to take necessary action accordingly.

Yours sincerely


(Vivek Johri)

Joint Secretary