CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70212 of 2021

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-144-&-145-20-21, dated-04/06/2020 passed by Commissioner (Appeals) CGST, Noida)

M/s Gopsons Papers Ltd **.....Appellant**
(A-2&3, Sector-64, Noida
Gautam Budh Nagar, Uttar Pradesh 201301)

VERSUS

Commissioner, CGST, Noida **....Respondent**

(4th Floor, C-56/42, Renu Tower
Sector-62, Noida-211001)

AND

Excise Appeal No.70213 of 2021

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M/s Gopsons Papers Ltd **.....Appellant**
(A-2&3, Sector-64, Noida
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VERSUS

Commissioner, CGST, Noida **....Respondent**
(4th Floor, C-56/42, Renu Tower
Sector-62, Noida-211001)

APPEARANCE:

Shri Atul Gupta, Advocate for the Appellant
Shri A.K. Choudhary, Authorized Representative for the Respondent

CORAM: **HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.- 70294-70295/2025

DATE OF HEARING : 21.04.2025
DATE OF DECISION : 21.04.2025

PER - RAJEEV TANDON:

The impugned two appeals filed by the Appellant relate to a common issue involving two different time periods viz April 2015 to March 2016 in Excise Appeal No.70212 of 2021 and May 2016 to March 2017 in Excise Appeal No.70213 of 2021. The issue involved in the subject appeals being common are dealt with by a common order here in below.

2. The Appellants M/s Gopsons Paper Limited is a manufacturer of Printed Books, Printed Lables, Holograms and other Printed Materials, Recovered Waste & Scrap, falling under the Chapter 49 & 47 of the First Schedule of the Central Excise Tariff Act. The Print Book & Hologram are exempted from payment of excise duty. The Hologram being unique sticker are made when images are printed by the Shim on the stamping foil then a release paper is stuck on the stamping foil by applying glue in between. This Shim is a printing plate made of Nickle which is used to print the Hologram.

3. The Appellant purchased the Master Shim from the market as it requires specialization. During the process of manufacture of Hologram these Shim get worn off. It is the appellant's contention that in order to reduce the cost, the appellant by using the electroforming process makes copies of the Master Shim, known as Shim. The Anti-Evasion Branch of the Central Excise Commissionerate, Noida carried out investigation against the appellant that culminated in the issuance of Show Cause Notice dated 30.06.2015 for the Period FY 2010-11 to 2014-15. The said Show Cause Notice alleged that as the Hologram manufactured by the appellant were exempted from payment of excise duty, the appellant was required to pay the duty on the Shim captively consumed in the manufacture of Holograms. Also the valuation of the Shim as arrived at by the Appellant was found to be low in comparison to the amount billed and recovered from the customers by the sale of Holograms. The said Show Cause Notice dated 30.06.20215 was confirmed by the adjudicating authority vide its order dated 18.07.2016. Aggrieved therewith the Appellant

preferred appeal before the learned Commissioner (Appeals) who set aside the Order-In-Original dated 18.07.2016, vide Order-In-Appeal dated 28.03.2018 relying on the decision of the Tribunal in the case of **M/s Uflex Ltd. V/s Commissioner of Central Excise, Customs & Service Tax, Noida [2016 (335) E.L.T. 376 (Tri.-All.)**. However, during the pendency of the proceeding before the learned Commissioner (Appeals) the Department issued a Statement of Demand (SOD) dated 13.04.2017, for the aforesaid period as indicated earlier. In response to the said SODs, the appellant had contended before the lower authority that the same were not sustainable in view of the Order-In-Appeal dated 28.03.2016 passed by the Tribunal in Appellant's own case against which no appeal was filed by the Revenue and which order had, therefore, attained finality.

4. The said two SODs dated 13.04.2017 & 29.05.2018 were further adjudicated and Order-In-Original No.32-33/CGST/AC/Division-III/Noida/2018-19 dated 25.03.2019 was issued, confirming the demand proposed in the SODs alongwith interest and penalties. In appeal before the learned Commissioner (Appeals), he upheld the said order of the lower authority. The Appellant is aggrieved by the impugned order. Holding its agreement with the findings of the lower authority with regard to the valuation of the Shim, the said order i*nter alia* states that though the goods are valued under Rule 8 of the Valuation Rules, however, the determination of cost for the production of Shim as per provisions of Rule 8 of the Central Excise Valuation Rules 2000 is not feasible, for the reason that the cost of mind applied and technology used in making the design of Shim are never booked in the books of account and will not form part of the cost of production on the basis of their books of account.

5. We have heard the two sides at length and perused the facts of the case. We note that the two SODs dated 13.04.2017 & 29.05.2018 were in continuance of the original proceedings initiated vide Show Cause Notice dated 30.06.2015 for the subsequent period. The learned appellate authority vide Order-In-Appeal dated

20.03.2018 had set aside the demand confirmed against the appellant vide Order-In-Original dated 18.07.2016 in the proceedings initiated vide Show Cause Notice dated 30.06.2015. In view of these any proceedings arising out of the order that was set aside and had attained finality are bound to be bad in law.

6. We, however note from the records that in the present matter the learned adjudicating authority recorded the following findings:-

> *"The party's submission that OIO no. 15/IC/Noida-I/2016-17 dated 18.07.2016 has been set aside by the OIA No. MOI-EXCUS-001-APP-2040-17-18 dated 28.03.2018, there is no need to further litigate the matter is not tenable as the department has accepted the foresaid OIA on monetary grounds, not merits."*

7. Section 35R(2) of the Central Excise Act,1944 does not debar the Department for appealing other, cases involving the said issue, order for which was accepted on monetary grounds. However, we note that the decision passed continued to be a binding precedent on the Authorities below/subordinate to the Authorities whose order was relied upon. This is a well established principal of jurisprudence that the precedents are binding in the course of decision making, however, if the Department is aggrieved by the decision which followed the precedent then the Department is at liberty to file an appeal there to or rake up the issue by way of an independent proceeding. Certainly, the department cannot raise an SOD arising from an order that attained finality. We, therefore, note that in terms of the principles of judicial discipline the adjudicating authority is in error by not following the precedent decision on the issue as the Department itself has accepted that the facts of the issue were in common, for which reason statement of demand was issued and not the Show Cause Notice. It is a settled principle of law that subordinate officers are bound by the decision of higher authorities. The Hon'ble Apex Court in the case of **UOI V/s Kamlakshi Finance Corporation Ltd. [1991 (55) E.L.T. 433 (S.C.)]** had held that the orders of the higher appellate authority should be followed unreservedly by the subordinate authorities. Relevant extract of the hon'ble apex court's decision is reproduced hereunder:-

> *"The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department in itself an objectionable phrase and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws."*

8. This Tribunal in the case of **M/s ILFS Cluster Development Initiative Ltd.** V/s **Commissioner of Central Excise & CGST, Noida** in Service Tax Appeal No.70477 of 2019 vide Final Order No.70618 of 2024 has held as under:-

> *"4.4 By applying the principle of "doctrine of merger" the said finding has merged with the order of Tribunal. However the above may not be relevant as Statement of Demands have been issued in continuance of original proceedings initiated by show cause notice of 2012 for the subsequent period. As Tribunal has already set aside the demand confirmed against the Appellant by the order in original dated 31.10.2013 in the proceedings initiated by Show Cause Notice of 2012, the proceedings initiated by the Statement of demand dated 05.04.2018 should have followed the same …….. ."*

9. In view of aforesaid, the proceedings initiated by a statement of demand even though for subsequent period ought to follow the decision of the appellate authority in the case of proceedings initiated, or a fresh show cause notice, issued in compliance with the relevant provisions in law.

10. It is, therefore, clear that proceedings initiated by statement of demand for a subsequent period cannot be justified in contradistinction to the order of the higher authority. We, therefore, find that authority below was in error in carrying out and upholding such adjudication and has contravened the law of judicial discipline. The Commissioner (Appeals) is against all propriety and canons of

judicial discipline, in upholding an order passed in violation of judicial propriety. Moreover, the lower authority would be in contempt of this Tribunal in holding that Tribunal's Order in the matter was based on assumption and presumption, without anything to substantiate its case to the contrary and a finding to the effect by a superior authority.

11. The learned Counsel for the appellant has pointed out that the issue regarding duty liability of the copy Shims manufactured by the appellant being used captively was decided by this Tribunal in the case of Uflex Ltd. referred to in Para 3, under identical set of facts and circumstances. It was held by this Tribunal that the method adopted by the Tribunal for ascertaining the value of the Shim by following the deduction method was erroneous and not supported by law or approved/accounting standards. We note that the said case has considered Shim/Copy Shim as capital goods manufactured within the factory for captive consumption and therefore, rightly claimed/allowed exemption under Notification No.67/95-CE dated 16.03.1995. In this regard relevant extract of the aforesaid decision of the Tribunal is as under:-

> *"5. ***********************************
>
> *Apart from the above, we find that the Revenue adopted highly arbitrary and imaginative methodology to arrive at the value of these impugned goods. The value of shim is arrived at from the value of final product - hologram - by deductive method. This is not supported by any provisions of law or approved standards of accounting/costing. The best judgment under Rule 11 of Valuation Rules does not permit such arbitrariness and imaginative valuation. The case laws relied on by Revenue has no bearing or relevance to the issue in hand. In Steel Complex Case - 2004 (171) E.L.T. 255 (Tri.-Bang.), the Tribunal held that Rule 8 would be unreliable in case the manufacturer is incurring huge losses. The ratio of this decision will not support the view that in present case because of huge profit, the CAS-4 standard should be discarded. It will result in a situation that the percentage of profit earned on final product will be added to the cost of intermediate product also. No legal sanction is available for such preposition.*
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> ***6.** We find that the principles laid down by the Hon'ble Supreme Court in the case of Cadbury India Ltd. : 2006 (200) E.L.T. 353 (S.C.) are applicable to the present case. The Hon'ble Supreme Court held that the Department is also bound by the Circular dated 13-2-2003.*

> ***7.*** *Regarding the second point for decision, we find that the impugned goods are admittedly "capital goods" falling under Chapter 84 of CET. The provisions of exemption Notification No. 67/95-C.E., dated 16-3-1995 is clearly applicable to the impugned goods as they are used captively within the factory of production. The exclusion provided in the proviso of the said notification shall apply only to inputs not capital goods. We find the reasoning given by the original authority to deny the said exemption as totally misconceived. Rule 6(4) of Cenvat Credit Rules, 2004, has no application to decide the eligibility of above said exemption. The said Rule is for non-eligibility of credit on capital goods used exclusively in the manufacture of exempted goods. In the present case, the appellant is not claiming any credit on capital goods. In fact, the appellant is manufacturing the capital goods and is claiming exemption under Notification No. 67/95-C.E., dated 16-3-1995. Here, we find that the ld. Commissioner's finding is absolutely without basis and is erroneous. Reliance can also be placed on the decision of Tribunal in Hero Cycles Ltd. : 2004 (165) E.L.T. 540 (Tri.-Del.) and Siemens Ltd. : 2004 (176) E.L.T. 299 (Tri.-Mum.). The Hon'ble Supreme Court in Novapan India Ltd. : 1994 (73) E.L.T. 769 (S.C.) observed that a notification has to be interpreted in the light of the words employed by it and not on any other basis. The exemption is to be applied by the language and plain terms of the notification.*
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> ***8.*** *In view of the above discussion and findings, we hold that the appellant will succeed on both the grounds viz. : valuation adopted in terms of Rules and CAS-4 standards and eligibility for exemption under Notification No. 67/95-C.E., dated 16-3-1995. Accordingly, the appeals are allowed. The Miscellaneous Applications are also disposed of."*

12. In view of the settled law, we do not find any merit in the Department's claim of back calculating the value of the final products.

13. We hold the impugned Shim as capital goods eligible for exemption, under Notification No. 67/95-CE dated 16.03.1995, being captively consumed. In view of the facts and circumstances as discussed above we find no merit in the order of the lower authority which is, therefore, set aside and the appeal filed by the Appellant is allowed.

(Operative part of the order was pronounced in open court)

Sd/-	Sd/-
(RAJEEV TANDON)	**(P. K. CHOUDHARY)**
MEMBER (TECHNICAL)	**MEMBER(JUDICIAL)**

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