FAX : 0532-2408149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch. Allahabad

Dated: 05/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70925-70927/2016-EX[DB] dated 09/06/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/572/2007	TRISTAR CREATIVE PRODUCTS PVT LTD B-43, SECTOR-80, PHASE-II, NOIDA
2	E/573/2007	MR SHIRISH JAIN M/S TRISTAR CREATIVE PRODUCTS PVT LTD, B-43, SECTOR-80, PHASE-II, NOIDA
3	E/574/2007	MR B K SHARMA M/S TRISTAR CREATIVE PRODUCTS PVT LTD, B-43, SECTOR-80, PHASE-II, NOIDA
		Name and Address of Respondent
4		-C.C.E NOIDA C-56/42, Sector-62, Noida-201307

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

V. LAKSHMI KUMARAN
5, JANGPURA EXTENTSION LINK
ROAD NEW DELHI-110014
LINK ROAD,NEW DELHI,-110014

O/c

ISSUED ON

SIGN. (DESPATCH [illegible] SECTION)
CUSTOMS, EXCISE [illegible] SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise, I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

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

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH: ALLAHABAD

DIVISION BENCH

E/572/2007-EX(DB),
E/573/2007-EX(DB),
E/574/2007-EX(DB)

Dated of Hearing/decision: 09/6/2016

[Arising out of Order-in-Appeal No. 149-151/CE/APPL/NOIDA/06 dated 06/12/2006 passed by Commissioner of Central Excise (Appeals), NOIDA]

For approval and signature:

Hon'ble Shri Anil Choudhary, Judicial Member
Hon'ble Shri Anil G. Shakkarwar, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would 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 to the Department Authorities?	Yes

M/s Tristar Creative Products Pvt. Ltd.
Mr. Shirish Jain, Mr. B.K. Sharma — Appellants

Vs.

C.C.E., NOIDA — Respondent

Appearance:
Present for the Appellant: Shri Subhash Chand Jain, Advocate
Present for the Respondent: Rajeev Ranjan (Joint Commissioner) A.R.

Coram: Hon'ble Shri Anil Choudhary, Member (Judicial)

Hon'ble Shri Anil G. Shakkarwar, Member (Technical)

<u>Final Order No.</u> 70925-70927/2016

Per: Anil Choudhary

These appeals have been filed against the common Order-in-Appeal No. 149-151/CE/Appl/NOIDA/06 dated 06.12.2006 passed by the order of Commissioner of Central Excise (Appeals), NOIDA, wherein it was held that converting of Canvas roll into:- (A) the Canvas Frame, (B) Canvas Board, (C) Canvas Pad, amounts to manufacture and liable to excise duty.

2. The appellant- Tristar Creative Products Pvt. Ltd. (TCPL for short), is engaged in the processing of primed canvas fabric into canvas products in usable form. For making canvas products, the appellant- TCPL procures jumbo roll of canvas fabric in the running length of 200-300 metres. Thereafter, the primed canvas fabric is converted into various different usable forms namely:- (i) Canvas Roll i.e. small length of Canvas cloth about five metres- the same is packed in roll form for sale, (ii) stretched canvas frame- which is ready for painting, (iii) Canvas Board Panel-appellant purchases wood board including particle board and thereafter canvas fabric is pasted on the frame and (iv)Canvas Pad- Appellant sends cut-piece of canvas to job worker for converting it into canvas pad which are also used for drawing, painting etc.

3. The ld. Counsel for appellant contends that these products are in 'ready to use forms' of the primed canvas cloth. No process of manufacture is carried out by the appellant on the same. Canvas fabric remains as such without any change in its name, character or use. The appellant further contends that the processes of cutting/pasting etc. carried out to make the goods in a usable form do not amount to 'manufacture'. Mere process of cutting and fixing on frame or pad with the intent to sell in the market does not amount to 'manufacture'.

4. It is further contended that essential character of the primed canvas does not undergo a change by the said processes. The primed canvass remain as such but is converted into a useable form. Hence the processes of canvas cutting or pasting do not amount to 'manufacture' as defined under Section 2(f) of the Central Excise Act and as such no excise duty is leviable thereon under Central Excise Act or Rules. It was further contended that they had submitted a letter dated 10.4.2002 addressed to the Deputy Commissioner of Central Excise, Noida with a copy to the Superintendent Central excise having jurisdiction over the factory informing about the said processes. Hence the entire factual position was in the notice of the department and the duty demand is also hit by limitation.

5. The Revenue issued a Show Cause Notice dated 23/6/2004 whereby it was contended that the process undertaken by the appellant amounts to 'manufacture' and therefore are liable to pay duty amounting to the Rs.40,97,108/- (Basic Excise duty of

Rs.27,31,405/- + Additional Excise Duty of Rs.13,65,703/-) by invoking the extended period, for the period from 1.4.2002 to 31.10.2003. Accordingly, appellants were issued the show cause notice wherein duty was demanded by invoking the extended period along with interest and penalty. Another, show cause notice dated 28.10.2004 was also issued for the subsequent period 1.11.2003 to 27.5.2004 regarding duty demand of Rs.18,96,369/- including additional excise duty with interest and the penalty.

6. The appellants contended that the demand is barred both on the ground of limitation and also on the ground that the processes undertaken do not amount to 'manufacture'. Both the notices were adjudicated by the Adjudicating Authority by a common Order-in-Original dated 19/6/2006 confirming the Central Excise Duty of Rs.27,31,405/- for the period 01.04.2002 to 31.10.2003 and Rs.12,64,246/- for the period 01.11.2003 to 27.05.2004 under Section 11A of CEA, 1944 along with interest. The adjudicating authority dropped rest of the duty demand towards AED as proposed under the SCNs. Further, it also imposed penalty of Rs. 3,99,565/ under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944. Further, the adjudicating authority also imposed penalty of Rs.5,00,000/- under Rule 26 of the Central Excise Rules, 2002 on Mr. Shirish Jain, Director and a penalty of Rs.5,00,000/- of Shri B.K. Sharma, President (Tech.) of Appellant Company.

7. Being aggrieved by the order-in-original, the appellants filed appeals before the Commissioner (Appeals), Noida. By the impugned order, Commissioner (Appeals) allowed the appeal in part, holding that no excise duty is payable on the Canvas Roll of five meters cleared by the appellant but other three products i.e., Canvas Frame, Canvas Board and Canvas Pad were held liable to excise duty. He further upheld the claim of Cum-duty-benefit and remanded the matter back to the Adjudicating authority for re-calculation of tax, penalty etc. on cum-duty-price.

8. Being aggrieved by the Order in appeal, the present appeals before this Tribunal.

9. The Ld. Counsel for the appellants urges that the issue is no longer res-integra rely on ruling by Hon'ble Supreme Court in the case of Union of India Vs. J.G. Glass reported in 1998 (97) E.L.T. 5 wherein the scope of the 'manufacture' was defined by relying upon its earlier decision in Union of India Vs. Delhi Cloth & General Mills – 1977 (1) E.L.T. (J 199) (S.C.) it was held that:-

"Para 9. The contention of the assessee is that printing and decorating bottles will not by any stretch of imagination amount to manufacture. It is argued that unless the process brings into existence a different commercial product, it cannot be said to be manufacturing process. In short, the contention is that the plain bottles do not cease to be bottles by some logos or names being printed thereon. Reliance is placed on a judgment of this Court in Union of India v. Delhi Cloth & General Mills - 1977 (1) E.L.T. (J 199) (S.C.) = 1963 Supp. (1) S.C.R. 586. Our attention is drawn to the following passage:-

"On a consideration of all these materials we have no doubt about the correctness of the respondents' case that the raw oil purchased by the respondents for the purpose of manufacture of Vanaspati does not become at any stage "refined oil" as is known to the consumers and the commercial community. The first branch of Mr. Pathak's argument must therefore be rejected.

The other branch of Mr. Pathak's argument is that even if it be held that the respondents do not manufacture "refined oil" as is known to the market they must be held to manufacture some kind of "non-essential vegetable oil" by applying to the raw material purchased by them, the processes of neutralisation by alkali and bleaching by activated earth and/or carbon. According to the learned Counsel "manufacture" is complete as soon as by the application of one or more processes, the raw material undergoes some change. To say this is to equate "processing" to "manufacture" and for this we can find no warrant in law. The word "manufacture" used as a verb is generally understood to mean as "bringing into existence a new substance" and does not mean merely "to produce some change in a substance", however minor in consequence the change may be. This distinction is well brought about in a passage thus quoted in Vol. 26, from American judgment. The passage runs thus:-

`Manufacture' implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use."

The Apex Court further held in Para 16 as follows:-

"Para 16 On an analysis of the aforesaid rulings, a two-fold test emerges for deciding whether the process is that of "manufacture". First, whether by the said process a different commercial commodity comes into existence or whether the identity of the original commodity ceases to exist; secondly, whether the commodity which was already in existence will serve no purpose but

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for the said process. In other words, whether the commodity already in existence will be of no commercial use but for the said process. In the present case, the plain bottles are themselves commercial commodities and can be sold and used as such. By the process of printing names or logos on the bottles, the basic character of the commodity does not change. They continue to be bottles. It cannot be said that but for the process of printing, the bottles will serve no purposes or are of no commercial use".

10. Ld. Counsel states that the appellant- TCPL converts Canvas Cloth by cutting it to short length and pasting on the board or frame and makes Canvas cloth ready for painting. The process is undertaken for making canvas cloth usable for the purpose of painting and as such no new commodity having any distinctive name, character and use has come into existence. It, therefore, does not amount to 'manufacture'. Accordingly, the ld. Counsel also relied on the following decisions:-

i. Commissioner of Central Excise, New Delhi-I v/s S.R. Tissues Pvt. Ltd.[2005 (186) E.L.T. 385 (S.C.)]

ii. Trans Asia Carpets Ltd. v/s Commissioner Of C. Ex., Meerut [2000 (116) E.L.T. 135 (Tribunal)]

iii. Win Enterprises v/s Commissioner Of Central Excise, Chennai-I2014 (299) E.L.T. 206 (Tri. - LB)]

iv. Collector Of Central Excise v/s Technoweld Industries [2003 (155) E.L.T. 209 (S.C.)]

v. Munch Food Products Ltd. v/s Collector Of C. Ex., New Delhi [1999 (114) E.L.T. 521 (Tribunal)].

Accordingly he prays for allowing the appeals with consequential benefits.

11. The Ld. A.R. appearing on behalf of the Revenue reiterates the findings of the impugned order. He claimed that the process undertaken by appellant - TCPL amounts to 'manufacture' and therefore, the adjudicating authority and the first appellate authority has rightly demanded the duty on the said activity.

12. Having considered the rival contentions, we find that by the processes adopted by the appellant, no transformation to new product or new article takes place. By following the law laid down by the Hon'ble Supreme Court in the case of J.G. Glass (supra), we hold that the process of cutting/pasting undertaken by the appellant does not amount to manufacture. The demand raised by the Revenue is held otherwise also barred by limitation as Revenue were fully aware of the existence of the appellant's unit and its activities. The impugned order is accordingly set aside, appeal is allowed with consequential relief, if any, in accordance with law. The penalty imposed is also set-aside in view of above.

13. We also hold that no mala-fide can be attributed to Sh. Shirish Jain-appellant, the director of the appellant company and Sh. B.K. Sharma-appellant, President (Tech) of the company (appellant-TCPL) and therefore penalty against them under Rule 26 is also set-aside and

their appeals are also allowed with consequential relief, in accordance with law.

(Dictated and pronounced in the open Court)

-Sd-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

-Sd-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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Asstt. Registrar
[illegible]

(K. Gupta)