CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 14/03/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70109-70111/2016 DB dated 11/03/2016

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
	E/1013-1015/2012 DB	MIT CORPORATION 171, KANAPPA MARG SAINK FARM, NEW DELHI-62 DMS CORPORATION 171, KANAPPA MARG SAINK FARM, NEW DELHI-62 SUBHASH LALWANI VC MIT CORPORATION 171, KANAPPA MARG SAINK FARM, NEW DELHI-62

Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE, NOIDA C-56/42, SECTOR-62 NOIDA(UP)

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH K.K.ANAND,ADV
A-103, DEFENCE COLONY
NEW DELHI-110024

4 Bar Association, CESTAT, ALLAHABAD

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

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

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, Satellite Road, Ahmedabad-15

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

...Online.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070

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

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

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL, ALLAHABAD BENCH
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad

Date of hearing: 21-01-16

Date of Pronouncement: 11-03-2016

Excise Appeal Nos.E/1013/2012, E/1014/2012 & E/1015/2012 (DB)

[Arising out of the Order-In-Original No. 16/Commissioner/Noida/2011-12 dated 30.12.2011 passed by the Commissioner, Customs, Central Excise & Service Tax, Noida]

For approval and signature:

Hon'ble Mr. Anil Choudhary, Judicial Member
Hon'ble Mr. H.K. Thakur, Technical Member

1. **Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :**
2. **Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ? :**
3. **Whether Their Lordships wish to see the fair copy of the Order? :**
4. **Whether Order is to be circulated to the Departmental Authorities ? :**

1) M/s. MIT Corporation
2) M/s. DMS Corporation
3) Sri Subhash Lalwani

..Appellants

Vs.

Commr. of C.E. & S.Tax, NOIDA

.... Respondent

HK

Appearance:

Sri K.K. Anand (Advocate) &
Ms. Surabhi Sinha(Advocate)

for the appellant

Shri Rajeev Ranjan (Jt. Commissioner), A.R.

for the Respondent/Revenue

Coram: Hon'ble Mr. Anil Choudhary, Judicial Member
Hon'ble Mr. H.K. Thakur, Technical Member

Final ~~Misc.~~ Order No. 70109-70111/2016

Per: Mr. H.K. Thakur

These appeals have been filed by M/s. MIT Corporation (Appellant No. 1) , DMS Corporation (Appellant No.2) and Shri Subhash Lalwani (Appellant No. 3) against Order-in-Original No. 16/Commissioner/NOIDA/2011-12 dated-30/12/2011 passed by Commissioner of Central Excise, Customs & Service Tax, NOIDA as Adjudicating authority.

2. Brief facts of the case are that both the appellant No. 1 & 2 are situated at B-58, Sector-4, NOIDA and were engaged in the manufacture of DVD/VCD players, Home

theatres falling under Central Excise Tariff Headings 85 219020 & 85209090 of the schedule to Central Excise Tariff Act, 1985. The proprietors of both these units are the daughters of Shri Subhash Lalwani who is working as Vice-President of the other appellants. The premises mentioned above were visited by the officers of Central Excise, NOIDA on 28/07/2005 . Shri Shyam Narayan, Supervisor of the appellants present in the factory stated that they are engaged in the trading of DVD/VCD Players, Home Theatres & speakers etc. received from Parwanoo. As per the records appellants are importing DVD/VCD Players etc. from abroad in the name of both the appellant No. 1 & 2. The imported goods were subject to some processes/activities at the said factory in NOIDA. The said premises was used for testing /quality checking/repairing of VCD/DVD players and other goods.On the goods so received at NOIDA various stickers showing MRP, Quality Control & Sr. No. were found. Shri Shyam Narayan Singh, Supervisor in his statement dated 28/7/2005 also confirmed that testing/quality check/repairing/MRP sticker pasting was done on the imported goods before selling. Shri Subhash Lalwani, Vice President of appellant M/s. MIT Corporation (Appellant No. 1) also confirmed in his statement dated 9/9/2005, interalia, that both appellant No. 1 & 2 are engaged in selling of imported goods as such and only on specific demands from the market the goods are sold in the form of a 'combo' form from NOIDA units. Certain goods were seized and after completing the investigation a show cause notice dated 21/01/2006 was issued with respect to seized goods by Additional Commissioner, Noida and decided under Order-in-Original No. 31/ADC/2006 dated 29/11/2006. Subsequent investigations from the buyers of the goods from the appellants also confirmed that goods from both the appellants were received under the brand names of appellants alongwith the warranty stickers etc. from NOIDA. A show cause notice dated 31/01/2008 was issued to the appellants by the Adjudicating authority for considering that the processes carried out by the appellants amounts to manufacture, for confirming Central Excise duty and imposition of penalties. After observing the principles of natural justice, show cause notice dated 31/1/2008 was decided under Order-in-Original dated 30/12/2011 against which the present appeals have been filed by the appellants.

3. Shri K.K. Anand (Advocate) and Ms. Surabhi Sinha (Advocate) appeared on behalf of the appellant. Shri K.K. Anand made the following arguments during the course of the proceedings which were also made before the Adjudicating authority:-

> (i) That the processes of testing /quality control/fixing of MRP sticker/repairing carried out at Noida on the imported/warranty period goods do not amount to manufacture under Section 2(f) (iii) of the Central Excise Act, 1944. He relied upon the following case laws in support of his arguments :

(a) Mega Pro (India) Vs. CCE, New Delhi [2007 (216) ELT 637 (Tri-Del.]
(b) CCE, Chennai Vs. Indian Additives Ltd. [2014 (302) ELT 544 (Noida)]
(c) Beltek (India) Ltd. Vs. CCE, Noida [2014 (302) ELT 1561 (Tri.-Del)]
(d) CCE,New Delhi Vs. Panchsheel Soap Factory (2002 (145) ELT 527(Tri.-Del.)]-Affirmed by Supreme Court -2003 (156) ELT a-382 (Supreme Court)]
(e) Amritlal Chemaux Ltd. Vs. CCE [2015 (321) ELT 5 (Supreme Court)]

(ii) That even if the processes carried out at Noida are held to be amounting to manufacture then also CVD credit of duty paid at the time of import will be admissible. It was his case that goods after carrying out testing/quality control etc. are sold at the same price at which they were imported. That the entire activity is thus revenue neutral and no duty is demandable as per the case law CC & ce Vs. Textile Corpn. Marathwada Ltd. [[2008 (231) ELT 195 (S.C.)]

(iii) That only goods supplied in 'Combo form' can be considered to be amounting to manufacture. It was his case that for making combo form of packing the processes are carried out in their Parwanoo unit and not at Noida, where finished goods are fully exempted under an area based exemption

(iv) That the goods in combo form are received from their Parwanoo Unit and Shyam Narayan Singh, Supervisor of the appellant has confirmed this fact in his statement. Learned Advocate made the bench go through para 2.2 of the Order-in-Original dated 30/12/2011 in support of his arguments. That goods were received from Parwanoo where area based exemption notification is availed by the appellants which has also been confirmed by Shri Subhash Lalwani. That no enquiry was made at Parwanoo whether 'combo' making is done in Parwanoo (Himachal Pradesh) That there is no facility of making combo packs at Noida.

4. Shri Rajeev Ranjan, Joint Commissioner, (A.R.) appearing on behalf of the Revenue submitted that any process of testing/quality control/fixation of revised MRP or making of

'combo' packing will amount to a process of manufacture under Section 2 (f) (iii) of the Central Excise Act, 1944. Learned A.R. made the bench go through paras 12, 13.2 & 15 of the Order-in-Original dated 30/12/2011 to argue that the processes undertaken by the appellants are essential for making the goods marketable to the consumer. Learned A.R. thus strongly argued that the processes undertaken by the appellants will amount to manufacture under Section 2 (f) (iii) and accordingly vehemently defended the Order-in-Original dated 30/12/2011 passed by the Adjudicating authority.

5. Heard both sides and perused the case records. The issues involved in these proceedings are the following:

> (i) Whether appellant No. 1 & 2 are undertaking any manufacturing activity as per Section 2 (f) (iii) of the Central Excise Act, 1944 when activities of testing/quality control/repairing/pasting of stickers are undertaken on the imported goods?
>
> (ii) Whether or not activities of 'combo form' of packing are undertaken by the appellants in their NOIDA units or in the factory situated in Parwanoo (Himachal Pradesh)?

6. So far as issue mentioned at para 5 (1) above is concerned it is not disputed by the appellants that the activities of testing/quality checking/repairing/fixing of MRP sticker are not carried out at NOIDA. It is the case of the appellantS that these activities are not amounting to manufacture under Section 2 (f) (iii) of the Central Excise Act, 1944 for which they have relied upon the case laws mentioned at para 3 (i) above. Section 2 (f)

(iii) of the Central Excise Act is relevant and is reproduced below:

" Section 2. Definitions- In this Act, unless there is anything repugnant in the subject or context,-

(f) "manufacture" includes any process,-

(i) incidental or ancillary to the completion of a manufactured product; and

(ii) which is specified in relation to any goods in the Section or Chapter notes of 9[the First Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to 10[manufacture; or]

(iii) which, in relation to the goods specified in the Third schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or ~~r~~ alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer."

6.1 The above provisions were interpreted in favour of appellant by CESTAT in the case of Beltek (India) Ltd. Vs. CCE, Noida (supra); where also processes of affixing stickers of warranty seal, chassis number , testing etc. were carried out on the imported goods; by holding that these processes do not amount to manufacture under Section 2 (f) (iii) of the Central Excise Act, 1944. Similar view was expressed by CESTAT ,Delhi in the case of CCE, New Delhi Vs. Panchsheel Soap Factory (supra)where following observations in para-5 were made by CESTAT while rejecting the appeal of the Revenue.

"The respondents in the present case, admittedly are only pasting the sticker on the packing of the imported soap to indicate the name of the importer and the MRP which is the requirement under the Standards of Weights and Measures Act. Simply putting a sticker, in our view, will neither amount to labelling or re-labelling, the processes which have been deemed to be a process of manufacture by Note 6. It is not the case of the Revenue that the label has been replaced by a new label or any label has been pasted over the existing label. Accordingly, it cannot be claimed that the process undertaken by the appellants amounts either to labelling or re-labelling. The Central Board of Excise & Customs has taken the same view in respect of imported finished medicines which were sold after pasting sticker on the cartons of the imported item in view of the requirement of the Drugs and Cosmetics Act without altering any information originally contained in the packet. The Board clarified that Note 5 to Chapter 30 may not be attracted in such a situation. Note 5 to Chapter 30 is *para meteria* to Note 6 to Chapter 34. Accordingly, we do not find any infirmity in the impugned Order and therefore reject the appeal filed by the Revenue.

6.2 The above order passed by CESTAT was upheld by the Apex Court by dismissing the appeal of the Revenue [2003 (156) ELT A 382 (S.C.]

7. It is also observed from the case records that in a recent ruling made by the Apex Court in the case of CCE Vs. Amritlal Chemaux Ltd. (supra) following observations have been made in *para 2 & 5 while rejecting the appeal filed by the Revenue:-*

" 2 It was the endeavour of Mr.K.Radhakrishnan, learned senior counsel appearing for the appellant, to argue that even if one of the two processes, viz., labelling or relabelling of containers or for that matter, repacking from bulk to retail packs is undertaken, the same should be treated as manufacture. To put it otherwise, he wanted us to read the word 'and' not conjunctively but disjunctively. We are not impressed with this argument of Mr.Radhakrishnan. It is clear from the plain language of the aforesaid Chapter Notes which use both expression 'or' as well as 'and' at different places. Thus, by using the two expressions, the intention of the legislature is manifest that insofar as the process of label or relabelling of containers is concerned, it would amount to manufacture only if the other condition, viz., repacking from bulk to retail pack is also satisfied. The aforesaid view gains credence from other fact, i.e., where the second process is treated as manufacture, viz., "adoption of any other treatment to render the product marketable to the consumer", the expression 'any other treatment' and that too, with intention to render it marketable clearly shows that insofar first part is concerned, both the conditions have to be satisfied."

3. Applying the aforesaid principle to the facts of this case, in the first instance, we find that though the show cause notice covered all the three products viz. dyes & dye bases, napthols & fast bases, as well as chrome pigments, the final order which was passed by the adjudicating authority, did not levy any excise duty on dyes and dye bases. Thus, we are concerned with the remaining two products, viz., napthols & fast bases and chrome pigments.

4. In sofar as the napthols & fast bases is concerned, even from the order of the Commissioner, it becomes clear that though there was repacking and even relabelling, the repacking of bulk was not into retail packing as the goods after repacking were supplied to industrial consumers on wholesale basis. It is specifically stated so by the assesse which fact is not denied by the Commissioner. Therefore, both the conditions mentioned in the Chapter Notes are not satisfied.

5. Insofar as the chrome pigments are concerned, the assesse only obliterated the name which was appearing on containers and the name of the assesse along with the logo is stencilled on such container that may amount to relabelling.

However, the process of repacking was not undertaken at all by the assesse. Thus, here also both the eligibility conditions which are to be fulfilled have not been satisfied."

8. In the light of the ratio laid down by various judicial pronouncements relied upon by appellant it has to be held that for the purpose of Section 2 (f) (iii) of the Central Excise Act, 1944 the said processes specified therein should be undertaken on the goods to render them marketable to the consumer. In the present case the goods in the imported condition itself are marketable as the same were purchased by the appellants as such. However, as appellants were affixing their own brand name and also extending warranty for the goods so imported, therefore, the imported goods were subject to quality control testing and affixing of MRP wherever required. In view of the ratio laid down by the Apex Court in the cases of CCE Vs. Amritlal Chemamm Ltd. (supra) the condition of rendering the imported goods marketable cannot be fulfilled only by the activities done by the appellants as the goods were already in a marketable condition when imported. The activities undertaken by the appellants were undertaken only to fulfil statutory obligations under other enactments.In view of the above observations and the settled proposition of law the processes of testing/quality control/affixing MRP stickers/repairing undertaken by the appellants on the imported goods, which are sold as such, do not amount to manufacture as per the provisions of

Section 2 (f) (iii) of the Central Excise Act, 1944, whether carried out at Noida or in the factory at Parwanoo.

9. So far as activities of making of 'combo form' of packing is concerned, it is observed from para 8.2 of the Order-inOriginal dated 31/12/2011 that appellant No. 1 is placing remote control and accessories in the 'combo ' packing for which certain goods are also purchased domestically and a different MRP is fixed. It is the case of the appellant the said activities of 'combo' making are not carried out at all in their Noida unit and the entire activities are undertaken at their Parwanoo unit where area based exemption is admissible to appellant No. 1. It is observed from the statement of Shri Shyam Narayan, referred to by the Adjudicating authority in para 2.2 of the Order-in-Original dated 30/12/2011, that the goods sold by the appellants are received from Parwanoo. The observations made by the Adjudicating authority, that no verification from Chandigarh Commissionerate (Parwanoo unit consignment) was required & was not relevant in not appropriate, as the stand of the appellants that goods are manufactured at Parwanoo was made known during investigation. The argument of the appellant is thus not countered by the department by taking up appropriate verification/investigation. There is also no evidence on record whether Noida units of the appellant No. 1 has the capability/space for making 'combo' form of packing from the goods imported/locally purchased. In view of the above it cannot be concluded that processes for making 'combo' form of goods

cleared by the appellant were in fact carried out at Noida. In the absence of any positive evidence to that effect Adjudicating authority cannot be considered to have Adjudicating jurisdiction to decide the duty liability on the 'combo' form of packing undertaken by the appellant No. 1.

10. In view of the above observations appeals filed by the appellants are allowed by setting aside the Order-in-Original dated 30/12/2011.

11. No observations are made by the bench on the points raised by appellants at para 3 (iii) above regarding revenue neutrality as on merits the appeals stand decided in favour of the appellants.

(pronounced in the Court on 11-03-2016).

Sd/-
(H.K.THAKUR)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

सत्यापित प्रति / Certified True Copy
17.3.16
सहायक रजिस्ट्रार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M.G. MARG, ALLAHABAD-211001