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

Dated: 09/08/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70759-70761/2017-EX[DB] dated 31/07/2017

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/975/2009	**XEROX INDIA LIMITED.** BARREILY ROAD, MODIPUR, RAMPUR.
2	E/976/2009	**SH. A.K. SRIVASTAVA ,SENIOR MANAGER (DISTRIBUTION) OF** M/S XEROX INDIA LTD.BAREILY ROAD, MODIPUR, RAMPUR, (U.P.)
3	E/977/2009	**SH. S.K.GUPTA, FINANCE CONTROLLER (DISTRIBUTION) OF** M/S XEROX INDIA LTD.BAREILY ROAD, MODIPUR, RAMPUR, (U.P.)

		Name and Address of Respondent
4		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)
5		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)
6		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

Other Appellants and Respondents as per Annexure

Copy To

7Advocate(s) / Consultant(s):

B.L.Narasimha (Adv.) & Atul Gupta, (Adv.), ALD
3/1A/3 OPP AUTO SALES,Above the Office Of Blue Dart/DHL Courier, COLVIN ROAD, LOHIA MARG ALLAHABAD-211001

8 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

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

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

18 C.D.R. 19 Office Copy 20 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos. E/975-977/2009-EX[DB]

(Arising out of Order-in-Original No. 57/Commr./Meerut-II/2008 dated 28/11/2008 passed by Commissioner of Central Excise & Service Tax, Meerut-II)

M/s Xerox India Ltd. (in Appeal No. E/975/2009)

Shri. A.K. Srivastava, Senior Manager (in Appeal No. E/976/2009)

Shri. S.K. Gupta, Finance Controller (in Appeal No. E/977/2009)

Appellant(s)

Vs.

Commissioner of Central Excise, Meerut-II **Respondent(s)**

Appearance:

Shri B.L. Narasimha (Advocate) & Shri Atul Gupra (Advocate) for Appellant(s)

Shri Rajeev Ranjan (Joint Commissioner) AR for Respondent(s)

CORAM:

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

Date of Hearing : 31/07/2017
Date of Decision : 31/07/2017

FINAL ORDER NOs. 70759- 70761/2017

Per: Anil G. Shakkarwar

Above stated three appeals are arising out of common Order-in-Original bearing No. 57/Commr./Meerut-II/2008 dated 28/11/2008 passed by the Commissioner of Central Excise Meerut-II. Therefore, they are taken together for decision.

2. The present proceedings are in compliance to the directions of Hon'ble High Court of Allahabad, through order dated 23 March, 2017 in Central Excise Appeal No. 112 of 2017 and order dated 11 May, 2017 in Central Excise Appeal No. 147 of 2017 and order dated 11 May, 2017 in Central Excise Appeal No. 148 of 2017.

3. Brief facts of the case are that the appellant- M/s Xerox India Ltd. (hereinafter referred to M/s Xerox) were engaged in the manufacture of Photocopier. They were also engaged in the trading of Digital Multifunctional Printers, Copiers, Photocopiers-cum-Printers and Photo Receptors-cum-Printers. They were having their factory at Rampur. The officers of Central Excise visited their factory at Rampur on 17.08.2005 and collected some documents and conducted investigations. During investigation statements of Shri S.K. Gupta, Finance Controller, Shri Nitin Jagtap, Head Technical Support, Shri Arvind Kumar Srivastava, Senior Manager, Shri Anil Kumar Gupta, Deputy General Manager and Shri Prabhat Kumar Gupta, General Manager, were recorded. On the basis of statements and further investigations appellant M/s Xerox were issued the show cause notice dated 18.04.2007. It was state in the said show cause notice that the appellant were importing various parts, components and machines and after their import and clearances of the same, in the system, a process called *Kitting* was undertaken.

During the process of kitting various sub assemblies were grouped into a kit and the kit also including certain components which were procured indigenously. Further during the process of Kitting the identification given to individual sub assemblies were withdrawn and entire kit was assigned one identification number at the end of the process of kitting and such kits were dispatch to the customers under invoices. It appeared to Revenue that such activity of kitting was assembly of machines by putting together various components to bring into a new machine. It was alleged in the show cause notice that such action was amounting to manufacture in terms of Section Note 6 of Section XVI of Central Excise Tariff which reads as follows :-

"In respect of goods covered by this Section, conversion of an article which is incomplete or unfinished but having the essential character of the complete or finished article (including 'blank' that is an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into a finished article or a part) into complete or finished article shall amount to manufacture".

4. It was alleged in the said show cause notice that various components were imported and various components were indigenously procured and they were subjected to process of

kitting and in view of said Section Note 6 the activity amounted to manufacture. Further there was another issue in the said show cause notice wherein it was alleged that activity undertaken by the appellant at Jolly Godown, Rampur amounted to manufacture. It was stated that old machines were brought to Jolly Godown and they were disassembled and useful parts were retrived from the same and they were put into other machines to make other machines workable and such other machines were given trade name as 'X-Mart' and they were cleared on invoices without payment of Central Excise Duty. It was alleged in the said show cause notice that the said process amounted to manufacture. There was a duty demand of Rs. 37,27,374/- on such refurbishing activity. The demand on the other activity which was alleged to be manufactured in the terms of said Section Note 6 was Rs. 14,87,79,895/-. Through the said show cause notice the said demands were raised under proviso Sub-Section 1 of Section 11A of the Central Excise Act, 1947. Further, the other two appellants i.e. Shri A.K. Srivastava and Shri S.K. Gupta were called upon to show cause as to why penalty under Rule 26 of Central Excise Rules. 2002 should not be imposed on them. The show cause notice was contested by all the three appellants M/s Xerox contended that Section Note 6 of Section XVI reveals that it covers only those articles which are incomplete or unfinished but having the character of complete or finished article and that the Note itself has given the example of blank which is not ready for direct use but it has approximate shape or outline of the finished article and such blanks on ~~bearing~~ having worked upon can be used and such finishing process amounts to manufacture. They contended that the goods in questions were imported as Printer-cum-Copier ~~on~~ under Heading No. 84.71 and CVD duty equal to the Excise Duty has also been paid while importing such goods and contended that the goods were complete as Printer-cum-Copier at the time of import in equal number of modules and they had undertaken only a simple process of integration and installation of them at the site of customers and their activity did not attract invocation of Section Note 6 of Section XVI of said Tariff Act. M/s Xerox also submitted that they had assembled ~~those~~ the disassembled machines and the disassembled machines were also complete machines within the meaning of Rule 2(a) of the Rules of Interpretation of Central Excise Tariff. They further contended that comparing Rule 2(a) with Section Note 6 of Section XVI, would reveal that while Rule 2(a) refers to incomplete or unfinished articles even if presented unassembled or disassembled, whereas said Note 6 refers to incomplete of unfinished goods including blanks and that in view of their submission of facts and provisions of said Rule 2(a) providing classification of the goods under the same heading even if presented unassembled or disassembled suggested that no manufacture has taken place. They further contended that they had only undertaken installation at the site and their activity did not amount to manufacture. They also contended that in respect of activity at Jolly Godown that total inventory value which came during the period of show cause from the factory of new parts to repair the X-Mart machines at the godown worked out to Rs. 39.13 lakhs for 1359 machines which per machines worked out to Rs. 2,890/- and the total price fetched for such 1359 machines was Rs. 2,70,23,100/- and thus per machines component worked out negligible percentage of sales value which indicates that the new machines did not come into existence, the old machines were repaired. Further having considered the statements of the appellants the Original Authority decided the said show cause notice through impugned Order-in-Original dated 28.11.2008 and held in Para 19.2.8 that "Kitting also included the activities which amounts to assembly of machines" and he has also held that activity undertaken for refurbishing act at Jolly Godown was also manufactured and he confirmed the demand of Rs. 14,87,79,835/- and Rs. 37,27,424/- and imposed equal penalty. Further he appropriated the amount of Rs. 37,27,424/- paid by M/s Xerox on 29.03.2006. The Original Authority imposed penalty of Rs. 2 lakhs on Shri S.K. Gupta under Rule 26 of Central Excise Rules, 2002 and Rs. 1 Lakh on Shri A.K. Srivastava under the same Rule. Aggrieved by the said order appellants preferred present appeals before this Tribunal. The said appeals were decided by this Tribunal through Final Order Nos. 815-817/2010 dated 30.11.2010 reported at 2011 (270) ELT 395 (Tri. Delhi.). Through the said order this Tribunal dismissed the appeal filed by the appellants. Aggrieved by the said order ~~of~~ the appellants preferred appeal before Hon'ble Allahabad High Court. It was contended by the appellant before the Hon'ble Allahabad High Court that appellant had similar activity both at Rampur and Hyderabad and similar show cause notice on the issue of manufacture covered by said Section Note 6 was issued to them by Commissioner of Central Excise, Hyderabad and the same was decided by Commissioner of Central Excise, Hyderabad which was challenged before Coordinate Bench of this Tribunal at Bangalore and Coordinate Bench at Bangalore found the said Order-in-Original passed by Commissioner of Central Excise, Hyderabad as untenable in law. Having considered the submission, Hon'ble High Court of Allahabad in their order dated 25.07.2011 in Central Excise Appeal No. 34 of 2011 directed this Tribunal by setting aside the said Final Order dated 30.11.2010 to decide the issue whether ~~where~~ the aforesaid activities amounted to manufacture and if this Bench did not agree with the findings of Coordinate Bench at Bangalore then ~~thus~~ the legal course was to refer the matter to President for creating Larger Bench for decision on the same. The remanded matter was heard by this Tribunal on 29.11.2016. The order passed by this Tribunal bearing ~~bearing~~ Final

Order Nos. 71110-71112/2016 dated 29.11.2016 was challenged by the appellants before Hon'ble Allahabad High Court. Hon'ble Allahabad High Court through above referred three orders dated 23.03.2017, 11.05.2017 and 11.05.2017 set aside this Tribunals Final Order dated 29.11.2016 and remanded the matter to this Tribunal with a direction to decide the appeal on merits.

5. Heard the learned counsel for the appellant. The learned counsel had submitted that in the proceeding, it has clearly been established that the activity at Rampur and activity at Hyderabad were similar in so far as the allegations of manufacture by invoking Section Note 6 was concerned and in view of earlier order of Coordinate Bench of this Tribunal at Bangalore, the impugned order needs to be set aside and in respect of another issue of refurbishing he has submitted that the said activity does not amount to manufacture in view of the final order of this Tribunal dated 04.08.1986 in the case of Shriram Refrigeration Industries Ltd. v/s Collector of Central Excise, Hyderabad reported at 1986 (26) ELT 353 (Tribunal) and ~~h~~as held by Hon'ble Allahabad High Court in the case of CCE, Meerut v/s Metro Appliance Ltd. reported at 2017 (345) ELT 638 (Allahabad). He has submitted that in the case of Metro Appliance Ltd. defective fans were dismantled and parts thereof were stored separately and useful parts were reused for repair of fans and Hon'ble Allahabad High

Court has held that such activity did not amount to manufacture and submitted that the case law is squarely applicable in respect of refurbishing activity at Jolly Godown in the present case.

6. Heard the learned AR who has supported the impugned Order-in-Original.

7. Having considered the rival contentions and on perusal of records, we find that the allegations in the show cause notice are on two grounds, one is that various components which were treated as complete goods classifiable under Heading 84.71 were imported and activity of Kitting was undertaken in the system and such activity was alleged to be amounting to manufacture by invoking provision under Section Note 6 of Section XVI of Tariff Act. We find that the requirement of facts for invocation of said Note are that at the beginning the goods should have essential character and they should be incomplete or unfinished and if any process is undertaken to make them complete and finished than such process amounts to manufacture. In the present show cause notice, which components are having essential characters and in which aspect they are incomplete or unfinished and which activities were undertaken to make them complete and finished are totally absent. Therefore, we do not find that the facts of the case justify invocation of provision of said Section Note 6 to Section XVI of Tariff Act, 1985. Therefore, so far as

the allegations regarding demand of Central Excise Duty of Rs. 14,87,79,895/- are concerned, we do not find that the allegations made in the show cause notice are sustainable. In so far as the demand of Rs. 37,27,424/- is concerned, we find that the ruling by Hon'ble High Court of Allahabad in the case of Metro Appliance Ltd. is squarely applicable and therefore we set aside the demand of Rs. 37,27,424/-. Since both the demands are not sustainable the personal penalties are also not sustainable. Thus, we do not find the impugned Order-in-Original sustainable. Further, we are not deferring in this order ~~to~~ with the conclusion drawn by the order passed by Coordinate Bench of this Tribunal in Bangalore referred above. We, therefore, set aside the impugned Order-in-Original and allow the appeals. The appellants shall be entitled for consequential relief as per law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

-Sd/-
(ANIL G. SHAKKARWAR)
Member(TECHNICAL)

Anku

प्रमाणित प्रति/Certified True Copy
21/08/17
सहायक पंजीकार/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