FAX : 0532-2400149

REGISTERED / AD

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

To

Dated: 30/08/2017

Appellant as per address in table below
Respondent as per address in table below

Final Order No. **A/70809/2017-EX[DB]** dated **10/08/2017**

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/2784/2009	**CERA DECOR INDIA LTD** C-27&28, Site-C, UPSIDC, Industrial Area, Surajpur, Greatar Noida.
		Name and Address of Respondent
2		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

Copy To
3Advocate(s) / Consultant(s):

B.L YADAV, (Consultant)
113,SECTOR 10, GURGAON
HARYANA

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

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

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

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

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

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

Asstt. Registrar

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

APPEAL No. E/2784/2009-EX[DB]

(Arising out of Order-in-Appeal No. 184/CE/Appl/Noida/09 dated 30/06/2009 passed by Commissioner of Central Excise (Appeals), Meerut-II at Noida)

M/s Cera Décor India Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Meerut-II **Respondent**

Appearance:

Shri B. L. Yadav, Consultant, for Appellant
Shri Pawan Kumar Singh, Superintendent (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 10/08/2017

FINAL ORDER NO...70809/2017......

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. 184/CE/Appl/Noida/09 dated 30/06/2009 passed by Commissioner of Central Excise (Appeals), Meerut-II at Noida.

2. The brief facts of the case are that the appellants were engaged in the manufacture of Pigment, Glass Frit & Lacquers/Medium, etc. The appellants were issued with a Show Cause Notice dated 06/02/2007 wherein it was alleged that they were engaged in (i) Grinding & Mixing of Glass Frit under Heading No. 3207000, (ii) Dilution & Mixing of Prepared Inorganic Pigments under Heading No. 32071030 &

(iii) Dilution & Re-packing of Cover Coats, Lacquer & Media under Heading No. 32081020. It was alleged that Grinding & Mixing of Glass Frit amounted to manufacture. Further, Dilution & Mixing of Prepared Inorganic Pigments amounted to manufacture and Dilution & Re-packing of Cover Coats, Lacquer & Media from bulk pack to small pack amounted to manufacture. Therefore, the appellants were issued again the said notice for demand of Central Excise duty of Rs.6,13,621/-. Further, through Show Cause Notice dated 03/05/2007 a demand of Rs.6,40,868/- was raised and through Show Cause Notice dated 03/12/2007 a demand of Rs.7,00,296/- was raised. The issue was adjudicated through Order-in-Original No. 09/Joint Commissioner/Noida/2008 dated 30/04/2008, wherein the Original Authority confirmed the demand of Rs.19,54,785/- and imposed equal penalty after holding that the processes stated in the show cause notice amounted to manufacture. The appellant preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) decided the appeal through impugned Order-in-Appeal No. 184/CE/Appl/Noida/09 dated 30/06/2009. The ld. Commissioner (Appeals) has held that the process of Grinding and Mixing of Glass Frit did not amount to manufacture since there was no change in the nomenclature, use or identity of the goods emerged, therefore the demand amounting to Rs.15,56,001/- on account of Mixing of Glass Frit was set aside by ld. Commissioner

(Appeals). Further, the ld. Commissioner (Appeals) has held that process of Dilution & Mixing of Prepared Inorganic Pigments involved process of mixing of silica powder with the pigments amounted to manufacture. Therefore, she did not interfere with the order of Original Authority in respect of the same. The ld. Commissioner (Appeals) has upheld the confirmation of demand in respect of Dilution & Re-packing of Cover Coats, Lacquer & Media from 200 kgs packs to 20 kg packs amounted to manufacture in view of definition of manufacture provided under Section 2(f) of the Central Excise Act, 1944 since the emerging goods were classified under 30208 which is covered by the 3rd Schedule of the Central Excise Act, 1944. Aggrieved by the said order appellant is before this Tribunal.

3. Heard the ld. Counsel for the appellant in respect of Dilution & Mixing of Silica Powder with the Pigments. He has submitted that this Tribunal in the case of Jayu Products *Versus* Collector of Central Excise, Bombay reported at 1994 (74) E.L.T. 158 (Tribunal) has held that if duty paid Ultra Marine Blue was mixed with China Clay as a dilutant then the process did not amount to manufacture. Therefore, he has pleaded that the impugned Order-in-Appeal to that extent is not sustainable. He has further argued that repacked goods were ~~where~~ for industrial consumers and therefore, as held in the case of Goyal M. G. Gases Pvt. Ltd. *Versus* Commissioner of Central Excise & Service Tax, Chandigarh reported at 2015

(325) E.L.T. 768 (Tri. – Delhi) that the Chapter Note 4 of Chapter 27 of Central Excise Tariff Act wherein the process of repacking from bulk packs or retail packs amount to manufacture did not apply in the said case, since the consumer was industrial user and therefore in their case also the repacked material was for consumption by industries, therefore, repacking did not amount to manufacture.

4. Heard the ld. A. R. for Revenue, who has supported the impugned Order-in-Appeal dated 30/06/2009.

5. Having considered the rival contentions and on perusal of the facts on record, we find that this Tribunal in the said case law Jayu Products *Versus* Collector of Central Excise, Bombay (supra) has held that if duty paid Ultra Marine Blue was mixed with China Clay as a dilutant then it did not amount to manufacture. In the present case Pigments were mixed with the Silica Powder and therefore, we hold that mixing of Pigments with the Silica Powder does not amount to manufacture. Therefore, we allow appellant's appeal in respect of demand of duty confirmed in respect of mixing of Silica Powder with the Pigments. In so far as repacking of the goods i.e. cover coats from 200 kgs packs into 20 kgs packs we find that the case law relied upon by the appellant is not applicable in the present case. In the said case of Goyal M. G. Gases Pvt. Ltd. *Versus* Commissioner of Central Excise & Service Tax, Chandigarh (supra) appellant therein used to receive oil through pipeline and said oil was used in the

transformers in the process of repair of transformers and in that case Revenue had contended that such use of oil in transformer was repacking into small packs and therefore it amounted to manufacture. This Tribunal in that case has held that oil was used in the maintenance and therefore it was not repacking. We find that said final order is not squarely applicable in the present case. Therefore, we hold that the impugned Order-in-Appeal is sustainable in so far as it is related to upholding of demand of Central Excise in respect of repacking of the goods from bulk container of 200 kgs. into 20 kgs. In above terms the appeal is allowed in part.

(Dictated & Pronounced in Court)

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

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

Ansari

प्रमाणित प्रति/Certified True Copy
05/09/17
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