## CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
## <u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

**Appeal No. ST/60377/2019-[DB]**

(Arising out of Order-in-Appeal No. LUD-EXCUS-0001-APP-1955-1958-18 dated 30.11.2018 passed by the Commissioner (Appeals), Ludhiana)

**CCE & ST, Ludhiana** **......Appellant**
(F-Block Rishi Nagar, Ludhiana, Punjab)

*VERSUS*

**M/s Gee 7 Graphics Pvt Ltd** **......Respondent**
(1272/2-3, Sargam Complex Mall Road, Bathinda, Punjab)

**WITH**

**Appeal No. ST/60378/2019-[DB]**

(Arising out of Order-in-Appeal No. LUD-EXCUS-0001-APP-1955-1958-18 dated 30.11.2018 passed by the Commissioner (Appeals), Ludhiana)

**CCE & ST, Ludhiana** **......Appellant**
(F-Block Rishi Nagar, Ludhiana, Punjab)

*VERSUS*

**M/s Five Star Albums** **......Respondent**
(Gali No.1, Agarsen Nagar, Amrik Singh Road, Bathinda, Punjab)

**<u>APPEARANCE:</u>**

Shri A.K.Saini , A.R. for the Appellant

Mr. Tarun Sharma, C.A. for the Respondent

**<u>CORAM:</u>** **HON’BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**
**HON’BLE MR. P.V.SUBBA RAO, MEMBER (TECHNICAL)**

**FINAL ORDER NO.61228-61229 of 2019**

DATE OF HEARING: 19.12.2019
DATE OF DECISION: 19.12.2019

**PER ASHOK JINDAL:**

The Revenue is in appeal against the impugned orders.

2. The facts of the case are common in both the appeals; therefore, these appeals are disposed of by this common order.

3. The facts of the case are that the respondent is engaged in manufacture and sale of photobooks to photography studio or individual photographers who outsourced such work to the respondent against agreed consideration. The photographers/photo studio provides predesigned photos in soft form (CD/pen drive) to the respondents. The respondent cannot format, edit or alter the photographs received by it in the soft form. The customer specifies the nature of sheets, covers, etc. to be used in photo books. The respondent prints photographs on both sides of standard plain printing paper by using high quality digital press. Thereafter, the printed photo sheets are laminated on both sides and specified number of printed photo sheets are wire-stapled on the stapling machine. Finally, plain sheets are pasted on both sides of stapled book and thereafter, cardboard cover having digital printed photographs of the function is pasted with the staple book to finally make a photo book. There is a complete change in the identity and nature of the photographs when printed from soft form to hard bound form as a photo book. The Revenue is of the view that the activity undertaken by the respondents fall

under the category of 'Photography service'. Therefore, the show cause notices were issued to the respondents but the Commissioner (Appeals) relying on the decision of this Tribunal in the case of Venus Albums Company Pvt.Ltd. vide final order No.63360-63362/2018 dated 24.10.2018 set aside the demand. Therefore, the Revenue is in appeal before us.

4. The Revenue has filed these appeals on the ground that the activity undertaken by the respondent fall under the category of photography services in terms of section 65 (78) and 65 (79) read with section 65 (105) (zb) of the Finance Act, 1994 prior to 1.7.2012. Under the definition of service in terms of section 65B (44) read with section 65B (51) of the Finance Act, 1994 after 1.7.2012. The Revenue has also taken the ground that the photography services consist of various steps like clicking photos, selecting and designing a layout for the photo book, printing a photo book. All the steps involved acceptance and approval of the customer also. Photography service is not completed until and unless the customer gets photos or photo book. The provision of photography service starts with a customer approaching a photo studio or photographer and ends when the customer gets photographs or photo album as per specifications from the photo studio or the photographer. The customer always pays a photographer or photo studio for the service provided to him, which, as per his understanding, culminate in his getting a photograph or photo album as per his choice and order. Further, the value of goods involved in photo book is nominal as compared to the total value of taxable services provided to the ultimate service recipient i.e. client of the photographer/photo studio and

moreover, the goods i.e. ink, paper etc. used in printing of photo book, are consumed during the provision of service only. Therefore, it cannot be said that it is a manufacturing activity.

5. Ld.Counsel for the respondents submits that the issue has been settled by this Tribunal in the case of Venus Albums Company Pvt.Ltd., therefore, the impugned orders are to be upheld.

6. Heard the parties and considered the submissions.

7. We find that the issue has been examined by this Tribunal in the case of Venus Albums Company Pvt.Ltd. (supra) wherein the facts of the case are as under:-

> "2.The brief facts of the case are that the appellant is having units at Chandigarh, Ludhiana and Amritsar and was carrying out the business of manufacturing and sale of photo books to photography studio or individual photographers who outsources such work to the appellant. The appellant was also engaged in the business of printing and selling of wedding cards, photo calendars, visiting cards, etc. During the year 2010-11, the appellant was also carried out the business of mere binding of books, registers, etc. The appellant was registered under the Central Excise law as manufacturer. The appellant was paying Central Excise duty on wedding cards, photo, calendars, etc. The photo books being classified under chapter heading 4911 of Central Excise Tariff Act, 1985 which attracted Central Excise duty at nil rate. The appellant filed ER-1 returns with the department wherein goods falling under chapter heading 4911 were separately mentioned. The appellant was also registered as dealer under Punjab VAT Act, 2005. The appellant was paying VAT on sale of photo book and other printed material viz. calendars, visiting card, etc. The present dispute with regard to the sale of photo books to photographers/photo studios and individual photographers. An investigation was conducted at the business premises of the appellant and a show cause notice was issued to the appellant on 20.10.2015 alleging that the activity of printing of photo book belonging to a particular person falls under the scope of photography service under Section 65 (105) (zb) of the Finance Act, 1994 till 30.6.2012 and thereafter it is taxable as a service under section 66B (44) of the Act. It was also alleged that photo books are not the product of printing industry but a specialized and customized service provided to customer. It was proposed to demand service tax alongwith interest and to impose penalties under section 77 and 78 of the Act. The demand of service tax has been confirmed on the premise that the activity of printing of personal photographs which is undertaken for a particular person falls under the scope of photography service till 30.6.2012. Thereafter as a service falls under

section 65B (44) of the Act and the photo books are not the product of printing industry but a specialized and customized service provided to customer and the activity undertaken by the appellant for making photo book does not amount to manufacture and photo book do not classify under chapter 4911 of the CETA. It was also held that the impugned service do not fall under the scope of works contract service, therefore, no exemption available to intermediate printing process. It was also held that the benefit of Notification No. 12/2003-ST dt. 20.6.2003 is not available. Against the said orders, the appellant is before us."

And this Tribunal has observed as under:-

"13. On careful consideration of the submissions made by both sides, we find that service tax has been demanded from the appellant in terms of Section 65 (78) of the Finance Act, 1994 for the period till 30.6.2012 and thereafter under Section 65B (44) of the Finance Act, 1994. For better appreciation the relevant sections of Finance Act, 1994 are reproduced as under:-

***"Section 65 (105):*** *"taxable service" means any service provided or to be provided, -*

*(zb) to any person, by a photography studio or agency in relation to photography, in any manner.*

***Section 65 (78):*** *"photography" includes still photography, motion picture photography, laser photography, aerial photography or fluorescent photography.*

***Section 65 (79):*** *"photography studio or agency" means any professional photographer or [any person] engaged in the business of rendering service relating to photography."*

14. Section 65 (105) (zb) defines the service provided to a any person by a photography studio or agency in relation to photography, in any manner. We also take note of the fact Chapter 49 covers printed pictures, designs and photographs and other product of printing industries. For better appreciation, Chapter 4911 is reproduced as under:-

*4911 Other printed matters, including printed pictures and photographs.*

*4911 91 00 Pictures, designs and photographs*

15. We take note of the fact that what activity has been undertaken by the appellant. We observe that the process of formation of photo book, the photographers provide predesigned photos in soft form via e-mail or on CD/Pen drive, to the appellant for supplying the photo book. In terms of the arrangement agreed, the appellant cannot format, edit or alter the photographs received by it in the soft form. The Customer specifies the nature of sheets covers, etc. to be used in photo books. The appellant prints photographs on both sides of standard plain printing paper by using high quality digital press. Thereafter, the printed photo sheets are laminated on both sides and specified number of printed photo sheets and then wire-stapled on the stapling machine. Finally, plain sheets are pasted

on both sides of the stapled book and thereafter, cardboard cover having digital printed photographs of the function is pasted with the stapled book to finally make a photo book. Thus, there is a complete change in the identity and nature of the photographs when printed from soft form to hard bound form as a photo book.

16. Ld. Counsel has relied upon the various decisions in support of their arguments to say that the activity undertaken by the appellant is printing on paper, the photographs/photo book amounts to manufacture. The said issue has been examined in the case of Fitrite Packers (supra) wherein the Hon'ble Apex Court has observed as under:-

***"10.*** *On the facts of the present case, it is to be determined as to whether the case would fall under category (2) or category (4). We have already taken note of printing process. A cursory look into the same may suggest, as held by the Tribunal, that GI paper is meant for wrapping and the use thereof did not undergo any change even after printing as the end use was still the same, namely, wrapping/packaging. However, a little deeper scrutiny into the facts would bring out a significant distinguishing feature; a slender one but which makes all the difference to the outcome of the present case. No doubt, the paper in-question was meant for wrapping and this end use remained the same even after printing. However, whereas blank paper could be used as wrapper for any kind of product, after the printing of logo and name of the specific product of Parle thereupon, the end use was now confined to only that particular and specific product of the said particular company/customer. The printing, therefore, is not merely a value addition but has now been transformed from general wrapping paper to special wrapping paper. In that sense, end use has positively been changed as a result of printing process undertaken by the assessee. We are, therefore, of the opinion that the process of aforesaid particular kind of printing has resulted into a product, i.e., paper with distinct character and use of its own which it did not bear earlier. Thus, the 'test of no commercial user without further process' would be applied as explained in paragraph 20 of Servo-Med Industries (supra). The aforesaid paragraph is extracted hereunder.*

*"20. In Brakes India Ltd. v. Superintendent of Central Excise - (1997) 10 SCC 717, the commodity in question was brake lining blanks. It was held on facts that such blanks could not be used as brake linings by themselves without the processes of drilling, trimming and chamfering. It was in this situation that the test laid down was that if by adopting a particular process a transformation takes place which makes the product have a character and use of its own which it did not bear earlier, then such process would amount to manufacture irrespective of whether there was a single process or several processes."*

17. Further, Hon'ble Delhi High Court in the case of Delhi Press Patra Prakashan (supra) has examined the issue and observed as under:-

*".........We do not think that we can read in this observation of Calcutta High Court, a decision that printing activity carried on by a publishing house may amount to manufacture does not ipso facto exclude the activity of printing from the scope of the expression*

*"manufacture or produce an article or thing" as occurring in Section 80-I (2) (iii) of the Act. The contention of Mr.Sahni that an assessee who is engaged on job work basis cannot be considered as a manufacturer is also premised on the observations made by the Calcutta High Court in the case of A. Mukherjee & Co. (supra) and as stated earlier, we do not find that the language of Section 80-I of the Act support this contention."*

"18. Further, in the case of Jamal Photo Industries (P) Limited (supra), Hon'ble Madras High Court has examined the issue and observed as under:-

"Whether in the facts and circumstances of the case, the Tribunal was right in holding that processing of the film and printing photographs from the negatives amounts to manufacturing activity and is an industrial undertaking eligible for the benefit of section 80-I"

There cannot be any dispute that the expression "manufacture" involves the concept of changes effected to a basic raw material resulting in the emergence of, or transformation into, a new commercial commodity. But it is not necessary that the original article or material should have lost its identity completely. All that is required is to find out whether as a result of the operation in question, a totally different commodity had been produced having its own name, identity, character or end use.

In the instant case, a negative film roll fitted had been exposed and produced as a distinct article, viz. Photograph and such photograph cannot be called a negative film and thus the negative film losses its identity completely, after the same had been developed and had also become a totally different commercial commodity having its own identity/character and a product of end us. Therefore, what is involved while taking a photograph by a photographer is a manufacture. Hence, the assesseë having engaged themselves in manufacturing process is entitled to claim investment allowance."

19. In view of the above judicial pronouncements and the activity undertaken by the appelant chapter heading 4911, is very much clear that the appellant has undertaken the activity of printing photograph on plain printing paper and thereafter bind them and selling them as photo books. The said activity amount to manufacture and the appellant is paying VAT and therefore, the said activity merit manufacturing activity and classified under Chapter 4911 and the appellant has classified accordingly.

20. We also take note of the fact that after introduction of GST, the classification of the same has been answered vide Circular F.No.332/2/2017-TRU dt. December, 2017 by observing that these items fall under HS Code 4911 an attract 12% GST.

TABLE

| S.No. | Queries | Replies |
|---|---|---|
| 62 | What is the classification and GST rate for photo books printed using digital Offset printing press on printing paper [other than photo albums] and thereafter manually bound? | 1. These items fall under HS code 4911 and attract 12% GST. |

21. Further, we take note of the fact that Notification No.14.04-ST dt.109.2004 amended by Notification No.19/06-ST dt.25.4.2006 with effect from 1.5.2006, exempts specifically the activity of printing from payment of service tax.

22. We also take note of the fact that the service exempted in terms of Notification No.25/2012-ST dt.20.6.2012 amended by Notification No.44/2012-ST dt.7.8.2012, 49/2012-ST dt.24.12.2012 and Notification No.3/2013 dt.1.3.2013 with effect from 1.4.2013, S.No.30, the activity of printing as job worker is exempted from payment of service.

23. As the activity of printing has also been exempted from payment of service tax, if we take note of the fact that the activity undertaken by the appellant in relation to photography service then also the activity undertaken by the appellant is not taxable service."

8. As the issue has already been settled by this Tribunal, therefore, the issue is no more *res integra.* In view of the decision of this Tribunal in the case of Venus albums Co.Pvt.Ltd. (supra), we do not find any infirmity in the impugned orders and the same are upheld. Consequently, the appeals filed by the Revenue are dismissed.

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

**(ASHOK JINDAL)**
**MEMEBR (JUDICIAL)**

**(P.V.SUBBA RAO)**
**MEMBER (TECHNICAL)**

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