IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal Nos. E/CO/16 & 17/2011 and E/189 & 190/2011

(Arising out of Orders-in-Appeal No. 8/2011 and 7/2011 both dated 14.1.2011 passed by the Commissioner of Central Excise (Appeals), Trichy)

Commissioner of Central Excise, Trichy Appellant

Vs.

M/s. Deepam Packagings
M/s. Guru Polymers Respondents

Appearance

Shri S. Govindarajan, AC (AR) for the Appellant
Shri B. Kumar, Senior Advocate for
Shri R.Asokan, Advocate for the Respondents

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **03.04.2018**

Final Order Nos. **41052-41053 / 2018**

Per Bench

Brief facts are that the respondents supplied raw materials namely poly propylene granules, filler materials and colour batches to M/s. Premier Polysacks Pvt. Ltd. (herein after referred to as M/s.PPP for short) under job work challans for the conversion of raw materials into PP packs / sacks under

Notification No.. 214/1986-CE dated 25.3.1986. In terms of the Notification, the goods may be used in or in relation to the manufacture of the final product or cleared as such from the factory of the supplier of raw materials subject to the condition that the supplier of raw material gives an undertaking to the Assistant / Deputy Commissioner having jurisdiction over the factory of the job worker that the onus of discharging of liability of central excise duty rests with him. Notification No.83/1994-CE dated 11.4.1994 grants exemption from payment of central excise duty from the whole of central excise duty to those goods exempted under SSI Notification No. 8/2003-CE dated 1.3.2003 when manufactured on job work basis. The department was of the view that fully finished PP bags / sacks were received from the job worker namely M/s. PPP Ltd. and the same were not subjected to any process in the premises of the respondent other than from operation of printing the names of customers on the sacks and that this activity not amounting to manufacture, the respondents are not eligible for the benefit of SSI exemption as per Notification No.8/2003. Show cause notice was issued proposing to demand duty along with interest and for imposing penalties. After due process of law, the original authority confirmed the demand, interest and also imposed penalties. Aggrieved, the respondents filed appeal before Commissioner (Appeals) who vide order impugned herein set aside the demand, interest and penalties. Hence the department has come before the Tribunal.

2. On behalf of Revenue, ld. AR Shri S. Govindarajan reiterated the grounds of appeal. He submitted that the Commissioner (Appeals) has committed grave error in holding that the respondent is the real manufacturer of the goods when no manufacturing activity was carried out by them. The respondent was only printing the names of the customers on the PP bags / sacks manufactured by the job worker. The said activity of merely printing the name of the customers does not amount to manufacturing activity. He relied upon the decision in the case of Union of India Vs. J. G. Glass Industries Ltd. – 1998 (97) ELT 5 (SC).

3. Against this, the ld. Senior Advocate Shri B.Kumar appeared and argued on behalf of the respondent. He adverted to the show cause notice as well as the order in original and submitted that the respondents were not merely printing the names of the customers on the bags but were also undertaking the packing of the sacks. The activity fully falls under deemed manufacture and therefore the respondents have rightly availed the SSI exemption benefit under Notification No. 8/2003. He argued that the very same issue was considered by the Hon'ble Supreme Court in the case of Commissioner of

Central Excise, Mumbai Vs. Fitrite Packers – 2015 (324) ELT 625 (SC).

4. Heard both sides.

5. On perusal of records, we find substance in the argument put forward by the ld. Senior Advocate for respondent. Though the ld. AR has stressed that the sole activity done within the premises of the respondent is printing of the names of the customers on the PP bags, on perusal of records we find that the activity includes not only printing the names of customers on the sacks but also packing of the sacks. In the impugned order, the Commissioner (Appeals) has clearly stated that the respondents are doing operation of printing the names of the customers on the sacks and also packing of the sacks. So also the very same allegation has been raised in the show cause notice to allege that the respondents are not eligible for exemption under Notification No. 8/2003. The ld. AR has relied upon the decision in the case of J.G.Glass Industries (supra). The said decision is not applicable to the facts of the case as the respondents are not merely printing the names of the customers but also doing packing of the sacks. Further, the said decision has been considered by the Hon'ble Supreme Court in the case of Fitrite Packers (supra). The facts relating to the issue that was analyzed in the said decision is as under:-

"The respondent/assessee herein purchased GI paper from the market which is already duty paid base paper. On this paper, the process of printing is carried out by the assessee according to the design and specifications of the customers depending on their requirements. This printing is done in jumbo rolls of GIP twist wrappers. Bulk orders are received from Parle, which needs the said paper as a wrapping/packing paper for packing of their goods. On the paper, logo and name of the product is printed in colorful form. After carrying out the printing as per the requirement of the customers, the same is delivered to the customers in jumbo rolls without slitting. The issue is as to whether this printing process amounts to manufacture or not?"

The Hon'ble Apex Court held as follows:-

"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."

11. The ratio thereof is explained in paragraph 24 in the following words :

"24. It is important to understand the correct ratio of the judgment in the *J.G. Glass* case. This judgment does not hold that merely by application of the second test without more manufacture comes into being. The Court was at pains to point out that a twofold test had emerged for deciding whether the process is that of manufacture. The first test is extremely important - that by a process, a different commercial commodity must come into existence as a result of the identity of the original commodity ceasing to exist. The second test, namely that the commodity which was already in

> existence will serve no purpose but for a certain process must be understood in its true perspective. It is only when a different and/or finished product comes into existence as a result of a process which makes the said product commercially usable that the second test laid down in the judgment leads to manufacture…..”
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> 12. This Court emphasised that there has first to be a transformation in the original article and this transformation should bring out a distinctive or different use in the article, in order to cover the process under the definition of ‘manufacture’. These tests are satisfied in the present case.
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> 13. As a result, present appeal is allowed setting aside the order of the Tribunal and restoring the Order-in-Original passed by the Adjudicating Authority.”

6. The Hon’ble Supreme Court in the case of Fitrite Packers had considered the decision laid in the case of J.G. Glass Industries (supra). Following the decision of the Hon’ble Apex Court in Fitrite Packers (supra), we are of the considered opinion that the order passed by the Commissioner (Appeals) requires no interference. The appeals filed by the department are dismissed.

7. The ld. counsel for the respondent submitted that they are withdrawing the cross-objections filed. The cross-objections filed by the respondents are dismissed as withdrawn.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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