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

ST/134/2008

[Arising out of Order-in-Revision No.7/2008, dated 10.03.2008 passed by the Commissioner of Central Excise, Salem]

M/s. PEARL PACKAGING — APPELLANT

Versus

THE COMMISSIONER OF CENTRAL EXCISE — RESPONDENT
Salem.

ST/245/2008

[Arising out of Order-in-Appeal No.90/2008, dated 13.08.2008 passed by the Commissioner of Central Excise (Appeals)] Salem.

M/s. PEARL PACKAGING — APPELLANT

Versus

THE COMMISSIONER OF CENTRAL EXCISE — RESPONDENT

Appearance:

For the Appellant	Shri M. Karthikeyan,	Adv.
For the Respondent	Shri K.P. Muralidharan	AC (AR)

CORAM:

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

Date of hearing/decision **03-08-2017**

FINAL ORDER NO. 41511-41512/2017

Per Bench

The appellants are engaged in blending of tea and packaging such tea in pouches on behalf of their client. The department was of the view that such activities fall under 'Business Auxiliary Services' and issued Show cause notice for demand of service tax, interest and proposing penalties for the period 10.09.2004 to 28.02.2005. After due process of law, the original authority confirmed demand of service tax of Rs.2,55,354/- along with interest and also imposed equal penalty under Section 78 and penalty of Rs.1000 under Section 77. No penalty was imposed under Section 76 of Finance Act 1994. Aggrieved by the non-imposition of penalty under Section 76, the department filed appeal before the Commissioner (Appeals). The appellant had also filed appeal. The Commissioner (Appeals) vide order impugned herein upheld the confirmation of demand of service tax, interest and penalties imposed. The appeal filed by department against non-imposition of penalty under Section 76 was allowed, imposing penalty under Section 76 also. The Appeal No.134/2008 is filed by appellant against such order. Appeal No.245/2008 is filed against the order of Commissioner (Appeals) upholding demand, interest and penalties under Section 77 and 78 of the Finance Act 1994.

2. On behalf of appellant, the Learned Counsel Shri. M. Karthikeyan submitted that the activities undertaken by appellant are only blending and packaging and it can be construed only as processing and not as production or manufacture of tea. He relied upon the judgment in the case of M/s. Tara Agencies 2007 (214) E.L.T. 491 (S.C.) as well as the following judgments:

Sonic Watches Ltd Vs. Commissioner of Central Excise, Vadodara 2011(21) S.T.R. 34 (Tri.-Ahmd)

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Rathour Engineering Works Vs. Commissioner of Central Excise, Chandigarh 2012(27) S.T.R. 37 (Tri.-Del.).

Auto Coats Vs. Commissioner of Central Excise, (S.T.), Coimbatore 2009(15) S.T.R. 398 (Tri.-Chennai)

3. The Learned AR reiterated the findings in the impugned order.

4. Heard both sides. The issue in whether the activity of blending and packing of tea on behalf of client would fall within the definition of Business Auxiliary Service. The department is of the view that such activities would amount to manufacture of goods. The Hon'ble Apex Court in the case of *Commissioner of Income Tax, Kerala Vs. Tara Agencies* (supra) has discussed the activity and observed as under:

> *All the three stages, namely, production, manufacturing and processing of tea can be enumerated as under. The tea is produced in the tea gardens. This first stage is called production of tea. The second stage is manufacture of tea. In this stage, the tea leaves are plucked from the tea bushes and by mechanical process, tea leaves are converted to tea. This second stage is considered manufacturing of tea. The third stage is blending of different qualities of tea in order to smoothen its marketability. This third stage is considered processing of tea.*
>
> *The controversy involved in this case revolves around construction and meaning of terms "manufacture", "production" and "process", therefore, we deem it appropriate to deal with these terms in detail as enumerated in various dictionaries and by the decided cases to properly comprehend the distinction in these terms.*
>
> *On clear construction and interpretation of Section 35B(1A) of the Act, we are clearly of the opinion that the respondent's activity amounts to "processing" only and the activity does not amount to either "production" or "manufacture". The term "processing" has not been included in Section 35B(1A) of the Act, therefore, the respondent is not entitled for weighted deduction under Section 35B(1A) of the Act.*

5. Following the same we are of the view that the activity of the appellants would not amount to manufacture. Similar view was taken in the case of Sonic Watches Ltd, and above cases relied by the appellant.

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6. From the above we hold that the demand is unsustainable. The impugned orders are set aside. The appeals are allowed with consequential reliefs, if any.

(Dictated and pronounced in open court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

Dillibabu

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