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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Date 27/05/2009

Appeal No. ST/175 /2007-176 /2007 - CU[DB]
ST/512/06, ST/98-100/07
ST/214-15/07

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)
C.C.E. INDORE

Appellant
Vs
Respondent

GREAT GALLION LTD.

I am directed to transmit herewith a certified copy of **Final order No.** ST/182-189 2009 CU[DB] dated

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
   GREAT GALLION LTD.
   106, KANCHAN BAUGH, INDORE (M.P.)
2. Adv. / Consult : Sh. S.K. Pahwa.
   Malwah & Pahwa,
   45 Aradhana Sector 13
   R.K. Puram N. Delhi 66.
3. S.D.R
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise, I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file
18. ASSOCIATED ALCHOHAL & BREWERIES
    4TH FLOOR, SILVER ARCH PLAZA, NEW PALASIA INDORE (M.P.)
19. M/s Gwalior Distilleries Ltd
    Raizu Farm, Agra-Mumbai Road, Gwalior (MP)

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

ST/Appeal Nos. 512/2006, 98-100 of 2007,

(Arising out of order in original No. 28/Commr/ST/06 dated 31.1.2007, No. 57, 58 and 59/Commnr/Cex/Ind/06 dated 28.11.2006 passed by the Commissioner of Central Excise Indore)

1. M/s Great Galleon Ltd
2. M/s Associated Alcohal & Brewaries Ltd

Appellant

ST/Appeal Nos. 214-215 of 2007

(Arising out of order in Appeal No. Ind.1/15 & 16/2007 dated 31.1.2007 passed by the Commissioner of Central Excise (Appeals), Indore)

3. M/s Gwalior Distilleries Ltd

Vs

CCE, Indore

Respondent

Appeared for the Appellant : Shri S.K. Pahwa, Advocate
Appeared for the Respondent : Shri A.K. Madan, SDR

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ST/Appeal Nos. 175-176 of 2007

(Arising out of order in Appeal No. Ind.1/15 & 16/2007 dated 31.1.2007 passed by the Commissioner of Central Excise (Appeals), Indore)

CCE, Indore

Appellant

Vs

1. M/s Great Gallon Ltd & Others
2. M/s Associated Alcohal & Brewaries Ltd
3. M/s Gwalior Distrilleries Ltd

Respondent

Appeared for the Appellant : Shri A.K. Madan, SDR
Appeared for the Respondent : Shri S.K. Pahwa, Advocate

Coram: Hon'ble Mr.D.N. Panda, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

Date of Hearing: 14.5.09

Final Order No. ST/182 to 189/09/2009

Per D.N. Panda:

Appeal Case Nos.512/2006 , 98-100 were of 2007, 214 and 215 of 2007 were filed by the Assessee. Revenue is in Appeal Case No. ST/175-176 of 2007. Hon'ble High Court of Madhya Pradesh in Writ Petition No.696 of 2008 disposed of on 20th March, 2008 in the case of Som Distrilleries Pvt Ltd & Others Vs Union of India. has held that activity of packaging and bottling of liquor come within the meaning of clause (f) of Section 2 of Central Excise Act, 1944 and therefor in view of definition contained in Section 65 (76)(b) of the Finance Act 1994 especially keeping in view the exclusionary facet and further regard being had to the circular issued by Central Board of Excise & Customs, ~~Accordingly~~, the impugned activity is not liable to service tax.

2. In Appeal Case Nos.175-176/2007, Revenue has come with the prayer that setting aside of penalty by the learned Appellate Authority was not proper. To this argument, learned Counsel Shri Pahwa submits that once activity is not liable to tax, levy of penalty is uncalled for following the ratio laid down by the Hon'ble High Court of Madhya Pradesh in the aforesaid case.

3. Heard both sides.

4. We had the advantage of going through such a matter in Service Tax Appeal Case No. 177 & 228 of 2007 on 28th April, 2009 in the case of CCE Indore Vs M/s Agarwal Distillers Pvt Ltd & Vice

Versa. That batch of appeals were decided following the decision of Hon'ble High Court of Madhya Pradesh. Therefore we have no hesitation to deal these appeals equally under the law and in consequence dismiss both the appeals of Revenue, allowing all (six) appeals of appellants to the extent, they are covered by the decision of Hon'ble High Court of Madhya Pradesh. Consequential relief, if any, that shall flow from our order, shall be granted to the appellants by the appropriate authority following due process of law.

5. We dictated the aforesaid order in the Chamber in the presence of both the sides. in view of power failure in the Court.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

MPS*