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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/1846/2011 – SM [BR] E / STAY / 2447 / 2011-SM[BR] **Date 23/12/2011**

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

To :
M/S UMAX PACKAGING LIMITED,

15 KM STONE, KHASRA NO. 20/2, NEAR JIET COLLEGE, VILLAGE-MOGRA, JODHPUR, PALI HIGHWAY, JODHPUR.- 342001

M/S UMAX PACKAGING LIMITED, Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.922/2011-SM[BR]&S/864/2011** dated 2.12.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A,VASANT KUNJ NEW DELHI

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
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 -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Excise Stay Appn. No.E/S/2447/2011-SM in Excise Appeal No. E/1846/2011-SM

[Arising out of Order-in-Appeal No. 133 (CB) CE/JPR-II/2011 dated 28.06.2011 passed by the Commissioner (Appeals), Jaipur-II].

M/s.Umax Packaging Limited, Jodhpur ...Appellant

Vs.

CCE, Jaipur-II ... Respondent

Present for the Appellant : Ms. Sukriti Das, Advocate
Present for the Respondent: Shri.S.K. Panda, J.C.D.R.

Coram: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Date of Hearing/Decision:2.12.2011

Final **ORDER NO.** 922/2011 SM (BR)/4 **DATED:**______
S - 864/2011 SM (BR)

PER: D.N.PANDA

Representative of the assessee submit that the impugned goods were used for the purpose of manufacture of capital goods. Department has not considered the reason behind use of goods for which the demand has arisen. Appellate authority also supported adjudication order. Therefore, following the decision of Apex Court in the case of Rajasthan Spinning Mills Ltd reported in 2010 (255)E.L.T. 481

(S.C.) the appellants are entitled to relief. Accordingly, not only stay applications may be disposed but also appeals may be decided.

2. Ld. JCDR on the other hand says that Revenue has advantage of going through following decisions which may resolve the controversy and may not give rise to further grievance.

1. Commr. Of C. Ex., Jaipur vs. Rajasthan Spinning & Weaving Mills Ltd. reported in 2010 (255) ELT 481 (S.C.)
2. Saraswati Sugar Mills vs. Commissioner of Central Excise, Delhi-III reported in 2011- TIOL-73-SC-CX = 2011 (270)ELT 465(SC).
3. Commissioner of C. Ex., Mysore vs. ICL Sugars Ltd. reported in 2011 (271) ELT 360 (Kar.)
4. Vandana Global Ltd.- 2010(253)ELT 440 (Tri. LB)

3. It is further submission of Revenue that adjudicating authority may not find difficulties to resolve the dispute in the light of ratio laid down in the aforesaid judgement passing a reasoned and speaking order, granting fair opportunity of hearing to the assessee again to plead their cases afresh.

4. Heard both sides and perused record.

5. For the cooperation of both sides, both stay application and appeal are disposed and appeal is remanded to re-do adjudication by the original authority following the decisions aforesaid and considering the

pleadings of the appellant afresh with evidence they may lead and pass a reasoned and speaking order bringing out whether the goods in question were input or used in manufacture of capital goods.

6. The appellants are directed to make application to the adjudicating authority on 27th January, 2012 for fixation of their hearing. If such application is made, the authority shall fix the date of hearing and without seeking adjournment appellant shall cooperate for disposal of their matters.

7. In the result, both stay application and appeal are disposed.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita