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

Date 18/05/2010

Appeal No. E/1906/2005 - EX[DB]

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

To :
M/S KONARK PRINTING & PACKING
A-25 FRIENDS COLONY, MAIN MATHURA ROAD
NEW DELHI

M/S KONARK PRINTING & PACKING — Appellant
Vs
C.C.E.DELHI-II — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 358/ 2010 EX[DB]** dated 06-5-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   C.C.E.DELHI-II
   C.R.BUILDING I.P.ESTATE NEW DELHI-II
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3 C.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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad
12 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13 Office Copy
14 Guard file
15. HON'BLE PRESIDENT.

Assistant Regist
(Excise Appeal Bran

16. Tax India Online.Com (P) Ltd.
Unit No.1, 2nd Floor, Vasant Aracade, Nelson Mandela Road,
Vasant Kunj, New Delhi-70

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

PRINCIPAL BENCH - COURT NO. I

Excise Appeal No. E/1906/05-Ex. (Br.)

[Arising out of Order-in-Appeal No.13/05-CE/DLH/2005 dated 10.2.05 passed by the Commissioner of Central Excise (Appeals) Delhi-II].

For approval and signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr.Rakesh Kumar, Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s. Konark Printing & Packaging ...Appellants

Vs.

Commissioner of Central Excise, Delhi-II ... Respondent

Present for the Appellants : Shri B.L. Narasimhan, Advocate
Present for the Respondent : Shri Sunil Kumar DR

Coram: Hon'ble Mr.Justice R.M.S. Khandeparkar, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing/Decision:06.05.2010

FINAL **ORAL ORDER NO.** 358/10-EX **DATED:06.05.2010**

PER: JUSTICE R.M.S.KHANDEPARKAR

Heard ld. Advocate for the appellants and ld. DR for the respondent.

2. The appeal arises from Order dated 10^{th} Feb., 2005 passed by the Commissioner (Appeals), New Delhi, whereby the appeal filed by the appellants against the order passed by the Adjudicating Authority has been dismissed. The Adjudicating Authority under Order dated 28^{th} July, 2004 had held that the printed paper board sheet is chargeable to duty under heading 4811.90 and printed cartons under heading 4819.19 under the Central Excise Tariff Act 1985, while disposing the matter which were remanded by the Tribunal under its order dated 12^{th} July, 2001 in Appeal No.E/3597/2000.

3. The appellants are engaged in the manufacture of printed cardboard cartons and also simultaneously undertake the job work of printing cartons/sheets. In relation to such job work carried out by the appellants, proceedings were initiated by issuing two show-cause-notices dated 4^{th} April 1996 and 14^{th} May, 1996 which were contested by the appellant. When the matter came up before the Tribunal in the first round of litigation by order dated 12^{th} July, 2001 while appreciating the contention on behalf of the appellant that the appellants had received sheets and card board for the purpose of printing thereon and they had returned the same after carrying out the job work of printing thereon, the matter was remanded to the adjudicating authority with specific observation that "from the perusal of adjudication order as well as Order-in-Appeal, it is clear that both the lower authorities have not decided the

classification under which the job work performed by them would be classifiable. Unless and until a finding is given as to whether the work performed by them is only product of printing industry or whether it is manufacture of printed cartons, no view can be taken about the liability of the appellants. In view of this, we set aside the impugned order and remand the matter to the adjudicating authority to give a finding about the classification of the activity undertaken by the appellants on job work".

4. Apparently the Tribunal after taking note of the contention of the appellants that in the matter in hand the appellants were merely receiving the sheets and cardboards from the manufacturer of such card boards for the purpose of printing thereon and on completion of job of printing, the card boards and sheets were returned to the manufacturer and that, therefore, it was necessary for the adjudicating authority primarily to decide, whether the work performed by the appellants is in the nature of manufacture or otherwise and that the liability for duty can arise only on the basis of such finding by the adjudicating authority, had remanded the matter.

5. Perusal of the impugned order alongwith that of the adjudicating authority discloses detailed discussion on the point as to whether the goods in question would be classifiable under particular heading or not, ignoring the basic requirement, which was indeed to be complied with in terms of

the remand order. The remand order clearly required the adjudicating authority to consider the nature of the work performed by the appellants in relation to the sheets and cardboards received by the appellants and on which the work of printing was done before the goods were returned to the manufacturer. We do not find any exercise having been done in this regard, either by the adjudicating authority or by the Commissioner (Appeals), while disposing the matter. Indeed, the Tribunal in the remand order had specifically stated that the liability for duty can be fastened upon the appellants only on the basis of the finding by the adjudicating authority that the appellants were carrying out the activity of manufacture in relation to the work, which they carry out in respect of the sheets and card boards received by them for the purpose of printing thereon, before being returned to the manufacturer. In the absence of any finding in that regard, entire exercise about classification of goods under particular heading is totally futile. In the circumstances, therefore, the impugned order cannot be sustained and matter will have to be remanded again to the adjudicating authority to carry out the directions issued by the Tribunal in the order dated 12th July, 2001 in letter and spirit. Accordingly, the appeal succeeds, the impugned order is set aside and the matter is remanded to the adjudicating authority with the specific direction that it has to decide primarily as to whether the activity of printing on the sheets and card boards received by the appellant, before they are being returned to the manufacturer, would amount to manufacture or not and based thereon also decide the classification of the goods. Taking into consideration the matter relates to the year 1995-96, the Adjudicating Authority shall dispose of the matter as expeditiously as possible, in any case, prior to December, 2010.

6. Appeal is accordingly disposed of in the above terms.

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Anita