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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

Appeal No. ST/571 /2006-573 /2006 - CU[DB] Date **19/08/2011**

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

To :
C.S.T. KANPUR
DIVISION -III, 117/7, SARVODAYA NAGAR, KANPUR.
208005

C.S.T. KANPUR Appellant

Vs

M/S KAMLA KANT & CO Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/361-63 2011 CU[DB]** dated 17.08.2011 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
M/S KAMLA KANT & CO
28/114, PHEEL KHANA, KANPUR.

(15) Sh. Dilip Ku. Shrivastava, Dir.
M/S K.P. ova flavor (I) Ltd
133/211 Transport Nagar
Kanpur (UP)

2. Adv. / Consult
MR.ANURAG MISHRA
117/10 SK APARTMENT SARVODAYA
NAGAR, KANPUR

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
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 - 110005
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

(14) SH KAMAL KISHORE CHAURSIA
PARTNER, 28/114 PHEEL PHANA, KANPUR.

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : 9.8.2011

Service Tax Appeal No. 571-573 of 2006

[Arising out of common Order-in-Appeal No. 463-465-CE/APPL/KNP/06 dated 13.9.06 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur]

Coram:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Technical Member

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Yes
4.	Whether order is to be circulated to the Department Authorities?	No

CC, Kanpur — Appellant

Vs.

M/s Kamla Kant & Co. — Respondents
Shri Kamal Kishore Chaursia, Partner
Shri Dilip Kumar Srivastava, Director of M/s K.P. Pan Flavour

Appearance:

Appeared for Appellant : Shri Sonal Bajaj, SDR
Appeared for Respondent : Shri K.K. Anand, Advocate

Coram:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Technical Member

Final Order No. ST/361-363/11 dated 17.8.11

Per **Mathew John :**

In this proceeding three Appeals filed by Revenue are being decided. M/s Kamla Kant & Co., the main Respondent, entered into an agreement with M/s K.P. Pan Flavour Pvt. Ltd. to allow the use of their trade marks for the purpose of manufacture and sale of Pan Masala (Sada) and Pan Masala Gutkha (containing tobacco) under the trade marks "Rajshree", "Rajshee", "Supreme", "Safal", "Saffronic", "Madhuban" and "Kamla Pasand". The Revenue made out a case that the main Respondent, M/s Kamla Kant & Co., should have paid Service Tax for the remuneration received for allowing M/s K.P. Pan Flavours (P) Ltd. to use their brand name. The second Respondent in this case is the partner of M/s Kamla Kant & Co., who signed the agreement with M/s K.P. Pan Flavours (P) Ltd. on behalf of M/s Kamla Kant & Co. and the third Respondent is Shri Dilip Kumar Srivastava, Director of M/s K.P. Pan Flavours (P) Ltd. who signed the agreement on behalf of the Company. This dispute is for the period 1.7.2003 to 31.12.2004.

2. Revenue issued a Show Cause Notice alleging that the service rendered is covered by the definition of franchisee service. Relevant sub-sections of Finance Act, 1994 are reproduced below:-

> "taxable service means any service provided or to be provided to a franchisee, by the franchisor in relation to franchise". {Section 65(105)(zee}
>
> "Franchise means an agreement by which –
>
> Franchisee is granted representational right to sell or manufacture goods or to provide

service or undertake any process identified with franchisor, whether or not a trade mark, service mark, trade name or logo or any such symbol, as the case may be, is involved;

(ii) the franchisor provides concepts of business operation to franchisee, including know-how, method of operation, managerial expertise, marketing, technique or training and standards of quality control except passing on the ownership of all know-how to franchisee;

(iii) the franchisee is required to pay to the franchisor, directly or indirectly, a fee; and

(iv) the franchisee is under an obligation not to engage in selling or providing similar goods or services or process, identified with any other person." {Section 65 (47)}

"Franchisor" means any person who enters into franchise with a franchisee and includes any associate of franchisor or a person designated by franchisor to enter into franchise on his behalf and term "franchisee" shall be construed accordingly". {Section 65(48)}.

of Section 65(47)

3. The case of Revenue is that all the four ingredients are satisfied in the case of service rendered by the main Respondent to M/s K.P. Pan Flavours (P) Ltd. and therefore they issued a Show Cause Notice demanding Service Tax amounting to Rs.22,30,742/- along with appropriate interest. Further, penalties under Section 75, 76, 77 and 78 of the Finance Act, 1994 also were proposed. The Show Cause Notice was adjudicated by the Adjudicating Authority confirming the demand

proposed in the Show Cause Notice along with interest. Further, penalties under Section 75, 76, 77 and 78 were imposed. Aggrieved by the order, the Respondents filed an Appeal with the Commissioner (Appeals). The Commissioner (Appeals) gave a finding that in the case of impugned services, condition No. (iv) in the definition for "franchisee" was not satisfied that is to say M/s K.P. Pan Flavours (P) Ltd. was under no obligation not to manufacture any Pan Masala under the brand name of any other person and thus there was no exclusive contract with the Respondent. Aggrieved by the order, Revenue has filed this Appeal.

4. Ld. DR submits that under the statement dated 16.9.2004 given by Shri Pradeep Kumar Chaurasia, Director of M/s K.P. Pan Flavours (P) Ltd. under Section 14 of the Central Excise Act, 1944 he clearly admitted that the company manufactured Pan Masala only in the brand names owned by M/s Kamla Kant & Co. The agreement dated 2.4.2002 between the parties is silent on the issue. Therefore, it is argued that the finding of the Commissioner (Appeals) that there was no condition regarding exclusivity is wrong. Shri Pradeep Kumar Chauraisa had also stated that all the materials used in the manufacture of Pan Masala and Gutkha were purchased by the Respondent but the compound used in the manufacture of Pan Masala and Gutakha was prepared in their factory by the Director of M/s Kamla Kant & Co. and they were not paying

anything to M/s Kamla Kant & Co. for preparation of the said compounds. It is the argument of Revenue that all the facts show exclusivity of the contract and thus agreement between the Respondent and M/s K.P. Pan Flavours come under the definition of "Franchisee services".

5. Ld. Counsel for the Respondent invites our attention to the contract entered by them with M/s K.P. Pan Flavour and stressed the point that as per the terms of the contract there was no condition that the Respondent should not have manufactured these products under the brand name of any other person. He submits that the statement of Shri Pradeep Kumar Chaurasia is only a question of fact that M/s Kamla Kant & Co. did not actually manufacture the goods under the band name of any person other than the main Respondent. The statement does not indicate the legal obligation. Further, if at all any statement is made that is contrary to the documents on record, the position indicated in records should prevail.

6. We have considered arguments on both the sides. We find from the contract submitted along with appeal papers that there was no condition that the M/s K.P. Pan Flavours (P) Ltd., the franchisee should have been manufacturing the goods only under the brand names of the

main Respondent. The statement of Shri Pradeep Kumar Chaurasia indicates only the factual position and does not indicate the legal obligation under the contract with the main Respondent. Therefore, we are not convinced by the arguments put forthwith by Revenue and we are in agreement with the findings of the Commissioner (Appeals). Therefore the Appeals filed by the Revenue are rejected.

(Pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM