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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/649 /2007 - CU[DB] Date **10/03/2011**

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

To :
M/S ORIENT PACKAGING LTD.

TAPRI, SAHARANPUR

M/S ORIENT PACKAGING LTD. Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/91/ 2011 CU[DB]** dated 03.03.11

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
C.C.E. MEERUT I
EXCISE CHOWK, UNIVERSITY
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NAGAR, MEERUT - 250005.
2. Adv. / Consult
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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. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

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

COURT NO. IV

Date of Hearing : 17.2.2011

Service Tax Appeal No. 649 of 2007

[Arising out of the Order-in-Appeal No. 165/CE/APPL/MRT-I/2007 dated 23.8.2007 passed by the Commissioner (Appeals), Central Excise, Meerut]

For Approval and signature :

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Mathew John, 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?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

M/s Orient Packaging Ltd. Appellant

Vs.

CCE, Meerut-I Respondent

Appearance :

Appeared for Appellant : Shri Ravi Raghvan, Advocate
Appeared for Respondent : Shri Sonal Bajaj, DR

Coram:
Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Final Order No. 37/91/11 dated 3.3.11

Per Ashok Jindal:

This appeal is filed by the appellants against the order of confirmation of Service Tax liability on business auxiliary services along with penalty.

2. The brief facts of the case are that the appellants have undertaken the process of cutting paper into sheets. The demand along with interest on Service Tax was confirmed on the ground that the appellants are producing goods on behalf of their client during the period 10.9.04 to 15.6.05 under business auxiliary service, as during that period, the production of goods on behalf of the client is covered under the scope of Section 65(19) of Finance Act, 1994. Therefore the production or processing of goods on behalf of the clients was covered under the scope of Service Tax in the category of business auxiliary services and the penalties under Section 76 and 77 of the Finance Act, 1994 were also imposed. Aggrieved from the said order, the appellants are before us.

3. Ld. Advocate for the appellant submits that the appellants are engaged in the process of cutting of paper into sheets which is not amounting to manufacture/production and the said activity has came into service tax net only with effect from 16.6.05 under business auxiliary services. Hence the appellants are not liable to pay Service Tax prior to that period. The ld. Advocate further contended that as the activity undertaken by them is not covered in the definition of manufacture/production as per Section 2(f) of the Central Excise Act, 1944 and they are engaged only in the activity of a process which neither forms manufacture nor production. Processing has specifically come into service tax net only with effect from 16.6.05. In support of his contention, he relied on the decision of **Commissioner of Income Tax, Kerala Vs. Tara Agencies** reported in 2007 (214) ELT 491 (SC). He further

submitted that as it is a case of interpretation of taxability, no penalties are warranted in this case.

4. On the other hand, the ld. DR drew our attention to the definition of business auxiliary services under Section 65 (19) of the Finance Act wherein clause v is reads as under :-

> ***"Production or processing of goods for, or on behalf of the client"***

5. He submitted that as admitted ~~that~~ the activity undertaken by the appellants does not amount to manufacture; but cutting paper into sizes is nothing but production only. He further submitted that if production/manufacture are the same then this clause of the definition will become redundant in view of the last part of the definition excluding any activity that amounts to "manufacture". Hence the appellants are liable to pay Service Tax on this activity of cutting paper into sheets.

6. Heard and considered.

6. We have gone through the submissions made by both the sides and we find that as per Section 65(19) of the Finance Act, the business auxiliary services has been defined wherein a specific sub clause (v) is introduced to bring production of goods for, or on behalf of the client within the scope of Service Tax levy. It is admitted fact that the cutting of paper into sheets, does not amount to manufacture which is very much clear. But production and manufacture both are different terms and the case law relied upon

by the ld. Advocate in the case of **Tara Agencies** Supra has clearly distinguished the same as production to be including some other items which are not included in "manufacture". Moreover, the contention of the ld. Advocate that this activity is processing of goods which does not amount to production has no force. In fact, processing of goods is a part of "production" as explained by the Hon'ble Apex Court in the case relied upon by the ld. Advocate itself. Para 12, 12A, 16, 19 and 20 of the order are reproduced below:-

> 12. The term 'manufacture' has not been defined in Section 2(f) of the Central Excise Act, 1944. Parts (i) and (ii) of Section 2(f) reads as under :-
>
> "2(f). "Manufacture' includes any process –
>
> (i) incidental or ancillary to the completion of a manufactured product; and
>
> (ii) which is specified in relation to any goods in the Section or Chapter notes of the Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture".
>
> 12A Clause (f) gives an inclusive definition of the term 'manufacture'. According to the dictionary, the term 'manufacture' means a process which results in an alteration of change in the goods which are subjected to the process of manufacturing leading to the production of a commercially new article. In determining what constitutes 'manufacture' no hard and fast rule can be applied and each case must be decided on its own facts having regard to the context in which the term is used in the provision under consideration.
>
> 16. In **Black's Law Dictionary** (5^{th} Edition), the term "production" has been defined as under :-
>
> "**Production**. Process or act of producing. That which is produced or made; i.e. goods. fruit of labor, as the productions of the earth, comprehending all vegetables and fruits; the productions of intellect, or genius, as poems and prose compositions; the productions or art, as manufactures of every kind."

19. The expression "produced" was given a wider meaning that the word 'manufacture' pointing out that the word "produced" will include an activity of manufacturing the materials by applying human endeavour on some existing raw material, but the word "produce" may include securing certain produce from natural elements, for example, by growing plants on soil, or by operating mines and the like or for example, by milching the cow the milkman produce milk though he has not applied any process or any raw material for the purpose of bringing into existence the thing known as milk.

20. The word 'production' or 'produce', when used in juxtaposition with the word 'manufacture' takes in bringing into existence new goods by a process which may or may not amount to manufacture. It also takes in all the by products, intermediate products and residual products which emerge in the course of manufacture of goods."

In our opinion, process is an integral part of production and keeping the intention of legislation while inserting the word "production" initially in 65(19) was to levy Service Tax on this activity of production/processing. Hence, we do not find any force in the argument advanced by ld. Advocate. Accordingly, demand is confirmed. We further find that the issue involved in this matter is of interpretation of the statute, hence it is fit case to invoke Section 80 of finance Act to waive penalty. Accordingly, penalty is waived. With these observations, appeal is disposed of.

(Pronounced in Court)

(Ashok Jindal)
Member (Judicial)

(Mathew John)
Member (Technical)

RM