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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/505 & 667/2007 & ST/281/08- CU[DB] Date **25/01/2011**

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

To :
M/S KEDIA CASTLE DELLEON INDUSTRIES LTD.

KEDIA NAGAR, KUMHARI, DISTT. DURG.

M/S KEDIA CASTLE DELLEON INDUSTRIES LTD. Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/18-20/ 2011 CU[DB]** dated 21.01.11

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. RAIPUR
CENTRAL EXCISE BUILDING,
DHAMTARI ROAD, TIKRAPARA,
RAIPUR 492001.
2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE,
NEW DELHI-110029
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
15. m/s Chhattisgarh Distilleries Ltd
(formerly Kedia castle Delleon Ind. Ltd)
Vill: Khapri,
Kedia Nagar, Kumhari
Distt: Durg.

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

ST/Appeal Nos 505 & 667/2007
ST/Aappeal No. 281/08

(Arising out of order in appeal No. Comm/RPR/32/07 dated 28.5.2007 passed by the Commissioner of Central Excise (Appeals), Raipur)

Date of Hearing: 18.1.2011

For Approval and signature:

Hon'ble Ms Archana Wadhwa, Judicial Member
Hon'ble Mr. M. Veeraiyan, Technical Member

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1. Whether Press Reporters 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? Yes

3. Whether their lordships wish to see the fair copy of the order? Seen

4. Whether order is to be circulated to the Department Authorities? Yes

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M/s Kedia Castle Delleon Industries Ltd — Appellants

Vs

CCE, Raipur — Respondent

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ST/Appeal No. 281/2008

(Arising out of order in appeal No. Comm/RPR/27/07 dated 13.3.2008 passed by the Commissioner of Central Excise (Appeals), Raipur)

M/s Chattisgarh Distilleries Ltd — Appellants

Vs

CCE, Raipur — Respondent

Appeared for the Appellant: Shri B.L. Narasimhan, Advocate
Appeared for the Respondent: Shri Amrish Jain, DR

Coram: **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final ORDER No. ST/18-20/11

Per Archana Wadhwa:

All the three appeals are being disposed of by this common order in as much an identical issue is involved.

2. The appellants are engaged in the manufacture and supply of country liquor in sealed bottles through the State Government . In as much as, they were undertaking activity of bottling, labeling, affixing the hologram sticker and sealing of the glass bottles of country liquor which is manufactured by them at various warewhouses of their 'contract area'. Revenue entertained a view that the said activities undertaken by the appellant amounted to 'packaging activity services' and the appellants were liable to pay service tax on the same.

3. Accordingly, proceedings were initiated against the appellant by way of issuance of show cause notices proposing to confirm service tax on the said activities undertaken by the appellants in terms of Section 65(76)(b) vide which service tax has been imposed on 'package activities services w.e.f. 16.6.2005.

4. During the course of adjudication, appellants inter alia contended that as per the definition of packaging activity, the same includes packing of goods including bottles, labeling, affixing of hologram sticker and the packing but does not including any packaging activity amounting to manufacture within the meaning of clause (f) of Section 2 of the Central Excise Act, 1944.

5. The adjudicating authority, however, observed that since the country liquor manufactured and packed by the appellants is not an excisable goods, in as much as, the said goods are not specified in the Central Excise Tariff Act, 1985, the same cannot be held to be excisable goods and hence not covered by the definition of manufacture under Section 2(f) of Central Excise Act. For the above proposition, he relied upon Hon'ble High Court judgement in the case of Vindhyachal Distilleries Pvt Ltd Vs State of MP reported in 2006 (3) STR 723 (MP) vide which it was held that such distilleries/bottlers are required to pay service tax being a service provider in view of the provisions of Section 68(1) of the Act.

6. The appellants also raised a number of other pleas with which we are not dealing in as much as the issue on the point of manufacture now stands finally decided by the Lager Bench of the Hon'ble MP High Court. As is seen from the impugned order of the Commissioner, reliance stands placed by him on the MP High Court judgment in the case of Vindhyachal Distilleries Pvt Ltd. However, it is seen that subsequently, the matter was referred to Larger Bench by another Bench of the MP High Court in the case of Som Distillereis and Breweries Pvt Ltd Vs State of MP and Another reported in 1997 (1) JLJ-319. The Larger Bench judgement in the case of Maa Sharda Wine Traders Vs Union of India reported in 2009 (15) STR 3 MP has held that packaging and bottling of liquor is covered by the definition of manufacture as defined in Section 2(f) of Central Excise Act, 1944. and will not attract any service tax liability. They accordingly over-ruled the earlier decision of the High Court in the case of Vindhyachal Distilleries.

7. For better appreciation, we reproduce para 32 of the said judgement in the case of Maa Sharda Wine Traders:-

"In view of the aforesaid, we answer the reference on following terms:

The decision rendered in M/s Vindhyachal Distilleries (supra) does not state the law correctly in as much as it has expressed the opinion that packaging and bottling of liquor are not the part of manufacturing process and hence, liable to service tax and we uphold the view taken in Som Distilleries (supra) and , therefore, rule that packaging and bottling of liquor come within the ambit and sweep of manufacture within the meaning of clause (f) of Section 2 of Central Excise Act, 1944 in view of the definition contained in Section 65(76b) of the Finance Act especially keeping in view the exclusionary facet and further regard being had to the circular issued by the Central Board of excise and Customs."

7. In as much as the issue stands decided by the Larger Bench judgment of the MP High Court. The decision in the case of Vindhyachal, relied upon by the Commissioner stands over-ruled, we set aside the impugned order and allow all the three appeals with consequential relief to the appellants.

(Order dictated and pronounced in the open Court.)

(ARCHANA WADHWA)
Judicial Member

(M. VEERAIYAN)
Technical Member

MPS*