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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/292 /2008 - CU[DB] Date **17/02/2011**

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

To :
M/S DAURALA SUGAR WORKS
DAURALA,DISTT. MEERUT (U.P.)

M/S DAURALA SUGAR WORKS Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/38/ 2011 CU[DB]** dated 04.02.11 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 ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult
MR.S.C. KAMRA & CO.
B-2/210(BASEMENT), 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

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 : 19.1.2011

Service Tax Appeal No. 292 of 2008-Cus.

[Arising out of the Order-in-Original No. 04/Commr./MRT-I dated 31.1.2008 passed by The Commissioner, Customs & Central Excise, Meerut-I]

For Approval and signature :

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, 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 Daurala Sugar Works — Appellant

Vs.

CCE, Meerut — Respondent

Appearance :

Appeared for Appellant : Shri S.C. Kamra, Advocate
Appeared for Respondent : Shri Sheo Narayan Singh, Jt. CDR

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

Final Order No. ST/38/11 dated 4.2.11

Per **Archana Wadhwa:**

As per the facts on record, the appellant is engaged in the manufacture of alcoholic liquor for human consumption on job work basis for M/s Seagram. They also entered into an agreement with M/s Seagram for the said purpose as also to undertake the work of bottling of Seagram's alcoholic beverages at Seagram's plant located at Daurala and arrange the labour required for undertaking the work and supervise all the operation after receipt of blended material and up to transfer of finished goods into the godown provided for the purposes of storage of finished goods at the plant and loading into trucks at the said plant for despatch.

2. The Revenue entertained a doubt that the above activities undertaken by the appellant amounted to cargo handing services for the period 16.8.2002 to 9.9.2004 and to business auxiliary services for the period 10.9.2004 to 30.9.2006. Accordingly, a Show Cause Notice dated 26.7.2007 was issued to the appellant requiring them to show cause as to why the Service Tax of Rs.1,78,79,899/- and education cess of Rs.2,25,663/- should not be confirmed against them along with confirmation of interest and as to why penalty should not be imposed upon them.

3. The appellant contested the above Show Cause Notice on various grounds. One of the grounds was that the activity of bottling of alcohol amounted to manufacturing activity in terms of the provisions of Section 2(f) of the Central Excise Act, in which case no Service Tax can be levied on them. While dealing with the said plea of the appellant, Commissioner (Appeals) observed that during the period 16.8.2002 to 9.9.2004, the appellants were not doing any cargo handing services and, accordingly, he dropped the demand. However, for the subsequent period, he held that the

appellant is liable to Service Tax under the category of business auxiliary services. He fairly agreed that Section 65(19) of the Finance Act, 1944, which defines the business auxiliary services, does not include any activity that amounts to manufacture within the meaning of Section 2(f) of the Central Excise Act. However, he held that the legislature wanted to restrict the definition of 'manufacture' to excisable goods only. The liquor produced by the appellant are not goods subject to Central Excise duties but are the goods covered under the category on which the Constitution has given the powers to the States to Collect Excise duty. As such, he observed that the activities undertaken by the noticee do not amount to manufacture under 2(f) of Central Excise Act but fall under the category of business auxiliary services. He accordingly confirmed the demand.

4. After hearing both the sides, we find that the above issue is no more res integra. It is seen that judgement of the M.P. High Court in the case of **Vindhyachal Distilleries Pvt. Ltd. Vs. State of M.P.** reported in 2006 (3) STR 723 (M.P.) supported Revenue's case but subsequently the matter was referred to the Larger Bench in the case of **Som Distilleries and Breweries Pvt. Ltd. Vs. State of M.P. and Another** reported in 1997 (1) JLJ 319. The Larger Bench judgment 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.** For better appreciation, we reproduce para 32 of the Larger Bench judgment 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."*

5. In view of the above, we set aside the impugned order of Commissioner and allow the appeal with consequential relief. Inasmuch as the appeal stands allowed on the above ground, we are not dealing with the other grounds raised by the appellant.

(Pronounced in Court)

(Archana Wadhwa)
Member (Judicial)

(M. Veeraiyan)
Member (Technical)

RM