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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

Appeal No. E/1608/2008,1716/2009,1773/2008 - EX[DB] Date **07/03/2011**

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

To :
M/S GILLETTE INDIA LTD.

P & G PLAZA, PLOT NO. 495,CARDINAL GRACIAS ROAD,ANDHERI (EAST) MUMBAI-400099.

M/S GILLETTE INDIA LTD. Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.261-263/ 2011 EX|DB|** dated **25.01.2011** 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. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017
2. Adv. / Consult
MR.V. LAXMIKUMARAN, S. BHARGAVA, ADV.
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. HON'BLE PRESIDENT.
16. M/S M. J. INDUSTRIES,
PLOT NO. 59, HPSIDC INDUSTRIAL AREA,BADDI (H.P.)
17. M/S GILLETTE INDIA LTD, PLOT NO. 59,
HPSIDC, INDL. AREA., BADDI, DISTT. SOLAN, (H.P.)

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing: 25.01.2011
Date of Decision:25.01.2011

For approval and signature:

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

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.
2. Whether it should 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 Departmental authorities? :

Excise Appeal No.E/1608/08 of Excise (Branch)

(Arising out of Order-in-Original No.124-126/CE/CHD/2008 dated 11.04.2008 passed by the Commissioner of Central Excise, Chandigarh).

M/s. Gillete India Ltd. **Appellants**

Vs.

CCE, Chandigarh **...Respondent**

Excise Appeal No.E/1716 of 2009 of Excise (Branch)

(Arising out of Order-in-Original No.26/CE/CHD/ 2009 dated 06.03.2009 passed by the Commissioner of Central Excise, Chandigarh).

M/s. Gillete India Ltd. **Appellants**

Vs.

CCE, Chandigarh **...Respondent**

Excise Appeal No.E/1773 of 2008 of Excise (Branch)

(Arising out of Order-in-Original No.124-26/CE/CHD/2008 dated 11.04.2008 passed by the Commissioner of Central Excise, Chandigarh).

M/s. M.J. Industries **Appellants**

Vs.

CCE, Chandigarh **...Respondent**

Appearance: Shri V.Lakshmi Kumaran & Shri S. Bhargava, Advocates appeared for the appellants.
Shri B.K. Singh, Jt. CDR appeared for the Respondent/Department.

CORAM:**Hon'ble Shri Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

Final **Order No.**261-263/2011-EX**/Dated:**

Per Rakesh Kumar:

M/s. Gillete India Limited, Plot No.59, HPSIDC, Industrial Area, Baddi, H.P. (hereinafter referred to as M/s. Gillete) having their registered office at Plot No.SPA-65 A, Bhiwadi Industries Area, Bhiwadi, Rajasthan had an agreement with M/s. M.J. Industries Pvt. Ltd., 59. HPSIDC, Baddi, H.P. (hereinafter referred to as M/s.M.J.) for packing of various shaving projects - blades, razors, batteries, shaving lotion, shaving gel, deodorant, etc. supplied by them. M/s. M.J. after packing of the shaving products, were returning the same back to the M/s.Gillete. Since the packing of the goods, in question, amounted to manufacture and since the area in which the unit of M/s M.J. is located, the hill area exemption under notification no.50/03-CE was available, M/s. MJ, after filing the required declaration, were availing of the duty exemption under this notification. The department was of the view that since from the agreement of Gillete with M/s. MJ, it is clear that the relationship between them is of master and servant and it is Gillete, who has to be treated as the manufacturer, for availing the exemption under Notification No.50/03-CE, the required declaration should have been filed by M/s. Gillete and since, the same had not been filed, the exemption has been wrongly availed. It is on this basis that after issue of the show cause notice, the following two orders were passed by the Commissioner, Central Excise, Chandigarh:-

(a) Vide Order-in-Original No.124,125&126/CE/CHD/08 dated 11.04.2008 duty demands of Rs.52,08,94,776/-, Rs.13,66,83,162/- and Rs.1,96,60,302/- totalling Rs.67,72,38,240/- for the period from September, 2003 to September, 2007 were confirmed against M/s. Gillete along with interest under Section 11 AB of the Central Excise Act, 1944 and besides this, penalty of Rs.52,08,94,776/- was also imposed on M/s.Gillete under Section 11 AC ibid. The first duty demand of Rs.52,08,94,776/- had been confirmed by invoking the extended period under proviso to Section 11 A(1) of the Central Excise Act, 1944. By this order, the Commissioner also imposed another penalty of Rs.14 Crores on M/s.Gillete under Rule 25 (1) of the Central Excise Rules and besides this, imposed penalty of Rs.1 Crore on M/s. M.J. under Rule 26 ibid.

(b) Vide Order-in-Original No.26/CE/CSD dated 6.3.2009, the Commissioner in respect of the period from October, 2007 to January, 2008 confirmed duty demands of Rs.1,90,54,055/- along with interest under Section 11 AB against M/s. Gillete. Besides this, he also imposed penalty of Rs.5 Lakh on M/s.Gillete under Section 11 AC of the Central Excise Act, 1944 but no penalty was imposed on M/s. MJ.

1.1 It is against these orders of the Commissioner that these appeals have been filed by M/s. Gillete and M/s. MJ.

2. Heard both the sides.

3. Shri V. Lakshmi Kumaran, Advocate, ld. Counsel for the Appellants, pleaded that there is no dispute about the fact that packing is done by M/s. MJ in terms of their agreement with M/s. Gillete and after packing of the goods, the same are returned to M/s. Gillete, that there is no dispute that the required declaration under Notification No.50/03-CE had been filed by M/s. MJ, that the only objection of the department is that since by virtue of the agreement between M/s. Gillete and M/s. MJ, it is M/s. Gillete, who is the actual manufacturer, the required declaration should have been filed by M/s. Gillete and since same has not been filed, the exemption under Notification No.50/03-CE is not available; that there is nothing in the agreement from which it can be concluded that the relationship between M/s. Gillete and M/s. MJ is that of master and servant; that in any case, any act of M/s.MJ as an agent of M/s. Gillete would have to be treated as the act of principal, that in view of this, since the required declaration has been filed by M/s. MJ,

that

the same would be deemed to have been filed by M/s. Gillete and in view of this, there is no ground for denial of duty exemption under Notification No.50/03-CE. He, therefore, pleaded that there is absolutely no basis for the denial of the duty exemption under Notification No.50/03-CE and for the duty demands and the penalties.

4. Shri B.K. Singh, ld. Jt. Chief Departmental Representative, defended the impugned order by reiterating the findings of the Commissioner and pleaded that since as per the condition of the exemption Notification No50/03-CE , the required declaration is required to be filed by the manufacturer and since it is M/s. Gillete, who is the manufacturer and not M/s. MJ, it is M/s. Gillete, who were required to be file the required declaration and since the same had not been filed, the exemption had been rightly denied, and that the word 'agent' is not there in the exemption notification and the declaration is required to be filed by the manufacturer and hence, the word 'agent' cannot be read into notification.

5. We have carefully considered the submissions from both the sides and perused the records. Without going into the merits of the Department's case, that in terms of the agreement between M/s. Gillete and M/s. MJ, it is the M/s.Gillete, who is the actual manufacturer, even if the department's allegation is accepted and M/s. MJ is treated as an agent of M/s. Gillete, since any action of an agent is to be treated as the action of the principal and since in this case, it is not disputed that the required declaration had been filed by M/s. MJ, the same will have to be treated as the declaration filed by

M/s. Gillete. In view of this, even if the department's allegation that the relationship between M/s. Gillete and M/s. MJ is that of master and servant, is accepted, the exemption under notification no.50/03 can not be denied. There is, therefore, no merit in the department's case. The impugned orders, therefore, not being sustainable, are set aside. The appeals are allowed. [Operative part of the order pronounced in the open court on 25.01.2011].

(Justice R.M. S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

Ckp.