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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/417 /2011-418 /2011 - EX[DB] with
E/(B) 507-508/2011-EX
Date 29/07/2011

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

To :
M/S WALLTRACTS (INDIA) PVT. LTD.,
TEX CENTRE, 'M' WING, OFF SAKI VIHAR RD,
CHANDIVALI, ANDHERI (E) MUMBAI.
400072

M/S WALLTRACTS (INDIA) PVT. LTD., Appellant

Vs

C.C.E. DELHI II STAY ORDER NO. 764-765/2011-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No.677-678/ 2011 EX[DB]** dated 11-7-11 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. DELHI II
C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002

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. 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 (Harvana)
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. HON'BLE PRESIDENT
15. M/S ARUN JASUJA,
52, SHANTA SADAN, 5TH FLOOR,
10TH N.S. ROAD, JUHU SCHEME MUMBAI.

Assistant Registrar
(Excise Appeal Branch

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

Excise Stay Application No.507 of 2011 in
Excise Appeal No.417 of 2011

M/s. Walltracts India Pvt. Ltd. — Appellant

Versus

CCE, Delhi-II — Respondent

Excise Stay Application No.508 of 2011 in
Excise Appeal No.418 of 2011

Shri Arun Jasuja — Appellant

Versus

CCE, Delhi-II — Respondent

Appearance: Rep. by Shri B.L. Narsimhan, Advocate – for the appellant.
Rep. by Shri N. Pathak, ld. Departemental Representative for the respondent.

Date of Hearing: 11.07.2011
Date of Decision: 11.07.2011

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

STAY order No. 764-765/2011-EX
FINAL Order No. 677-678/2011-EX Dated : 11.07.2011

Per. Rakesh Kumar :-

The appellants make Roller Blinds/Vertical Blinds at site and install the same. For this purpose, they buy Aluminium Sections, clamps, and fiber glass sheets/ sheets. The Aluminium Sections are cut to the size and after fixing the wood frame and clamps on the windows, the sections are fixed. The department was of the view that the Roller Blinds/Vertical Blinds are chargeable to central excise duty and on this basis, a show cause notice was issued to the Appellant for demand of duty along with interest and also for imposition of penalty under Section 11 AC of the Central Excise Act and on Shri Arun R. Jasuja, General Manager of the appellant company under Rule 26 of the Central Excise Rules, 2002.

1.1. The show cause was adjudicated by the Commissioner, Central Excise, Delhi-II vide Order-in-Original dated 30.11.2010 by which --

(a) the duty demand of Rs.59,35,572/- was confirmed against the appellant company under proviso to Section 11 A (1) of the Central Excise Act, 1944 along with interest at the applicable rate under Section 11 AB ibid;

(b) penalty of equal amount under Section 11 AC ibid was imposed on the Appellant Company and besides this, penalty of Rs.10 Lakhs was imposed on Shri Arun R. Jasuja, General Manager of the appellant company under Rule 26 of the Central Excise Rules, 2002; and

(c) since during investigation of this matter, the appellant had voluntarily deposited an amount of Rs.15 Lakhs towards their duty liability, this amount was also appropriated towards the duty demand.

1.2 Against this order of the Commissioner, the present appeals along with stay applications have been filed. Though this matter was listed for hearing of the stay applications, after hearing both the sides, we are of the view that this matter can be taken up for final disposal and accordingly, the requirement of pre-deposit is dispensed with and the matter is taken for final disposal.

2. Heard both the sides.

3. Shri B.L. Narsimhan, Advocate, ld. Counsel for the appellants, pleaded that the appellants' activity does not amount to manufacture, that the appellants are registered for service tax payment as an interior decoration and are paying service tax on their activity on the gross amount charged by them, that the same activity of the Appellant cannot be treated as manufacture as well as providing of taxable service, that since the appellants' activities are all over India and similar show cause notices had been issued to them by different commissioners, the appellants have represented to the Board for appointment of a common adjudicating authority, but in the meantime, the Commissioner of Central Excise, Delhi-II fixed the hearing and ignoring their pleas for adjournment so that the issue regarding appointment of common

adjudicating authority is decided by the Board, decided this matter ex parte without hearing them, that though the duty demand of Rs.59,35,572/- has been confirmed by the Commissioner, from the perusal of the order, it will be seen that absolutely no finding has been given by the Commissioner as to under which heading the goods alleged to have been manufactured and cleared without payment of duty, are classifiable, that without deciding the classification, the duty demand is without any basis and, that in view of the above facts, the impugned order is not sustainable at all.

6. Shri N. Pathak, ld. Departmental Representative defended the impugned order by reiterating the findings of the Commissioner. On being specifically asked as to under which heading the goods have been classified by the Commissioner, he stated that there is no finding of the Commissioner on this point.

7. We have carefully considered the submissions from both the sides and perused the records. From para- 10 of the impugned order, we find that this is an ex parte order passed without hearing the appellants and without considering their pleas. The appellant's plea that they are also registered as service tax payer and are paying service tax as interior decorator on the same activity and, therefore, on the same activity, central excise duty cannot be charged by treating the same as

manufacture, has not been considered anywhere in the impugned order. The same activity cannot be treated as taxable service and at the same time, as manufacture. Besides this, we find that nowhere in the order, the Commissioner has given any finding as to under which heading the goods alleged to have been manufactured by the appellant and cleared without payment of duty, are classifiable. Without deciding the classification, the duty demand cannot be confirmed. In view of this, the impugned order is not sustainable. The same is set aside. The matter is remanded to the Commissioner for de novo adjudication after hearing the appellant. Needless to say, the Commissioner must give a clear finding as to whether the appellant's activity amounts to manufacture and if so, under which heading their goods would be classifiable. The appeals and the applications stand disposed of as above.

[operative part pronounced in the open court on 11.07.2011].

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

Ckp.