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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

Date **16/04/2012**

Appeal No. E/1269&1271/2005 - EX[DB]

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

To :
M/S GM ENTERPRISES, ← 14. SH. PUNEET MAHAJAN,
945, SEC A, POCKET C, VASANT KUNJ, NEW DELHI
110070

Appellant

M/S GM ENTERPRISES,

Vs
Respondent

C.C.E. JAIPUR I

I am directed to transmit herewith a certified copy of **Final order No.A/435-436/ 2012 EX[DB]** dated 13-4-12 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. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult SH. NIKHIL AGGARWAL, ADV.,
11-A, SUCHETA BHAWAN, 1ST FLOOR,
VISHNU DIGAMBAR MARG,
N. DELHI - 2

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-3
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 (Haryana)
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

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 13.3.2012
Date of pronouncement: 17 .04.2012

Central Excise Appeal No.1269 and 1271 of 2005
Arising out of the order in appeal No.414-415(MPM) CE/JPR-I/2004 dated 26.11.2004 passed by Commissioner (Appeals), Central Excise & Customs, Jaipur .

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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?	

M/s G.M. Enterprises .... Appellants
Shri Puneet Mahajan

Vs.

CCE, Jaipur ... Respondent

Present Shri Nikhil Agarwal, Advocate for the appellants.
Present Shri N. Pathak, A.R. for the respondent.

FINAL ORDER No. A/435-436/2012-EX (SR)

Per Justice Ajit Bharihoke:

This appeal is directed against the impugned order of Commissioner (Appeals) whereby he upheld the order of the jurisdictional Joint Commissioner confirming the demand of excise duty to the tune of Rs.8,02,808/- against the appellant M/s G.M. Enterprises under Section 11A of the Central Excise Act, 1944 and also imposed the equal penalty under Section 11AC of the Act besides payment of interest and the penalty to the tune of Rs. 1 lakh on the appellant Puneet Mahajan, Partner and authorized signatory of M/s G.M. Enterprises.

2. Briefly put relevant facts for the disposal of these appeals are that M/s G.M. Enterprises is in the business of manufacture of Razors and razor blades by way of assembling the components supplied by M/s Gillette India Ltd. (GIL). Appellant Puneet Mahajan is a Partner and authorized signatory of M/s G.M. Enterprises.

3. During the period October and November, 2001 the appellant firm assembled combination packs comprising of the twin blade cartridge manufactured by him and the Gillette Shave Gel Tubes (GSG) obtained from GIL under a promotional scheme and marketed those combination packs discounted on MRP of Rs. 85/-. The combination packs consisting of five twin blade cartridge having MRP of Rs. 66/- and 60 gms. tube Gillette shaving gel tube with MRP of Rs. 49/-. The appellant paid duty on the basis of MRP of five twin blade cartridge mainly for the reason that Gillette shaving gel tube procured by the appellant firm from GIL were duty paid.

4. The department was of the view that since the MRP printed on the combination pack was Rs. 85/-, the appellant firm was liable to pay excise

duty on MRP value as per Section 4A of the Central Excise Act, 1944. Thus, a show cause notice was issued to the appellant as to why the demand for excise duty for differential of the MRP of the twin blade cartridge and the combination pack should not be confirmed and recovered. The appellant contested the show cause notice. However, adjudication proceedings culminated into confirmation of excise duty demand to the tune of Rs.8,02,808/- with interest and equal amount of penalty on the appellant firm. Besides that penalty of Rs. 1 lakh was imposed upon the appellant Puneet Mahajan.

5. The appellants preferred appeals against the adjudication order. The appeals however were dismissed by the Commissioner (Appeals-I) CCE, Jaipur vide impugned order dated 26.11.2004.

6. Shri Nikhil Agarwal, Advocate appearing for the appellant has submitted that the order-in-original as also the impugned order are not sustainable in law for the reason that the orders are based on mis-interpretation of law. Expanding on the argument ld. Counsel submitted that both the adjudicating authority as also the appellate authority have failed to appreciate that the activity of assembling a combination pack of two different articles does not fall within the ambit of manufacture as defined under Section 2(f) of the Central Excise Act, 1944. Ld. Counsel further submitted that the adjudicating authority as also the appellate authority failed to appreciate that MRP printed on the cartridge of twin blade and the shaving gel tube packed in the combination pack were respectively Rs. 66/- and Rs. 49/- and the shaving gel tubes were procured from GIL on payment of excise duty. Thus, the appellant was right in paying excise duty on the

cartridge of twin blade manufactured by them calculated on the basis of MRP Rs. 66/-. It is submitted that since excise duty have been paid by the appellant on both the items as per their MRP. It is obvious that he had paid excise duty at MRP of Rs. 66/- plus Rs. 85/- = Rs. 115/- instead of the MRP printed on combination packs at a discounted rate of Rs. 85/- Thus, there was no occasion for holding that the appellant has short paid the excise duty and there was no reason for confirming the demand. Thus, ld. Counsel for the appellant has concluded by pressing for setting aside the order-in-original as well as the impugned order.

7. Shri Nagesh Pathak, AR appearing for the respondent has argued in favour of the impugned order. Ld. AR submitted that admittedly this is a case of selling the combination pack as per printed MRP of Rs. 85/-, therefore, for the purpose of assessing the excise duty Section 4A of the Central Excise Act, 1944 would come into play. Ld. AR further submitted that in the instant case the adjudicating authority as well as appellate authority have rightly assessed and confirmed the excise duty on the basis of the MRP Rs. 85/- printed on the combination pack, therefore, impugned orders cannot be faulted.

8. We have considered the rival contentions and perused the record. Admittedly, the appellant M/s G.M. Enterprises is manufacturing twin blade cartridge by assembling the parts procured from GIL. It is not disputed that MRP on a pack of five twin blade cartridge manufactured by the appellant is Rs. 66/- on which the appellant paid excise duty while clearing the combination pack of twin blade cartridge alongwith Gillette shaving gel. It is also not disputed that Gillette shaving gel tubes packed in combination

packs were having MRP Rs. 49/- and those were procured by the appellant firm from GIL on payment of excise duty. Thus, in fact in respect of the combination packs, the appellant has paid excise duty on the basis of respective MRP printed on the twin blade cartridge and shaving gel tube i.e. Rs. 66/- plus Rs. 49/- is equal to Rs. 115/-.

9. Admittedly, the combination pack of said two articles was marketed under a promotional scheme for shaving gel at discounted MRP of Rs. 85/-, therefore, it is apparent that appellant has paid excise duty at a higher value i.e. Rs. 115/-. If the view of the department is to be accepted then the appellant after paying the excise duty on the MRP of Rs. 85/- would be entitled to avail cenvat credit in respect of excise duty paid on the procurement of input for combination pack i.e. the Gillette shaving gel and this would not only neutralized the demand confirmed vide the impugned order but result in loss to the department. Thus, in our considered view this is not a case of evasion of excise duty.

10. Ld. Counsel for the appellants has also contended that the Commissioner (Appeals) has failed to appreciate that the activity of packing the cartridges of twin blades alongwith duty paid Gillette shaving gel in the combination pack does not amount to manufacture of goods because the aforesaid activity has not changed the character either of the twin blade cartridges or the Gillette shaving gel tube as they were known to the market and since the packing aforesaid two articles in a combination pack did not amount to manufacture. The adjudicating authority and the appellate authority were wrong in holding that the appellant has to pay excise duty on MRP Rs. 85/- printed on the combination pack particularly when admittedly

the excise duty has been paid on both the articles as per their MRP. In support of this contention, he has relied upon several judgements of the Tribunal as also the judgement of Andhara Pradesh High Court in the case of XI Telecom Ltd. vs. Supdt. of C. Ex. Hyderabad – 1999 (105) ELT 263 (A.P.).

11. In order to appreciate the above contention of ld. Counsel for the appellants, it is necessary to understand the meaning of manufacture as defined under Section 2(f) of the Central Excise Act, 1944 as it existed in October and November 2001. Andhra Pradesh High Court while dealing with this issue in the matter of XI Telecom Ltd. (supra) considered several judgements of Supreme Court and inter-alia observed thus:-

> **11.** The Supreme Court in *D.C.M.'s* case (supra) construing the definition of `manufacture' observed the word "manufacture" used as a verb is generally understood to mean as "bringing into existence a new substance" and does not mean merely "to produce some change in a substance," however minor in consequence the change may be. While making the above observation relied on a passage quoted in Permanent Edition of Words and Phrases, Vol. 26 from an American Judge which reads as follows :
>
> "`manufacture' implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use."
>
> In *South Bihar Sugar Mills Ltd.* v. *Union of India* (supra) the Supreme Court followed the decision in *D.C.M.'s Ltd.* and observed that :
>
> "The Act charges duty on manufacture of goods. The word "manufacture" implies a change but every change in the raw material is not manufacture. There must be such a transformation that a new and different article must emerge having a distinctive name, character or use."
>
> In *Ujagar Prints* v. *Union of India* (supra) the Supreme Court reiterated the view expressed in *D.C.M.'s* case and observed that :

"The prevalent and generally accepted test to ascertain that there is `manufacture' is whether the change or the series of changes brought about by the application of processes take the commodity to the point where, commercially, it can no longer be regarded as the original commodity but is, instead, recognised as a distinct and new article that has emerged as a result of the processes. There might be borderline cases where either conclusion with equal justification be reached. Insistence on any sharp or intrinsic distinction between `processing' and `manufacture', results in an oversimplication of both and tends to blur their interdependence in case such as the present one."

In *Moti Laminates Private Ltd.* v. *Collector of Central Excise, Ahmedabad* (supra) while reiterating the judgment in *D.C.M.'s* case the Supreme Court observed :

"Therefore, where the goods are specified in the schedule they are excisable goods but whether such goods can be subjected to duty would depend on whether they were produced or manufactured by the person on whom duty is proposed to be levied. The expression "produced or manufactured" has further been explained. By this court to mean that the goods so produced must satisfy the test of marketability. Consequently, it is always open to an assessee to prove that even though the goods in which he was carrying on business were excisable goods being mentioned in the schedule but they could not be subjected to duty as they were not goods either because they were not produced or manufactured by it or if they had been produced or manufactured they were not marketed or capable of being marketed."

The next decision to be considered is *Porritts & Spencer (Asia) Ltd.* v. *C.C.E., New Delhi* (supra) while reiterating the test laid down in *D.C.M.'s* case it was held :

"Every change does not necessarily fall within the expression `manufacture' unless it is shown that the process has brought into existence any new product having a distinct identity in the commercial world. In the absence of any evidence in that behalf which the Revenue ought to have laid, it is difficult to come to the conclusion that excisable goods came into existence by the treatment of cotton and nylon yarn into a multiford yarn."

12. What emerges from the above is excise duty is leviable on goods manufactured. The expression manufacture means bringing into existence a new substance and does not mean merely to produce some change in a substance, however minor in consequence the change may be and as a result of treatment, labour and manipulation there should be transformation in the raw material and as a result of treatment, labour and manipulation a new and different article must emerge having a distinct name, character or use. It is not enough if there is change, the change should result in bringing into existence a new and definite article having a distinctive name, character or use and the said

> article must be marketable and it should be known to the market as such. In the absence of any one of the ingredients referred to above, the provisions of the Act are not attracted and no excise duty is leviable. Even if the goods so produced were excisable goods mentioned in the schedule, they cannot be subjected to duty unless they are marketed or capable of being marketed. The marketability is one of the principle test in determining the liability to excise duty. In addition the product which is brought into existence must have a distinct identity in the commercial world".

12. On applying the aforesaid decision to the facts of the instant case, it is apparent that the appellants have undertaken the exercise of packing duty paid shaving gel with the twin blade cartridges, duty on which cartridges were also paid at the time of clearing the combination pack. This exercise has not brought about any transformation in those articles placed in the combination kit. The shaving gel as also the twin blade cartridges are marketable as such and no process is also involved to bring about a new product. Aforesaid articles were packed together in a combination pack, and there is no change in character of the articles packed in combination pack. Thus, it cannot be said that the exercise undertaken by the appellant amounts to manufacture.

13. Sh. Nagesh Pathak, ld. AR for respondent submits that admittedly this is a case of repacking twin blade cartridge as also the shaving gel tube in a combination pack and altering the retail sale price (MRP). As such the combination packs falls within the deemed definition of manufacture under section 2(f)(iii) which reads thus:-

> "Manufacture includes any process:-
>
> (iii)which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or lavelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer"

14. Above argument is of no avail to the respondent for the reason that Section 2(f)(iii) was introduced in the Central Excise Act, 1944 by way of amendment w.e.f. 1.3.2003, and the instant case relates to the period earlier to the amendment i.e. October and November 2003 as such deeming definition provided under Section 2(f)(iii) is not applicable to the present case.

15. In view of the above, we conclude that the activity of the appellant in packing the twin blade cartridge as also Gillette shaving gel tube in a combination pack and selling it at a discounted MRP of Rs. 85/- does not amount to manufacture. As no mere product has come into being the combination product does not attract incidence of excise duty. Admittedly, the appellant has paid duty on Gillette shaving gel tube while procuring them from GIL and he has paid excise duty on MRP of the twin blade cartridges while clearing the combination pack. Thus, it cannot be said that the appellant has either failed to pay or short paid the excise duty. Accordingly, the demand of excise duty confirmed as also the interest and the penalty imposed cannot be sustained. Appeals are, therefore, allowed and the order of the adjudicating authority which is confirmed by the impugned order is set aside.

16. Appeals are disposed of accordingly.

(Pronounced in the open Court on 13/4/2012.)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant-