FAX : 011-26108426

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
EXCISE APPEAL BRANCH

Dated: **01/11/2012**

To

1. Appellant as per address in table below
2. Respondent as per address in table below

Final Order No. **A/1279-1284/2012-EX[DB]**, Stay[redacted] Order No. **SO/1809-1814/2012** and dated **10/10/2012**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1)** of **the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

S.No	Application	Appeal	Name and Address of Appellant	Name and Address of Respondent
1.	E/Stay/1835/2009, E/Stay/1836/2009, E/Stay/1837/2009, E/Stay/1838/2009, E/Stay/1839/2009, E/Stay/1840/2009,	E/1778/2009, E/1779/2009, E/1780/2009, E/1781/2009, E/1782/2009, E/1783/2009,	**C.C.E. JAMMU** OB-32, RAIL Head Complex, Jammu - 180012.	**J.K.CARD BOARD INDUSTRY,** AKALPUR ROAD, MUTHI, JAMMU.

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2. Other Appellants and Respondents as per Annexure

Copy To

1. Advocate(s) / Consultant(s): SH. UDIT JAIN, ADV,
A-5, BASEMENT,
LAJPAT NAGAR-III,
N. DELHI-24

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2. C.D.R **3. Office Copy** **4. Guard File**

5. Bar Association, CESTAT, Delhi **6.** Director Publications, Customs, Excise. I.P. Estate, Delhi

7. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

8. Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

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, Satellite Road, Ahmedabad-15

11. LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12. TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

Assistant Registrar
EXCISE Appeal Branch

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066
Principal Bench, New Delhi
COURT NO. 1

Date of Hearing/Date of Decision: 10/10/12

Appeal Nos. E-/1778-1783/09 along with
Stay Application No. E/S/1835-1840/09

CCE, Jammu		**Appellants**
	Vs.	
M/s J.K. Card Board Industries **AKalpur Road, Muthi, Jammu.**		**Respondent**

(Arising out of the Order No. 209-226/CE/Appl/Jal(JK)/09 dated 13/03/09 passed by the Commissioner Central Excise, Jammu.

Hon'ble Justice Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rule, 1982? :
2. Whether it would be released under Rule 27 of the CESTAT (procedure) Rule, 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? :

Appearance

Sh. R.K.Verma. A.R - for the Appellant
Sh. Udit Jain, Advocate - for the Respondent

STAY ORDER NO. 1809-1814/2012-Ex(BR)
FINAL ORDER NO. A/1279-1284/2012-Ex(BR)

Per Rakesh Kumar

The Facts leading to these appeals and stay applications by the revenue are, in brief, as under:-

1.1 The Respondent are a unit located in Jammu Distt. in the state of Jammu & Kashmir. They were availing the duty exemption under Notification No. 56/02CE. This Notification exempts the goods covered by this exemption Notification and cleared from units located in the

Industrial Growth Centres, Industrial Infrastructure Development Centres or Export Promotions Industrial Parks or Industrial Estates or Industrial Areas or Commercial Estates, or Scheme Areas, as the case may be, specified in **Annexure-II** of the Notification, from the duty of excise leviable under Section 3 of the Central Excise Act, 1944 and additional duty of excise leviable under Additional Duties of Excise, (goods of special importance) Act, 1957 and Additional Duties of excise (Textiles & textile articles) Act,1978, to the extent as mentioned in this Notification. In this case there is no dispute about the eligibility of the goods manufactured by the Respondent for exemption. The dispute is as to whether the area in which the unit is located is specified in **Annexure-II** of the Notification. In terms of a certificate given by the Tehsildar, the unit is located in "Khasra No. 267 at Muthi Dharmal Tehsil, Distt. Jammu". The area in which the unit is claimed to be covered is "Barnai (Muthi)" in Tehsil Jammu and falling under village/police station "Domana" and comprising of Khasra Nos as mentioned against it,(which includes Khasra No.267), [entry No. (2) (I) (D) (2) of **Annexure-II** of the notification]. The Jurisdictional Assistant Commissioner accepted the respondent's claim regarding exemption under Notification No. 56/02CE holding that the unit is located in the area notified in **Annnexure-II** and by separate orders passed for the months of April'07, May'07, May'07, June'07, July'07, August'07 & Sept.'07 allowed the benefit of this exemption. These orders of the Assistant Commissioner were reviewed by the jurisdictional commissioner under **Section 35E (2)** of Central Excise Act,1944 and accordingly on the directions of the Commissioner, the Assistant Commissioner filed review appeals before the Commissioner (Appeal) against his order vide **Section 35(4)** of the Act.

1.2 These appeals were decided by the Commissioner (Appeals) vide order in appeal dtd.13.03.09 by which he upheld the Assistant Commioner's orders and dismissed the department's appeals.

1.3 Against the above order the Commissioner (Appeals),these appeals have been filed by the Revenue.

2. Heard both the sides.

3. Sh. R.K.Verma, learned Departmental Representative, assailed the impugned order in appeal by reiterating the grounds of appeal in the Revenue's appeals and pleaded that while the unit of the respondent is located in the Khasra No. 267 of Muthi Dharmal, the place Muthi-Dharmal is not specified in **Annexure-II** of the Notification, that the industrial area specified in **Annexure-II** of the Notification is "Barnai(Muthi)" against which Khasra No. 267 is mentioned, that as per notification SR0236 dtd. 9/08/04 issued by the Govt. of Jammu & Kashmir specifying the list of Mohallas/villages in the local areas of Jammu Master Plan, Dharmal, Barnai and Muthi are three independent villages out of which only one village 'Barnai' is specified in the notification, that CCE(Appeals) has not given any finding on the point as to whether or not the Respondent's unit is located in Barnai(Muthi)village of Jammu Tehsil, that the Respondent's unit is located in village 'Muthi Dharmal' as per Tehsildar's Certificate which is not specified in the notification and hence the same is not eligible for the exemption and that, therefore, the impugned order is not correct.

4. Sh. Udit Jain, the learned counsel for the Respondent defended the impugned order by reiterating the findings of CCE (Appeals) in it and pleaded that the Respondent's unit is located in the area notified in the notification as there is no dispute that it is located in Khasra No. 267, which is specified in the **Annexure-II** of the notification against "Barnai (Muthi)". He, therefore, pleaded that there is no infirmity in the impugned order.

5. We have considered the submissions from both the sides and perusal the records. The respondent's unit is located at "Akalpur Road, Muthi, Jammu." According to the certificate of Tehsildar Jammu, the unit is located at "Khasra No. 267, Muthi Dharmal Tehsil, District Jammu." The Industrial Area notified in **Annexure-II** to notification No. 56/02-CE against S. No.(2) (I) (D) (2) is "Barnai (Muthi) in Domana Police Station/village" and is a Commercial Estate on private land. The Khasra numbers covered by this industrial area are:-

" 432 to 434, 438, 447, 605, 668, 669, 678, 771/5, 758, 783, 788, 1219, 1220, 235, 235M, 240, 255, 472, 260, 355, 390, 132, 132M, **267**, 64, 98, 180M, 435, 664, 743, 744, 843, 667, 668/1".

5.1 The point of dispute is as to whether the Khasra No. 267 of the respondent unit is of "Barnai (Muthi) of Domana police station/village" and hence covered by the exemption notification or this Khasra number is some other village. According to the original adjudicating authority and CCE (Appeals) this unit is located in the Industrial Area notified in the exemption notification, while according to the Department, "Muthi", "Barnai" and "Dharmal" are three independent villages and, thus, the unit located in "Muthi Dharmal" according to Tehsildar's Certificate, can not be said to be located in "Barnai(Muthi)" and in this regard, the Department relies upon the notification SRO-236 dtd. 9/8/04 and SRO-44 dtd. 2/2/71, issued by Government of Jammu & Kashmir specifying the mohallas/villages in the local areas of Jammu Master Plan wherein villages Muthi, Dharmal and Barnai are listed separately.

6. As per the information retrieved through Google Search;-

(a) the villages 'Muthi' 'Barnai' and Domana' are the villages in Tehsil Bhalwal of District Jammu;

(b) Dharmal seems to be a locality near Jammu, it is not a village.

(c) the geographical coordinates of "Dharmal" are 32° 45′ 49″ N, 74° 48′ 33″ E, the coordinates of 'Barnai' are 32° 45′ 18″ N, 74° 47′ 47″ E, the coordinates of "Muthi" are 32° 18′ 5″ N, 75° 23′ 51″ E, the coordinates of Police Station "Domana" are 32° 47′ 26″ N, 74° 46′ 56″ E and the coordinates of the respondent unit are 32° 45′ 18″ N, 74° 48′ 19″ E, which shows that all there places are nearby places and the Respondent's unit appears to be located in Barnai; and

(d) "Muthi" seems to be the post office for Barnai and 'Domana" seems to be the police station.

6.1 However the exact factual position has to be ascertained from the District Revenue authorities. In any case, Tehsildar's certificate mentioning 'Muthi-Dharmal' as Tehsil in District Jammu appears to be vague.

7. Since it is Barnai (Muthi) industrial area falling in village/police station-Domana which is notified in the exemption notification, if the respondents unit falls in this industrial area, located in Barnai Village and falling within Muthi Post Office jurisdiction and Domana Police Station jurisdiction, the same would be eligible for exemption. There are no findings by CCE (Appeals) on this point in the impugned order. Though as mentioned above, from the geographical coordinates, the factory of the respondent appears to be located in the village Barnai, this has to be verified from the District revenue authorities, or District Industries Centre.

8. The impugned order is, therefore, set aside and the matter is remanded to CCE (Appeals) for de-novo decision after verification with the District revenue authorities, as well as District Industries Centre on the point as to whether the respondent's unit is located in village Barnai falling under police station "Domana" and post office "Muthi" and if so whether the Khasra No. in which the unit is located is 267.

(Justic Ajit Bharihoke)
(President)

(Rakesh Kumar)
Member(Technical)

S.Kaur