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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/841/2012 - EX[DB]
E/STAY/1024/2012-EX(DB)

Dated: **22/05/12**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,**Packaging India Pvt Ltd**
Plot No. C-608,eldeco Sidcul Industrial Park Sitarganj-262 405, Udham Singh Nagr, Distt. Uttrakhand

Packaging India Pvt Ltd (Appellant)

VS

C.C.E. & S.T.-Meerut-ii (Respondent)

STAY ORDER NO 844/2012-EX(DB)

I am directed to transmit herewith a certified copy of **Final Order No.** A/_605/2012 **EX[DB]** dated 17/5/2012 passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
C.C.E. & S.T.-Meerut-ii
OPPOSITE SHAHEED SMARAK...DELHI ROAD...BHANSALI GROUND, MEERUT,

2. Advocate(s) / Consultant(s):
V.Lakshmi Kumaran
5,Jangpura Extension,Link Road,New
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3. C.D.R
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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 GAURD FILE

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Court No.1

Excise Stay application No.1024 of 2012
in Excise Appeal No.841 of 2012

(Arising out of Order-in-Original No.09/Comm./M-II/2010 dt.29.12.2011 passed by the CCE, Meerut)

Date of Hearing/Decision: 17.05.2012

For approval and signature:
Hon'ble Mr.Justice Ajit Bharihoke, President
Hon'ble Mr.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) 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?	

M/s.Packaging India Pvt.Ltd. Appellants
Vs.
CCE, Meerut-II Respondent

Present: Shri R.K.Hasija, Advocate for the Appellant
Present Shri Nagesh Pathak, AR for the Respondent

Coram: **Hon'ble Mr. Justice Ajit Bharihoke, President**
Hon'ble Mr.Rakesh Kumar, Member (Technical)

STAY ORDER No. 844/2012-EX (BR)
FINAL **ORDER No.** A/605/2012-EX (BR)

Per: Justice Ajit Bharihoke

The appellants are engaged in the manufacture of flexible packing material chargeable to Central Excise duty under heading 3920 and 3923 of the Central Excise Tariff, 198. Their unit is located at C-60B, Eledeco Industrial Park, Sitarganj, Distt.Udham Singh Nagar, Uttarakhand. The period of dispute in this case is from November, 2009 to October, 2010. At the relevant time, benefit of exemption was extended to the unit located in Uttarakhand under two notifications being notification No.50/-03-CE and Notification No.49/03-CE. Notification No.49/03-CE was goods specific and Notification No.50/03-CE was for location specific. As per Notification No.50/03-CE, the assessee desirous of availing benefit under that notification was required to furnish requisite information on prescribed declaration form. The appellant with a view to avail the benefit of exemption from excise duty submitted requisite declaration. The appellant, however, instead of mentioning that declaration was filed in respect of Notification No.50/03-CE mentioned that it was under Notification No.49/03-CE. Pursuant to that declaration, the appellant started availing the benefit of exemption from excise duty.

2. The department was of the view that the appellant was not entitled to the benefit of exemption from excise duty under Notification No.50/03-CE. Accordingly, a show cause notice was issued raising a demand of Rs.8,17,73,423/- alongwith interest. The appellant contested the notice on the ground that he was fully covered under exemption Notification No.50/03-CE and in his declaration he has furnished the requisite information. That only for the reason Notification No.49/03-CE was mentioned in the declaration, he should not be denied the benefit of exemption under Notification No.50/03-CE. Plea of the appellant did not find favour with Commissioner (Adjudication). Accordingly, vide order in original No.09/Commissionr/M-II/2010 dt.29.12.2011 the appellant was held not eligible for exemption from excise duty under Notification

No.50/03-CE on the ground that the appellant has not filed requisite declaration under the Notification. Thus, the demand of Rs.8,17,73,423/- alongwith interest was confirmed.

3. The matter is listed for arguments on the stay application. However, after hearing the parties for sometime, it is noticed that this case is covered by the earlier order No.152/2012-EX (DB) dt.1.02.2012 of the Tribunal involving the same issue between the parties. Thus, in our view, there being no factual dispute in this case, the appeal can be taken up for final disposal. Accordingly, the requirement of pre-deposit of duty demand and interest is waived and the matter is taken up for final disposal with the consent of both sides.

4. Shri R.k.Hasija, Advocate, learned Counsel appearing for the appellant pleaded that the appellant's unit is located at C-60B, Khasra no.169,170. 171, Eledeco Industrial Park, Distt.Udham Singh Nagar, Uttarakhand, which area for the purpose of exemption from excise duty falls within the ambit of notification No.50/03-CE. Learned Counsel for the appellant submits that in the requisite declaration notification No.49/03-CE was inadvertently mentioned in place of Notification No.50/03-CE and for this clerical lapse, the appellant cannot be denied the benefit of exemption under Notification No.50/03-CE when he is otherwise eligible for exemption under Notification No.50/03-CE. Learned Advocate for the appellant further submits that pursuance to the declaration filed by the appellant, the jurisdictional Central Excise Superintendent also visited the appellant's unit for field verification and he vide his report

dt.2.6.2008 reported to the Assistant Commissioner concerned that the appellant appears to be qualified for the benefit of exemption from excise duty under Notification no.50/02-CE. From this, learned Counsel submits, it is apparent that all through the department was treating the declaration filed by the appellant under Notification No.50/03-CE despite of typographical error in respect of notification. It is also pleaded that in an earlier appeal filed by the appellant involving the identical issue the Tribunal vide final order No.152/2012-EX (DB) dt.1.02.2012 has set aside the demand confirmed by the adjudicating authority on similar grounds by holding that the benefit of Notification No.50/03-CE cannot be denied to the assessee only because of clerical mistake in the declaration filed for claiming exemption under relevant notification. Thus, learned Counsel for the appellant has urged us to accept the appeal and set aside the impugned order.

5. Shri Nagesh pathak, learned AR for the Revenue has pleaded that in order to avail the benefit of exemption from excise duty under notification no.50/03-CE, the appellant was required to file requisite declaration. The appellant, however, instead of filing declaration under Notification No.50/03-CE, filed declaration under Notification no.49/03-CE which declaration cannot be treated as declaration under Notification No.50/03-CE to extend the benefit of exemption from payment of excise duty to the appellant. Learned AR further submits that perusal of the declaration filed by the appellant under Notification no.49/03-CE would show that it does not supply the complete information in as much as that the declaration does not

disclose Khasra No. of the land on which the appellant's unit is located. Ld.A/R submits that Notification No.50/03-CE is location based notification it is unnecessary for the appellant to given khasra number of land in which his unit is located. In absence of such information, the adjudicating authority was right in denying the benefit of exemption notification No.50/03-CE to the appellant. Thus, impugned order confirming the demand cannot be faulted. In support of his contention, learned AR has relied upon the judgement of the Supreme Court in the case of Eagle Flask Industries Limited vs. CCE, Pune reported in 2004 (171) ELT 296 (SC) wherein it was observed thus:

"We find that Notification 11/88 deals with exemption from operation of Rule 174 to exempted goods. The Notification has been issued in exercise of powers conferred by Rule 174A of the Rules. *Inter alia* it is stated therein that, where the goods are chargeable to nil rate of duty or exempted from the whole of duty of excise leviable thereon, the goods are exempted from the operation of Rule 174 of the Rules. The goods are specified in the Schedule to the Central Excise Tariff Act, 1985 (in short 'the Tariff Act'). The proviso makes it clear that where goods are chargeable to nil rate of duty or where the exemption from the whole of the duty of excise leviable is granted on any of the six categories enumerated, the manufacturer is required to make a declaration and give an undertaking, as specified in the Form annexed while claiming exemption for the first time under this Notification and thereafter before the 15th day of April of each financial year. As found by the forums below, including CEGAT, factually, the declaration and the undertaking were not submitted by the appellants. This is not an empty formality. It is the foundation for availing the benefits under the Notification. It cannot be said that they are mere procedural requirements, with no consequences attached for non-observance. The consequences are denial of benefits under the Notification. For availing benefits under an exemption Notification, the conditions have to be strictly complied with. Therefore, CEGAT endorsed the view that the exemption from operation of Rule 174, was not available to the appellants. On the facts found, the view is on *terra firma*. We find no merit in this appeal, which is, accordingly, dismissed."

6. We have considered the rival contentions and perused the records. In the instant case, it is undisputed that the appellant's unit is located at C-60B, Eledeco Industrial Park, Sitarganj, Distt.Udham Singh Nagar, Uttarakhand. The contention of the AR for the Revenue is that the declaration filed by the appellant is not complete as per requirement of notification no.50/03-CE in as much as it does not disclose Khasra No. This argument prima facie appears to be convincing but on careful perusal of the copy of the declaration submitted to the Assistant Commissioner of Central Excise, Division Rampur, we notice that alongwith this declaration, the appellant had annexed list giving description of inputs, unit, manufacture of specified goods and copies of other documents. One such document is the copy of the lease deed pertaining to the plot on which the appellant's unit is located. Perusal of schedule A of lease deed would show that in this schedule it is clearly mentioned that plot in question is located in Khasra No.169, 170, 171 within the limit of field of Eledeco Industrial Park, Sitarganj, Distt.Udham Singh Nagar, Uttarakhand. Thus, it cannot be said that the appellant had not supplied complete information regarding khasra no of the appellant's unit as required under Notification No.50/03-CE. Further, on perusal of the records, we find that pursuant to the declaration submitted by the appellant, the jurisdictional Superintendent of excise department

had visited the appellant's unit for field verification and as per his verification report addressed to the jurisdictional Assistant Commissioner, the appellant was found qualified for availing the benefit of exemption under Notification No.50/03-CE. From this it is evident that the appellant was entitled to area based exemption under notification No.50/03-CE. Even the department was treating the declaration filed by the appellant claiming exemption as submitted under notification No.50/03-CE irrespective of clerical mistake regarding notification no.

7. The judgement of the Supreme Court in the case of Eagle Flask Industries Limited, supra, in our respectful view, is not applicable to the facts of this case. In the said case, the Supreme Court, while dealing with the issue of exemption under Notification No.11/88-CE from Rule 174 has held that proviso to rule require the manufacturer to make a declaration and give an undertaking on the prescribed form while claiming the exemption under notification for the first time and thereafter before the 15th day of April of each financial year. The Supreme Court has also held that this requirement of filing of declaration and undertaking is not an empty formality but this is a foundation for availing the benefit under the notification. In the case in hand, the facts are slightly different because this is not the case where the appellant has failed to file necessary declaration under exemption notification with the requisite information, actually this is the case of typographical error whereby the appellant submitted declaration but due to inadvertent clerical error number of notification under which the exemption was sought was mentioned as

49/03-CE instead of 50/03-CE. Therefore, this being a case of inadvertent error, ratio of above referred judgment of the Supreme Court cannot be extended to this case.

8. The real question required to be addressed by the adjudicating authority was whether or not the appellant fulfilled the condition of eligibility for exemption under Notification No.50/03-CE. However, on reading of the impugned order, we find that the Commissioner (Adjudication) instead of addressing to the real issue has gone into technical details regarding the notification no. mentioned in the declaration filed for claiming exemption. From the report of the jurisdictional superintendent of central excise, it is obvious that after field survey, the appellant was found eligible for exemption under Notification no.50/03-CE. It is not the case of the department that at any stage the appellant became ineligible for exemption. Therefore, in our view, merely because of inadvertent clerical error regarding notification no. in the declaration filed for the purpose of exemption, the appellant cannot be denied the benefit of Notification no.50/03-CE, when he otherwise is eligible for the same. Thus, we find it difficult to sustain the impugned order which is based upon the technical consideration ignoring real facts. The appeal is therefore accepted and the impugned order is set aside.

9. The appeal as well stay petition is disposed of in the above terms.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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