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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/248/2006-EX[DB], E/249/2006-EX[DB]

Dated: **22/08/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
MR. GOBIND SINGH (PROPRIETOR OF G S ENTERPRISES)
E-127, INDL. AREA, BHIWADI

MR. GOBIND SINGH (PROPRIETOR OF G S ENTERPRISES) (Appellant)

VS

C.C.E. JAIPUR I (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/961-962/2012-EX[DB]** dated **07/08/2012** 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. JAIPUR I
N.C.R.Building, Statue Circle, "C" Scheme, jaipur 302005.

2. **Advocate(s) / Consultant(s):** MR. C. HARISHANKAR, ADV, 116, BANK ENCLAVE, N. DELHI -

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
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13. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

14. **G.S. ENTERPRISES**
E-127, INDUSTRIAL AREA, BHIWADI

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 07.08.2012

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. 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?	

Excise Appeal Nos. 248 - 249 of 2006
(Arising our of order-in-appeal No. 417 - 418 (MPM)CE/JPR-I/2005 dated 16.11.2005 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur).

M/s G.S. Enterprises — Appellants
Govind Singh, Prop.

Vs.

CCE, Jaipur — Respondent

Present Sh. C. Harishankar, Advocate for the appellants.
Present Sh. A.K. Jain, ld. Jt. CDR (AR) for the respondent.

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

FINAL ORDER NO. A/961-962/2012-EX(BR)

Per: Justice Ajit Bharihoke:

These two appeals have been filed by M/s G.S. Enterprises, Bhiwadi and its Prop. Shri Govind Singh against the Order-in-Appeal

No. 417-418 (MPM)CE/JPR-I/2005 whereby the Commissioner (Appeals) partly allowed the appeal filed by M/s G.S. Enterprises by setting aside the part of the demand confirmed vide Order-in-original and confirmed the duty demand to the extent of Rs.14,54,089/- with penalty of equal amount and rejected the appeal of appellant Govind Singh confirming the penalty of Rs. 2.5 lacs and imposed on him under Rule 26 of the Central Excise Rules, 2002.

2. Briefly put the facts relevant for this appeal are that the appellants during the period from January 2003 to February 2004 received parts of shaving razors and tucks of blades from M/s Gillete India Limited on payment of duty. The appellant procured packing material from market and after assembling the components of razors, packed a razor with a packet of blades in blister packing having MRP printed on the same. In some cases, the appellants procured razors from M/s Gillet India Limited on payment of duty and packed them with packet of blades in blister packing those combination were cleared by the appellant on payment of excise duty as per the MRP printed thereon. Thus, combination packs displayed that the blades were free with razor. The department was of the view that since the blades contained in combination pack were supplied free of cost, the appellant had wrongly availed cenvat credit on the blades amounting to Rs.23,97,678/-. Accordingly a show cause notice for recovery of wrongly availed cenvat credit amounting to Rs. 23,97,678/- was issued to the appellant. Show cause notice also proposed penalty under Rule 13(2) of the Cenvat Credit Rules, 2002 r/w Section 11AC of

the Central Excise Act, 1944. The jurisdictional adjudicating authority after hearing the appellants disallowed the cenvat credit availed by the appellant and confirmed the proposed demand of Rs. 23,97,678/- with interest and also imposed penalty of equal amount on the appellant M/s G.S. Enterprises besides penalty of Rs. 2.5 lacs was imposed on appellant No. 2 Sh. Govind Singh under Rule 26 of the Central Excise Rules, 2002.

3. Being aggrieved of the impugned order, the appellants filed appeals. The Commissioner (Appeals) dismissed the appeal of the appellant No. 2 and maintained the penalty of Rs. 2.5 lacs. However, appeal filed by the company was partly accepted and the demand as well as penalty reduced to Rs. 14,54,089/- respectively. Feeling aggrieved of the impugned order passed by the Commissioner (Appeals), the appellants have preferred above referred appeals.

4. Learned Counsel for the appellant has pleaded that the impugned order is not sustainable for the reason that it is based on incorrect appreciation of law and facts. Expanding on the argument, Sh. C. Harishankar, ld. Counsel for the appellant, has contended that the adjudicating authority as also the Commissioner (Appeals) have failed to appreciate that in view of Rule 2(f) of the Central Excise Act, 1944 packing or repacking of razor and blades amounts to deemed manufacture. Thus the composite pack of blade and razor ought to have been considered as a single excisable item and components ingredients forming part of combo pack should have been treated as inputs. Ld. Counsel further submitted that the blades packed with the

razors in the combo pack were meant for use by the ultimate consumer alongwith the razor. Therefore, both the components of the composite pack were complimentary to each other and as such the blades were accessories of the razor and covered within the meaning of input as defined under Rule 2(9) of the Cenvat Credit Rules, 2002. It is further contended on behalf of the appellant that adjudicating authority as well as appellate authority have failed to appreciate that declaration that the blades contained in the combo pack were free was only a marketing strategy and they have fallen in error in concluding that since the blades were supplied free the appellant was not entitled to avail cenvat credit on the same.

5. Sh. A.K. Jain, ld. Jt. CDR (AR) on the contrary has canvassed in favour of the impugned order and he has contended that since the blades were supplied free alongwith razor in the combo pack the adjudicating authority as well as appellate authority were right in disallowing the cenvat credit availed by the appellant in respect of the excise duty paid on the blades packed in combo pack alongwith razor.

6. We have considered the rival contentions and perused the material on record. Similar issue came up before the High Court of Gujarat at Ahmedabad in the matter of **CCEC & ST, Daman vs. prime Health Care Products reported in 2011 (272) ELT 54 (Guj.)** and the High Court decided said appeal in favour of the assessee with the following observations:-

> "**9.** *The Tribunal while disposing of the appeal, has observed that the combo-pack containing toothbrush reaches final stage of*

marketability only after the packet containing tooth brush is placed with the tooth paste and hence, cenvat credit in respect of tooth brush is admissible. The Tribunal further observed that re-packing, labelling etc. are amounting to process of packing and it would be considered manufacture and hence, packing two items together itself amount to manufacture and hence, it has to be held that credit is admissible.

10. *We have examined this reasoning of the Tribunal in view of the provisions contained in Cenvat Credit Rules, 2004. Rule 3(1) of the Rules says that a manufacturer or producer of final product or a provider of taxable service shall be allowed to take credit of items mentioned therein. The proviso further states that the cenvat credit shall be allowed to be taken of the amount equal to central excise duty................. paid on any input or capital goods received in the factory of manufacture of final product. The word "input" is defined in Rule 2(k) which also includes accessories of the final products cleared along with final product. There is no dispute about the fact that on toothbrush, excise duty has been paid. The toothbrush is put in the packet along with the tooth paste and no extra amount is recovered from the consumer on the toothbrush. Considering the definition given in the Rules of "input" and the provisions contained in Rule 3, we are of the view that the Tribunal is justified in taking the view that the credit is admissible in the case of the respondent-assessee.*

11. *The view taken by the Tribunal is further supported by the provisions contained in Section 2(f) of the Central Excise Act, 1944 which defines the word "manufacture". It includes any process in relation to the goods specified in the Third Schedule, which includes packing or re-packing of such goods in a unit container. In the Third Schedule, at Serial No. 38, under Heading - Sub-Heading of Tariff Item, Entry No. 3306, is in respect of tooth paste. Hence, the process of packing and re-packing the* *input, that is, toothbrush and tooth paste in a unit container would fall within the ambit of "manufacture" as defined under the Act and as such, the assessee would be entitled to claim cenvat credit on such input".*

7. In our considered view the ratio of aforesaid case squarely applies to the facts of this case. Accordingly, we conclude that the Commissioner (Appeals) has fallen in error disallowing the cenvat credit availed by the assessee company in respect of the excise duty paid on the blades and imposing penalty on the assessee company as well as its Prop. Sh. Govind Singh. The appeals are, therefore, allowed and impugned order is set aside.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant