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: **27/11/2012**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/1325/2012-EX[DB]** dated **06/11/2012**

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.**

Asstt. Registrar(EXCISE Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	E/1114/2005	**ABHINAV ENTERPRISES,** 4,Vaid Dharmshala Ashok Nagar Main Road Udaipur Rajasthan
		Name and Address of Respondent
2		**C.C.E. JAIPUR II** N.C.R.Building, Statue Circle, "C" Scheme, Jaipur 302005.

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Copy To
3Advocate(s) / Consultant(s):

K. K. Anand
A-5, BASEMENT,
LAJPAT NAGAR-III,
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DELHI
110024

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4 Bar Association, CESTAT, Delhi

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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, Satellite Road, Ahmedabad-15

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

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

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar(EXCISE Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/ Decision:06.11.2012

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 No.E/1114 of 2005

(Arising out of Order-in-Appeal No.871(EM)CE/JPR-II/2004 dated 23.12.2004 passed by the Commissioner of Central Excise (Appeals-II), Jaipur)

M/s. Abhinav Enterprises ...Appellants

Vs.

CCE, Jaipur-II ...Respondent

Appearance: Shri Udit Jain, Advocate for the appellant.
Shri R.K. Verma, DR for the respondent.

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

FINAL Order No. A/1325/2012-BT(BR)

Per Rakesh Kumar:

The appellant during the period of dispute from 13.07.96 to 4.10.97 received HDPE fabrics from M/s. Jain Plaspack Pvt. Ltd. for conversion into HDPE bags by stitching. The department being of the view that the activity of the appellant amounts to manufacture and since they had neither obtained central excise registration nor paid any duty, issued a show cause notice for demand of duty of Rs.14,39,761/- in respect of the clearances of HDPE bags to M/s. Jain Plaspack Pvt. Ltd. along with interest and also for imposition of penalty. The show cause notice was adjudicated by the Addl. Commissioner vide order-in-original dated 27.12.2004 by which the duty demand raised in the show cause notice was confirmed against the appellant and besides this. penalty of equal amount was imposed on them under Section 11 AC of the Central Excise Act. On appeal being filed before the Commissioner (Appeals), this order of the Addl. Commissioner was upheld vide order-in-appeal dated 23.12.2004. Against this order of the Commissioner (Appeals), this appeal has been filed.

2. Shri Udit Jain, ld. Counsel for the appellant. challenged the impugned order on two grounds. Firstly demand is barred by limitation and that the appellant only stitched fabrics on job work basis, which exercise cannot be

termed as manufacture as such the levy of excise duty on the appellant is not sustainable. He, therefore, pleaded that impugned order is not correct.

3. Shri R.K. Verma, ld. DR, defended the impugned order reiterating the findings of the Commissioner (Appeals) in it and emphasized that the process undertaken by the appellant amounts to manufacture , that longer limitation period has been correctly invoked as the appellant had neither obtained central excise registration nor had intimated the department about their activity nor were filing any return in respect of the goods cleared by them. He, therefore, pleaded that there is no infirmity in the impugned order.

4. We have considered the submissions from both the sides and perused the records.

5. The appellant were receiving cut pieces of HDPE fabrics from principal manufacturers and converting the same into HDPE bags on job work basis. We are of the view that by this activity of the appellant a new product with distinct name, characteristics and uses has emerged and as such the processes undertaken by them amounts to manufacture and hence would attract central excise duty under Heading No.3923.90.

6. As regards the question of limitation, from the records, it is clear that the appellant neither obtained central excise registration nor had intimated the jurisdictional central excise authorities about their activities in any manner. In

view of these circumstances, there is indeed suppression of facts with intention to evade payment of duty and longer limitation period for recovery of duty has been correctly invoked under proviso to Section 11A(1) of the Central Excise Act and penalty under Section 11 AC has been correctly imposed. In view of this, we do not find any infirmity in the impugned order. The appeal is, therefore, dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Ckp.