REGISTERED / AD

FAX : 011-26108426

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

Dated: **13/12/2012**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/1356/2012-EX[DB]** dated **11/12/2012**

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)

Name and Address of Respondent

1 E/1372/2005 **PREMIUM SUITINGS (P) LTD**
(Chemical Division), G-6-8, UPSIDC
Industrial Area, Jainpur, Kanpur

Name and Address of Appellant

2 **COMMISSIONER OF CUSTOMS &**
CENTRAL EXCISE KANPUR
117/7, Sarvodaya Nagar, Kanpur

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Copy To
3Advocate(s) / Consultant(s): SH. ADITYA KUMAR,ADV.,
F-12-A, LGF,KAILASH COLONY, N. DELHI-48

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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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I
DATE OF HEARING : 31/07/2012.
DATE OF DECISION : 11/12/2012.

Excise Appeal No. 1372 of 2005

[Arising out of the Order-in-Appeal No. 665-CE/APPL/KNP/2004 dated 31/12/2004 passed by The Commissioner (Appeals), Customs & Central Excise, Kanpur.]

Hon'ble Shri 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) Rules, 1982?	:
2.	Whether it would 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 Department Authorities?	:

CCE, Kanpur — Appellant

Versus

M/s Premium Suitings (P) Ltd. (Chemical Division) — Respondent
G-6&8, UPSIDC Industrial Area,
Kanpur, Dehat (U.P.)

Appearance

Shri Sanjay Jain, Authorized Representative (DR) – for the appellant.

Shri Aditya Kumar, Advocate alongwith Shri Vipul Jain, Director of the respondent company - for the Respondent.

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

Final Order No. 1356/2012 Dated : 11.12.2012

Per. Rakesh Kumar :-

The facts leading to this appeal filed by the Revenue are, in brief, as under.

1.1 The respondent in their unit at UPSIDC Industrial Area Jainpur, Kanpur Dehat (U.P.) manufacture prepared glues and poly vinyl acetate chargeable to Central Excise duty. The period of dispute in this case is from 1997-1998 to June 1999. There is no dispute that there is a textile division of the respondent company where they manufacture textiles. The respondent unit during the period of dispute was availing of SSI exemption on the basis of an SSI registration certificate issued by the Director of Industries. The department being of the view that M/s Premium Suitings (P) Ltd. [Chemical Division] (the respondent in this case), are not a separate manufacturer in as much as they are a division of the main manufacturer M/s Premium Suitings (P) Ltd., UPSIDC Industrial Area, Jainpur, Kanpur and as such the aggregate value of the clearances of all excisable goods for home consumption from one or more factories of the respondent during the previous financial year were in excess of the threshold limit of Rs. 3,00,00,000/- (Rupees Three crores), they would not be eligible for SSI exemption. On this basis, 7 show cause notices were issued to the respondent for different periods for demand of short paid duty amounting to Rs. 4,04,172/- alongwith interest and also for imposition of penalty. The show cause notices were adjudicated by the Assistant Commissioner by a common order-in-original dated 27/4/01 by which holding that the respondent is only a division of the main manufacturer M/s Premium Suitings (P) Ltd. and, as such, they are not eligible for SSI exemption, confirmed the total duty demand of Rs. 4,04,172/- and beside this imposed penalty of Rs. 50,000/- on them under Rule 173Q of Central Excise Rules.

1.2 The respondent filed appeal before the Commissioner (Appeals) against this order of the Assistant Commissioner. The Commissioner (Appeals) vide order-in-appeal dated 31/12/04 set aside the Assistant Commissioner's order and allowed the appeal holding that the respondent i.e. M/s Premium Suitings (P) Ltd. [Chemical Division] are a unit independent of their textile division and are independently eligible for SSI exemption. Against this order of the Commissioner (Appeals) this appeal has been filed by the Revenue.

2. Heard both the sides.

3. Shri Sanjay Jain, the learned DR, pleaded that the respondent are merely a chemical division of the main manufacturer - M/s Premium Suitings (P) Ltd. engaged in the manufacture of textile, that they cannot be treated as an independent manufacturer, that the respondent unit engaged in the manufacture of chemicals has to be treated merely as another factory of the Respondent company engaged in manufacture of textiles, that in view of this, for the purpose of determining the eligibility of the respondent for SSI exemption during a particular financial year, the clearances for home consumption of all excisable goods manufactured by all the factories of the respondent have to be taken into account, that on this basis, during the entire period from 1997-98 to 1998-99 and 1999-2000, the respondent would not be eligible for SSI exemption, that just because Central Excise registration is different for chemical division, the respondent cannot be treated as a separate and independent entity, that the judgment of the

Apex Court in the case of **Rollatainers Limited vs. CCE, Delhi – III** reported in **2004 (170) E.L.T. 257 (S.C.)** relied upon by the Commissioner (Appeals) is not applicable to the facts of this case and that in view of this, the impugned order is contrary to the provisions of law and is not sustainable.

4. Shri Aditya Kumar, Advocate, alongwith Shri Vipul Jain, Director of the respondent company, while defending the impugned order clarified that the respondent – "M/s Premium Suitings (P) Ltd. [Chemical Division]" is a division of the respondent company – "M/s Premium Suitings (P) Ltd.", that though the respondent unit has a separate Central Excise registration as a manufacturer of excisable goods, for the purpose of income tax and sales tax, they have a common PAN/ Sales Tax Registration and their Income-Tax Assessment and the Sales Tax Assessment are common.

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

6. The benefit of SSI exemption is available to a manufacturer manufacturing the specified goods only if the clearances of all excisable goods manufactured by that manufacturer in one or more factories and cleared for home consumption during the previous financial year is within the specified threshold limit, which during the period of dispute was Rs. 3,00,00,000/- (Rupees Three crores). In this case, it is undisputed that the respondent i.e. chemical division of M/s Premium Suitings (P) Ltd. is part and parcel of the main manufacturer engaged in manufacture of textiles and, therefore, the respondent unit i.e. chemical division of M/s Premium Suitings (P) Ltd. cannot be looked at

in isolation for the purpose of determining its eligibility for SSI exemption and for this purpose, the clearances for home consumption of all excisable goods of the respondent unit have to be clubbed with the clearances of excisable goods manufactured by other factories of the respondent company during the previous financial year and on that basis, the respondent would not be eligible for SSI exemption. We, therefore, hold that the impugned order extending the benefit of SSI exemption to the respondent unit is contrary to the provisions of law and is not sustainable. The same is set aside. The order passed by the original Adjudicating Authority is restored. The Revenue's appeal is allowed.

(Order pronounced in open court on 4/12/2012.)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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