

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3**

SERVICE TAX APPEAL NO. 54869 OF 2023

[Arising out of Order in Appeal No. IND-EXCUS-000-APP-76-2022-23 dated 09.02.2023 passed by the Commissioner (Appeals), CGST, Customs & Central Excise, Indore]

M/S GUPTA COLOR LAB

....APPELLANT

Prop. Ravi Shankar Gupta,
109, Station Road, Ratlam (MP)
457001

Vs.

**COMMISSIONER OF CGST & CENTRAL
EXCISE-UJJAIN**

....RESPONDENT

29, Bharatpuri Administrative Area,
Ujjain(MP)

Appearance:

Present for the Appellant : Shri Krishan Garg, Advocate

Present for the Respondent: Shri S.K. Meena, Authorised Representative

CORAM:

HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 50852 /2026

DATE OF HEARING/DECISION: 04/05/2026

ASHOK JINDAL

1. The appellant is in appeal against the impugned order confirming the demand of service tax on account of photography services provided by the appellant.

2. The facts of the case are that the appellant is registered with the service tax department but have not filed their ST-3 returns. On the basis of data received from third party, it was found that the appellant has received an amount against the photography services

provided during the period 2016-17, but did not pay service tax liability thereon. Therefore, for ascertaining the actual service tax liability and verification of facts, a letter dated 14.12.2020 was issued to the appellant and various documents were called for from the appellant, namely, profit and loss account, Form 26AS details of service provided/ received, copies of work order for the period April 2016 to June 2017. The appellant did not reply the same but filed copies of profit and loss account and Form 26AS ITR Returns. On the basis of the above said documents it was revealed that the appellant is liable to pay an amount of service tax of Rs. 9,52,319/-. Therefore, a show cause notice dated July 20, 2021 was issued to the appellant by invoking the extended period of limitation to demand of service tax.

3. The matter was adjudicated the demand of service tax Rs.4,62,443/-was confirmed and equivalent amount of penalty was also imposed. Penalty of Rs. 60,000/- was also imposed under Section 70 of the Act. The said order was challenged by the learned Commissioner (Appeals) who affirmed the order of the adjudicating authority, therefore, the appellant is before us.

4. Learned counsel appearing on behalf of the appellant submits that the appellant is not providing any service as appellant is engaged in the activity of developing of negative film processing and they are not working as photographer or photo studio. It is the submission that the activity undertaken by the appellant is covered under manufacturing activity and under negative list of services (Clause (f)

of section 66D) of the Finance Act, 1994. Therefore, the appellant is not liable to pay service tax. To support his contention he relied on the decision in the case of **Venus Album Company Pvt Ltd. & Others vs. CCE Chandigarh** reported in **2019 (22) GSTL 386** which has been affirmed by the Hon'ble Apex Court vide Civil Appeal No. 8234-8236 of 2019 dated 18.02.2023. Therefore, demand against the appellant is not sustainable under photography services in the negative list regime.

5. On the other hand learned authorized representative submitted that the issue has been dealt by the Tribunal in the case of **Matchwell vs. Commissioner of Central Excise, Ahmedabad-I 2020 (371) ELT 840 (Tri.-Ahmd) dated 21.06.2019**, wherein it has been held that the activity undertaken by the appellant does not amount to manufacture, therefore, they are liable to pay service tax.

6. Heard the parties and considered the submissions.

7. Admittedly the appellant is engaged in the activity of printing and developing photographs in his colour lab for which they are procuring duty paid paper, chemical etc. from the market. They received only soft copy of photo to be printed which is developed by them and the said activity of 'printing' amounts to 'manufacture' as photographs are excisable activity as held by the Tribunal in the case of **Venus Colour Lab. (supra)** where this Tribunal observed as under:

"13. On careful consideration of the submissions made by both sides, we find that service tax has been demanded from the appellant in terms of Section 65 (78) of the Finance Act,

1994 for the period till 30.6.2012 and thereafter under Section 65B (44) of the Finance Act, 1994. For better appreciation the relevant sections of Finance Act, 1994 are reproduced as under:-

"Section 65 (105): "taxable service" means any service provided or to be provided, - (zb) to any person, by a photography studio or agency in relation to photography, in any manner.

Section 65 (78): "photography" includes still photography, motion picture photography, laser photography, aerial photography or fluorescent photography.

Section 65 (79): "photography studio or agency" means any professional photographer or [any person] engaged in the business of rendering service relating to photography."

14. Section 65 (105) (zb) defines the service provided to a any person by a photography studio or agency in relation to photography, in any manner. We also take note of the fact Chapter 49 covers printed pictures, designs and photographs and other product of printing industries. For better appreciation, Chapter 4911 is reproduced as under:-

4911 Other printed matters, including printed pictures and photographs.

4911 91 00 Pictures, designs and photographs

15. We take note of the fact that what activity has been undertaken by the appellant. We observe that the process of formation of photo book, the photographers provide predesigned photos in soft form via e-mail or on CD/Pen drive, to the appellant for supplying the photo book. In terms of the arrangement agreed, the appellant cannot format, edit or alter the photographs received by it in the soft form. The Customer specifies the nature of sheets covers, etc. to be used in photo books. The appellant prints photographs on both sides of standard plain printing paper by using high quality digital press. Thereafter, the printed photo sheets are laminated on both sides and specified number of printed photo sheets and then wire-stapled on the stapling machine. Finally, plain sheets are pasted on both sides of the stapled book and thereafter, cardboard cover having digital printed photographs of the function is pasted with the stapled book to finally make a photo book. Thus, there is a complete change in the identity and nature of the photographs when printed from soft form to hard bound form as a photo book.

16. Ld. Counsel has relied upon the various decisions in support of their arguments to say that the activity undertaken by the appellant is printing on paper, the photographs/photo book amounts to manufacture. The said issue has been examined in the case of Fitrite Packers (supra) wherein the Hon"ble Apex Court has observed as under:-

"10. On the facts of the present case, it is to be determined as to whether the case would fall under category (2) or category (4). We have already taken note of printing process. A cursory look into the same may suggest, as held by the Tribunal, that GI paper is meant for wrapping and the use thereof did not undergo any change even after printing as the end use was still the same, namely, wrapping/package. However, a little deeper scrutiny into the facts would bring out a significant distinguishing feature; a slender one but which makes all the difference to the outcome of the present case. No doubt, the paper in question was meant for wrapping and this end use remained the same even after printing. However, whereas blank paper could be used as wrapper for any kind of product, after the printing of logo and name of the specific product of Parle thereupon, the end use was now confined to only that particular and specific product of the said particular company/customer. The printing, therefore, is not merely a value addition but has now been transformed from general wrapping paper to special wrapping paper. In that sense, end use has positively been changed as a result of printing process undertaken by the assessee. We are, therefore, of the opinion that the process of aforesaid particular kind of printing has resulted into a product, i.e., paper with distinct character and use of its own which it did not bear earlier. Thus, the „test of no commercial user without further process“ would be applied as explained in paragraph 20 of Servo-Med Industries (supra). The aforesaid paragraph is extracted hereunder.

"20. In Brakes India Ltd. v. Superintendent of Central Excise - (1997) 10 SCC 717, the commodity in question was brake lining blanks. It was held on facts that such blanks could not be used as brake linings by themselves without the processes of drilling, trimming and chamfering. It was in this situation that the test laid down was that if by adopting a particular process a transformation takes place which makes the product have a character and use of its own which it did not bear earlier, then such process would amount to manufacture irrespective of whether there was a single process or several processes.

17. Further, Hon“ble Delhi High Court in the case of Delhi Press Patra Prakashan (supra) has examined the issue and observed as under:-

".....We do not think that we can read in this observation of Calcutta High Court, a decision that printing activity carried on by a publishing house may amount to manufacture does not ipso facto exclude the activity of printing from the scope of the expression "manufacture or produce an article or thing" as occurring in Section 80-I (2) (iii) of the Act. The contention of Mr.Sahni that an assessee who is engaged on job work basis cannot be

considered as a manufacturer is also premised on the observations made by the Calcutta High Court in the case of A. Mukherjee & Co. (supra) and as stated earlier, we do not find that the language of Section 80-I of the Act support this contention.”

“18. Further, in the case of Jamal Photo Industries (P) Limited (supra), Hon“ble Madras High Court has examined the issue and observed as under:-

“Whether in the facts and circumstances of the case, the Tribunal was right in holding that processing of the film and printing photographs from the negatives amounts to manufacturing activity and is an industrial undertaking eligible for the benefit of section 80-I”

There cannot be any dispute that the expression “manufacture” involves the concept of changes effected to a basic raw material resulting in the emergence of, or transformation into, a new commercial commodity. But it is not necessary that the original article or material should have lost its identity completely. All that is required is to find out whether as a result of the operation in question, a totally different commodity had been produced having its own name, identity, character or end use.

In the instant case, a negative film roll fitted had been exposed and produced as a distinct article, viz. Photograph and such photograph cannot be called a negative film and thus the negative film losses its identity completely, after the same had been developed and had also become a totally different commercial commodity having its own identity/character and a product of end us. Therefore, what is involved while taking a photograph by a photographer is a manufacture. Hence, the assessee having engaged themselves in manufacturing process is entitled to claim investment allowance.”

19. In view of the above judicial pronouncements and the activity undertaken by the appellant chapter heading 4911, is very much clear that the appellant has undertaken the activity of printing photograph on plain printing paper and thereafter bind them and selling them as photo books. The said activity amount to manufacture and the appellant is paying VAT and therefore, the said activity merit manufacturing activity and classified under Chapter 4911 and the appellant has classified accordingly.

20. We also take note of the fact that after introduction of GST, the classification of the same has been answered vide Circular F.No.332/2/2017-TRU dt. December, 2017 by observing that these items fall under HS Code 4911 an attract 12% GST.

Sr No.	Queries	Replies
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62	What is the classification and GST rate for photo books printed using digital offset printing press on printing paper [other than photo albums] and thereafter manually bound?	1. These items fall under HS code 4911 and attract 12% GST.
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21. Further, we take note of the fact that Notification No.14.04- ST dt.10.9.2004 amended by Notification No.19/06-ST dt.25.4.2006 with effect from 1.5.2006, exempts specifically the activity of printing from payment of service tax.

22. We also take note of the fact that the service exempted in terms of Notification No.25/2012-ST dt.20.6.2012 amended by Notification No.44/2012-ST dt.7.8.2012, 49/2012-ST dt.24.12.2012 and Notification No.3/2013 dt.1.3.2013 with effect from 1.4.2013, S.No.30, the activity of printing as job worker is exempted from payment of service

23. As the activity of printing has also been exempted from payment of service tax, if we take note of the fact that the activity undertaken by the appellant in relation to photography service then also the activity undertaken by the appellant is not taxable service

24. In view of the above discussion, we hold that on merit the activity undertaken by the appellant amounts to manufacture and classifiable the Chapter 4911, therefore, no service tax is payable by the appellant. In alternate, we hold that the activity undertaken by the appellant is exempted from payment of service tax. Therefore, no service tax is payable by the appellant.

24. In the result, the impugned orders are set aside and the appeals are allowed."

8. The said order has been affirmed by the Hon'ble Apex Court as reported *supra*. During the course of argument the learned authorized representative relied on the decision of **Matchwell (supra)**. We find that in the case of **Matchwell** this Tribunal has not considered the decision in the case of **Venus Album Company Private Limited (supra)** and after the decision of **Matchwell** the decision in the case of **Venus Albums Co. Pvt Ltd.(Supra)** has been affirmed by the Apex Court. Therefore, the issue is no more *re-*

integra. Accordingly, we hold that the activity undertaken by the appellants amounts to 'manufacture'. Therefore, no service tax is payable by the appellant. In view of this we set aside the demand against the appellant. Consequently, no penalty is payable by the appellant. Accordingly, impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Order pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K.ANPAZHAKAN)
MEMBER (TECHNICAL)

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