# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

## Excise Appeal Nos. 2185 & 2186 of 2008

(Arising out of Order-in-Original No. 24/Commr/CEX/IND/08 dated 30.07.2008 passed by the Commissioner of Central Excise, Indore)

DATE OF HEARING : 23.01.2018
DATE OF DECISION : 23.01.2018

**M/s WWS Sky Shop (P) Ltd. ….. Appellants**
(Rep. by Sh. V. Lakshmikumaran, Adv.)

VERSUS

**CCE, Indore ..… Respondent**
(Rep by Sh. S.K. Bansal, DR)

**CORAM** : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
**HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)**

## FINAL ORDER NO. 50353-50354/2018

**PER JUSTICE (Dr.) SATISH CHANDRA :**

Both the present appeals are filed by the assessee-Appellants against the Order-in-Original No. 24/Commr/CEX/IND/08 dated 30.07.2008 passed by the Commissioner of Central Excise, Indore. The period in dispute is December 2003 to July, 2005.

2. The brief facts of the case are that, during the period under consideration, the assessee-Appellants were engaged in trading and tele-marketing of various goods and also selling the medicines

manufactured by M/s Davo Laboratories and M/s Balchem Laboratories through the VPP. They were also giving advertisement on television and other media. The assessee-Appellants received the medicines, duly duty paid, from the manufacturer in the packed form mentioning therein the retail price. After receiving the bottles of the medicines in the packets, they just affix the hologram & bar code to avoid duplicity and put in an outer cover box to ensure safe transportation. The Department is of the view that the activity of the assessee-Appellants amounts to manufacture and demanded the duty along with the penalty. Being aggrieved, the assessee-Appellants have filed the present appeals.

3. With this background, we have heard Shri V. Lakshmikumaran, learned counsel for the assessee-Appellants and Shri S.K. Bansal, learned DR for the Department.

4. After hearing both sides and on perusal of the material available on record, we find that the Board vide its Circular F.No. 354/285/2011-TRU dated 8th December, 2011 has clarified the position as under :

> **"2. It has been represented that they are in the business of marketing of consumer and other products. They facilitate the transaction sales of the vendors by making arrangements with third parties toward courier/delivery, advertisement and marketing of the products through television channel and web portal to procure order on behalf of the vendor's customers, collect payments on behalf of the vendors. Upon receipt of order from a customer, either an order is placed with the manufacturer/importer/trader of the specified goods or the vendor may import the goods directly. The 'pre-packed duty paid retail goods' are put in an outward transit box by the vendors and are wrapped with tamper proof wrapper and taped to ensue safe delivery to the customer. The repacking box bears the name of the**

**HSN 18, call centre and the website address. Apart from this repacking, no other activity is being undertaken. The issue raised for clarification in this background is whether the levy of excise duty is attracted on this activity of repacking such 'pre-packed duty paid retail goods'.**

**3. The matter has been examined. The purpose of "deeming" processes such packing, re-packing, labeling, relabeling etc. to be processes amounting to manufacture is to capture the value addition. In the instant case, there is admittedly "no value-addition". The goods are sold either at or below the MRP to the consumer. More importantly, the goods when received by the vendor are already in a pre-packed form, bear the necessary declarations including the MRP as prescribed by the provisions of the Legal Metrology Act and have already been subjected to excise duty on the basis of value determined under Section 4A i.e. the Retail Sale Price less abatement. The vendor neither re-labels nor alters the retail pack or the declarations affixed therein. Under these circumstances, the activity undertaken in the instant case merely consists of transferring pre-packed duty paid retail goods into another packing.**

**4. In view of the above, it is clarified that in such cases excise duty would not be attracted on the operations or processes carried out by the vendor."**

5. In the present case, the situation is identical. By following the Board Circular (supra), we find no reason to sustain with the impugned order and the same is hereby set aside.

6. In the result, both the appeals filed by the assessee-Appellants are allowed.

(Dictated & pronounced in the open court)

**(JUSTICE DR. SATISH CHANDRA)**
**PRESIDENT**

**(V. PADMANABHAN)**
**MEMBER (TECHNICAL)**

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