IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Service Tax Appeal No. 2801 of 2012

[Arising out of Order-in-Appeal No. 124/ST/DIV-II/2012 dated 28.5.2012 passed by the Additional Commissioner, New Delhi]

M/s. Narain Packaging **Appellant**

Vs.

Commissioner of Service Tax **Respondent**
Delhi

Appearance:
Ms. Rinki Arora, Advocate for the Appellants
Shri P Juneja, DR for the Respondent

CORAM:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B Ravichandran, Member (Technical)

Date of Hearing: 18.1.2018
Date of Decision: 15.02.2018

FINAL ORDER NO.50632/2018

Per: B Ravichandaran:

The present appeal is filed against the Order-in-Original No. 124/ST/D-II/2012 dated 28.5.2012.

2. The appellant is aggrieved by the above said order holding that the activity of packaging undertaken by them in the manufacturing of paper in the premises of the clients is liable to service tax. The plea of the appellant is that such activity is incidental to 'manufacture' and

as such, it is excluded from the tax entry for 'packaging activity' under section 65 (76 b) of the Finance Act, 1994. The lower authorities rejected the contention of the appellant and upheld the tax liability under the said tax entry.

3. We have heard Ms Rinki Arora and Shri P Juneja, learned representatives of the parties and perused the appeal record. The statutory definition of packaging activity for service tax levy is given below:

> ***"76b "packaging activity" means packaging of goods including pouch filling bottling, labeling or imprinting of the package, but does not include any packaging activity that amounts to 'manufacture' within the meaning of clause (f) of section 2 of the Central Excise Act, 1944."***

4 The submission of the appellant is that without packaging of the paper made by the client, same cannot be marketed and hence, the same is a 'part of manufacture' in terms of section 2(f) of the Central Excise Act, 1994 and not liable to service tax. She relies on the following case laws:

1. ***Maa Sharda Wine Traders vs. Union of India [2009 (15) STR 3 (MP)];***
2. ***Kedia Castle Delleon Industries Ltd. vs. CCE, Raipur [2011 (22) STR 15 (Tri-Del)];***
3. ***ITW India Ltd. vs. CCE, Hyderabad [2009 (14) STR 826 (Tri-Bang)];***

4. ***CCE, Bombay vs. S D Fine Chemicals P Ltd. [1995 (77) ELT 49 (SC)]; and***
5. ***CCE, Indore vs. Agarwal Distillers P Ltd. [2009 (16) STR 208 (Tri-Del)]***

5. We note that under section 2(f) of the Central Excise Act, 1944, sub clause (i) was relied upon by the appellant. Here, we have to examine whether the packaging done by the appellant is incidental or ancillary of the completion of their manufactured product. Admittedly, the packaging is subsequent to manufacture of paper by M/s. J K Paper Ltd. The appellants claim that they have contributed to the incidental activity of manufacture. We note that the appellants are engaged in packing activity in the premises of clients. The cut size paper manufactured by M/s. J K Paper were given to the appellant direct and using their packing machine the appellant undertakes the wrapping, packing in box, strapping and returns the completed goods back to client. These operations are inside the manufacturing premises of the client.

6. The Tribunal had earlier examined the scope of tax liability under packaging service. In ***MAA Sharda Wine Traders*** (supra) and ***Kedia Castle Delleon Industries Ltd.*** (supra), the Tribunal held bottling of liquor is incidental activity of manufacture, excluded from "packaging activity" as defined under section 65 (76b) of Finance Act, 1994. Examining the facts of the present case, we find that the

activities undertaken by the appellant in the manufacturing premises of client are excluded from service tax liabilities. Accordingly, we hold the impugned order as unsustainable. The same is set aside and appeal is allowed.

(pronounced in the open Court on 15.02.2018)

(Justice (Dr.) Satish Chandra)
President

(B Ravichandaran)
Member(Technical)

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