IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NOS: E/2110 & 2111/2010 & E/965 & 1461/2011

[Arising out of Orders-in-Appeal No: SB(109-110)109-110/MV/2010 dated 29th September 2010 and SB(51-52)51-52/MV/2011 dated 31st March 2011 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – I .]

Kajal Print & Pack (Pvt) Ltd
Sunil P Rui … ***Appellants***

versus

Commissioner of Central Excise
Mumbai – V ***…Respondent***

Appearance:

Ms Padmavati Patil for appellant

Shri DS Chauhan, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing: 27/08/2018
Date of decision: 19/09/2018

ORDER NO: A/87363-87366/2018

Per: C J Mathew

Three appeals of M/s Kajal Print & Pack (Pvt) Ltd and one appeal of Shri Sunil P Rui are disposed off by this common order.

Three different show cause notice for demand of duty pertaining to July 2004 to October 2004, April 2009 to December 2009 and from January 2010 to April 2010 were decided against the appellants by the two lower authorities leading to these appeals.

2. Appellant is a manufacturer of various printed stationary items and claimed benefit of exemption under notification 8/2003-CE dated 01st March 2003 available to small-scale units. The controversy over withholding the benefits of this notification from manufacturers of packaging with designs establishing that these were for those who were not entitled to the exemption had led to denial of exemption to manufacturers, such as the appellant, who, under contract, could not but print such identification on the packing material manufactured by them.

3. Appellant had, therefore, obtained registration and had been paying duty since October 2004. One of the show cause notices pertains to the period prior to such registration. By notification 47/2008-CE dated 1st September 2008, the exemption was made available to small scale industries manufacturing packing material bearing marks of non-entitled entities by insertion of clause (e) in paragraph 4. However, even after such amendment, the appellant was denied eligibility to exemption on the ground that ‘catch cover’ manufactured by them was not specifically enumerated in the

incorporated provision. Hence, this appeal before this Tribunal.

4. It is the submission of the Learned Counsel for appellant that 'catch cover' is also a packing material, akin to cartons, and, hence, eligible for the exemption.

5. Learned Authorised Representative places reliance on the decision of the Tribunal in *M/s Beauty Arts v. Commissioner of Central Excise, Mumbai – I [Appeal no. E/1342/2011]* which, while disposing of stay application no. E/Stay-1526/2011, had disallowed the plea for waiver of pre-deposit on the ground that the said exemption did not apply to 'catch covers'.

6. It would appear from the amendment to the notification, and the subsequent exemption under section 11C of Central Excise Act, 1944, that legislative approval for exclusion from exemption did not intend to cover 'packaging' manufacturers in the small scale sector who, by the very nature of their activity, were, undoubtedly, an ancillary but, undoubtedly, in the small-scale sector. The exclusion from exemption is applicable to goods which bear a brand name and the exclusion from coverage under these exclusion is limited to certain categories. That the packaging industry in the small-scale sector would generate its business by manufacture of packages bearing brand names is acknowledged by the amending exclusion in the notification of the Central Government. That 'catch cover' is a packaging is not in

dispute. There is no definition of ‘printed cartons of paper or paperboard’ either in the notification or elsewhere. Accordingly, this description should conform to such as is commonly understood, and intended, in the industry. We, therefore, find no reason to distinguish ‘printed cartons of paper or paperboard’ from ‘catch cover’ and to deny eligibility to exemption.

7. For the above reason, we set aside the impugned orders and allow the appeals.

(Pronounced in Court on 19/09/2018)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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