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

APPEAL NO: E/572/2010

[Arising out of Order-in-Appeal No: SB(01)01/MI/2010 dated 11.01.2010 passed by the Commissioner (Appeals) Central Excise, Mumbai Zone-I.]

Municipal Printing Press **_Appellant_**

versus

Commissioner of Central Excise (Appeals) Mumbai-I **_Respondent_**

APPEAL NO: E/86454/2013

[Arising out of Order-in-Appeal No: BR (6) MI/2013 dated 26.12.2012 passed by the Commissioner (Appeals) Central Excise, Mumbai Zone-I.]

Municipal Printing Press **_Appellant_**

versus

Commissioner of Central Excise
Mumbai-I **_Respondent_**

Appearance:

Shri H.G. Dharmadhikari, Advocate for appellant

Shri Ajay Kumar, Additional Commissioner (AR) and Shri M.R. Melvin Superintendent (AR) for respondent

CORAM:

Hon'ble Shri S.K. Mohanty, Member (Judicial)
Hon'ble Shri C.J. Mathew, Member (Technical)

Date of hearing: 18/01/2019
Date of decision: 18/01/2019

ORDER NO: A/85160-85161/2019

Per: S.K. Mohanty

Brief facts of the case are that the appellant is an unit of Municipal Corporation of Greater Mumbai (MCGM) and is engaged in processing / printing of various registers, forms, books, letters etc., and supplying the same to its other establishments governed by the MCGM. A show cause notice dated 04.07.2008 was issued to the appellant, proposing demand of duty along with interest and for imposition of penalty on the ground that printing of the forms etc., though were fully exempted from payment of duty in terms of Notifiction No. 10/2013 dated 01.03.2003 till 28.02.2006, but by Finance Bill, 2006 the effective rate @ 8% ad valorem was imposed vide Notification No. 10/2006 – CE dated 01.03.2006. Accordingly, the demand of duty was raised for the period 01.03.2006 to 31.03.2008. The adjudicating authority had confirmed the demand of duty along with interest and imposed penalty on the appellant. By the impugned order, the Commissioner (Appeals) had upheld the adjudication order and rejected the appeals filed by the appellant. Hence, the present appeals were filed before the Tribunal.

2. Heard both sides and perused the records.

3. We find that the subject goods are classifiable under Heading No. 4820.10 of the Central Excise Tariff Act, 1985, which covers “Registers, Account Books, Note Books, Order Books, Receipt Books, Letter Pads, Memorandum Pads, Diaries and similar articles”.

The goods were exempted up to 01.03.2006. By Notification No. 10/2006-CE (supra), duty was levied @ 8% ad valorem. But the appellant contended before the lower authorities that the stationary items are solely to be used by the various offices of MCGM and it cannot be sold in the open market and that since, the goods are not marketable, the same is not excisable. In this context, the appellant has strongly relied upon the decision of the Tribunal in the case of Deputy Chief Manager (P&S), Central Railway Vs. CCE, Mumbai – I, 2015 (328) ELT 296 (Tri.-Mumbai), amongst others.

4. For the purpose of proper appreciation of the present case, the relevant portion in the case of Deputy Chief Manager (P&S), Central Railway (supra) is re-produced below:-

> " From above judgments it is crystal clear that product in question being in the form of various printed forms with some blanks is product of printing industries and the same is classifiable under Chapter 49 and excluded from Chapter 48 therefore in our considered view the product in question are classifiable under Chapter 4901 and hence not liable for duty. On the issue of marketability, in view of the fact that all the printed products are contained details related to and for the purpose of various day to day function of Central Railway, these products are indeed used in-house by Central Railway. Excisebility of the product comes into play only when paper is printed. When bought out paper are printed and comes into existence an excisable product then test of

marketability has to be under gone. After printing of the plain paper with the details containing therein all these forms leaflet, folders etc. can be used by Central Railway alone and it can neither be used nor shall be useful for any other person other than Central Railway. This undisputed facts is more than sufficient reason to hold that the product is not marketable because same is neither capable of being bought and sold nor can be factually bought and sold. As regard the marketability, the contention of the Revenue is that the product is commercially known in the market does not hold water for the reason that if the product in the present case since not capable being bought and sold, cannot be commercially known as marketable. We agree with the submission of Ld. Sr. Counsel that Revenue has not undertaken any exercise to prove that this very product are marketable. Therefore admittedly the Revenue has not discharged the burden lies on them as regard the test of marketability of the product. The judgments in this regard relied upon by the Ld. Sr. Counsel squarely applicable to the present case that if the burden of proof of marketability does not discharged by the Revenue by producing the evidence then claim of appellant that the goods in question is not marketable must be accepted and no contrary view can be taken."

5. On perusal of the impugned order, we find that the Commissioner (Appeals) has observed that even though the goods were not sold as such, they were sent/transferred to their own other offices, outside the factory. It is further observed that the goods may not necessarily be sold, but at the same time, they can be marketable.

We do not find any material on record that the printed stationary of the appellant is marketable. It is well settled law that Revenue has to discharge the burden of test of marketability of the product. In the present case, as the Revenue failed to discharge the burden of test of marketability, the demand of duty cannot be sustained. We respectfully agree with the decision of the Tribunal referred supra.

6. In view of the above discussions, the impugned order is set aside and the appeal is allowed in favour of the appellant

(Operative part pronounced in court)

(C.J. Mathew)
Member (Technical)

(S.K. Mohanty)
Member (Judicial)

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