IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. I

Appeal No. E/1342/2011

(Arising out of Order-in-Appeal No. YDB/48/M-I/2011 dated 15.07.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-I).

M/s Beauty Art	Appellant

Vs.

Commissioner of Central Excise, Mumbai-I	Respondent

Appearance:

Shrikant Kamat, Advocate	for Appellant
Sanjay Hasija, Supdt. (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P ANJANI KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 06.03.2019

Date of Decision: 06.03.2019

ORDER NO. **A/85452 / 2019**

Per: Dr. D.M. Misra

Heard both sides.

2. This is an appeal filed against Order-in-Appeal No. YDB/48/M-I/2011 dated 15.07.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-I

3. Briefly stated the facts of the case are that the appellants are engaged in manufacture of printed cartons, catch covers falling under Chapter sub-heading 48192090 and 48192010 of Central Excise Tariff Act, 1985 respectively. The appellants were availing SSI exemption benefit under Notification No. 8/2003-CE dated 1.3.2003. During the relevant period i.e. April, 2004 to October, 2004 and April, 2008 to August, 2008 they have cleared packing materials namely, printed cartons of paper and paper board and also catch covers affixing the brand name of others without payment of duty. Later, Notification No. 24/2009-CE(NT) dated 21.10.2009 was issued under Section 11C of the Central Excise Act, 1944 retrospectively allowing exemption to various packing materials including 'printed cartons of paper and paper board'. However, since it did not mention the item namely, 'catch covers', a show-cause notice was issued to the appellant for recovery of the duty of Rs.2,79,811/- not paid alongwith interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed an appeal before the learned Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

4. Learned Advocate Shrikant Kamat for the appellants submits that catch covers are also used for packing of materials namely, medicines and covered within the scope of the meaning of 'packing materials', therefore, Section 11C notification issued for the packing materials ought to include catch covers and exemption ought to be allowed. The learned Commissioner (Appeals) erroneously have not extended the said benefit to the appellant. He further submits that this Tribunal recently in the

case of *Kajal Print and Packing Pvt. Ltd. Vs. Commissioner of Central Excise, Mumbai-V – 2018-TIOL-3374-CESTAT-MUM*, in identical circumstances held that the benefit of exemption is admissible to ‘catch cover’ considering the same as packing materials. Further, he submits that removal of catch covers from the factory during the relevant period were duly reflected in various statutory documents and communication has been addressed to the department about clearance of the said catch covers from the factory. In support, the learned Advocate placed the relevant ER-1 returns filed during the relevant period. He submits that since the fact is within the knowledge of the department and issue involved is pure interpretation of law, which is evident from issuance of Section 11C notification, therefore, invocation of extended period of limitation is unsustainable.

5. Learned Authorised Representative for the Revenue reiterates the findings of the learned Commissioner (Appeals).

6. We have carefully considered the submissions of both sides. We find that this Tribunal in the case of *Kajal Print (supra)* analyzing the circumstances where the catch covers were cleared availing SSI exemption under Notification No. 8/2003-CE dated 1.3.2003 observed as follows: -

> *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. We do not find any reason to deviate from the aforesaid findings of the Tribunal. Besides, we also find that the appellant from time to time disclosed all relevant facts to the department while claiming the exemption and there is no suppression of fact on their part with intent to evade payment of duty. Accordingly, the appeal succeeds on both counts, that is, on merit as well as on limitation. In the result, the impugned order is set aside and appeal is allowed with consequential relief, if any, as per law.

(Dictated and pronounced in Court)

(P. Anjani Kumar)	**(Dr. D.M. Misra)**
Member (Technical)	**Member (Judicial)**

Sinha