**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH, MUMBAI
COURT I**

Appeal No.E/1248,1263-1265/2011

[Arising out of: OIA No.SB(61 to 68) 61 to 68/MV/2011, dt.07.05.2011, passed by CCE (Appeals), Mumbai]

M/s J.S. Creation **... Appellants**

Vs.

CCE Mumbai-V **... Respondent**

Appearance:
For Assessee: Shri L.V. Pai, Consultant
For Revenue : Shri N.N. Prabhudesai, Supdtt. (AR)

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

Date of Hearing: 05.04.2019
Date of Decision: 05.04.2019

Order No. A/85678-85681/2019

Per: D.M. Misra

These appeals are filed against OIA No.SB(61 to 68) 61 to 68/MV/2011, dt.07.05.2011, passed by CCE (Appeals), Mumbai.

2. Briefly stated the facts of the case are that the Appellants are engaged in manufacture of Printed Cartoons, Labels/Stickers/Tags, Paper Folders/Booklets etc falling under Chapter 48 and 39 of Central Excise Tariff Act, 1985. On scrutiny of the records by the Department, it was noticed that the Appellant during the period April 2006 to June 2009, cleared the Printed and Plain Paper Labels/Tags/Stickers, Folders and

Diaries falling under Chapter 48 of Central Excise Tariff Act, 1985, bearing brand name/trade name of others, hence the benefit of SSI exemption Notification No.8/2003-CE, dt.01.03.2003 was not admissible. Consequently, the demand notices were issued from time to time, proposing denial of the benefit of the said notification and recovery of the duty not paid along with interest and penalty. The Adjudicating authority confirmed the demand with interest and penalty. Aggrieved by the said order, they filed appeal before the learned Commissioner (Appeals), who in turn, partly allowed their appeal. Hence, the present appeal.

3. At the outset, the learned Consultant Shri L.V. Pai for the Appellant submits that even though the benefit of SSI exemption Notification No.8/2003-CE, dt.01.03.2003 was allowed by the learned Commissioner (Appeals) on various products but on 'catch covers' and 'diaries', considering the same as not packing material the exemption was denied. It is his contention that 'catch covers' are nothing but packing material and hence eligible to the benefit of exemption Notification No.24/2009-CE (NT), dt.21.10.2009. He submits that this Tribunal in the case of Kajal Print & Packaging Pvt. Ltd. Vs CCE Mumbai-V – 2018-TIOL-3374-CESTAT-MUM, observed that the catch covers are nothing but packing material. He submits that this Tribunal, following the said judgment, this Tribunal has expressed a similar view in the case of M/s Beauty Art Vs CCE Mumbai-I vide Final Order No.A/85452/2019, dt.06.03.2019.

4. The learned A.R. for the Revenue reiterates the findings of the learned Commissioner (Appeals). He submits that in any case, the diaries cannot be considered as packing material, hence, the benefit of exemption notification cannot be extended to diaries.

5. Heard both sides and perused the records. We find that the short issue involved in the present appeal is whether the aggregate value of clearance of two products viz. 'catch covers' and 'diaries' which were cleared by the Appellant affixing the brand name of others be included in the aggregate value of clearance of all excisable goods during the relevant period so as to determine the eligibility of SSI exemption Notification No.8/2003-CE, dt.01.03.2003, as amended. The claim of the Appellant is that the catch covers are exempted considering it as packing material by virtue of Notification No.24/2009-CE, dt.21.19.2009 issued under Section 11C of Central Excise Act, 1944. We find that this Tribunal has already considered the issue whether the 'catch covers' be called as 'packing material' and fall within the scope of Notification No.24/2009-CE (NT), dt.21.10.2009, in Kajal Print and Packing Pvt. Ltd's case. Following the said judgment subsequently in M/s Beauty Art's case (supra), this Tribunal observed as follows:-

> "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, dt.01.03.2003 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."*

6. Therefore, in our opinion, the value of 'catch cover' cannot be included in the aggregate value of clearance in computing the aggregate value of clearance to extend the benefit of SSI exemption during the relevant period. However, we do not find merits in the contention of the Appellant that the 'diaries' be also considered under the said notification.

7. In the result, the value of aggregate clearance of diaries be included in computing the exemption limit prescribed under Notification No.8/2003-CE, dt.01.03.2003 for the period in question. Consequently, the matter is remanded to the Adjudicating authority to determine the aggregate value of clearance and re-compute the demand with interest and penalty. Appeal is partly allowed to the extent mentioned above.

(Dictated in Open Court)

(P. Anjani Kumar)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

cbb