CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 86894 of 2013

(Arising out of Order-in-Appeal No. BR/27/M-I/2013 dated 01.02.2013 passed by the Commissioner of Central Excise (Appeals), Mumbai-I)

M/s Nipa Offset Printers .... **Appellant**
121 A to Z Industrial Estate,
Ganpatrao Kadam Marg,
Worli, Mumbai- 400 013.

Versus

Commissioner of Central Excise, Mumbai-I .... **Respondent**
Kendriya Udpadh Shulk Bhavan,
115 Maharshi Karve Marg,
Churchgate, Mumbai- 400 020.

Appearance:

Shri Suresh Shah, Proprietor for the Appellant

Shri P.K. Acharya, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85589/2024

Date of Hearing: 07.06.2024

Date of Decision: 07.06.2024

Per: S.K. MOHANTY

Heard both sides and perused the records.

2. Denial of SSI exemption provided under Notification No. 8/2003 C.E. dated 01.03.2003 is the subject matter of present dispute. The department has denied the duty exemption provided under the said notification on the ground that the appellant had manufactured and cleared "Catch Covers" and "Printed Labels" bearing the brand name/logo of another person and accordingly, should not be eligible for consideration as a SSI unit for availment of the benefit provided under the said notification.

3. The period of dispute involved in the present appeal is from 1st September 2008 to 31st March 2009. We find that for the earlier period from April 2008 to August 2008, on the identical set of facts, this Tribunal vide Final Order No. A/86162/2019 dated 20.06.2019 has allowed the appeal in favour of the appellant, holding that even if the packing materials contain the brand name/logo of another person, the benefit of SSI exemption as provided under Notification No. 01.03.2003 should be available. The relevant paragraphs in the said order are extracted herein below:

> *"5. The short question involved in the present appeal for determination is whether the appellants are entitled to the benefit of Notification No. 8/2003-CE in relation to the product 'catch covers'. The Tribunal in the case of Beauty Arts Vs. Commissioner of Central Excise, Mumbai-I vide Final Order No. A/85452/2019 dated 06.03.2019 following the judgment of this Tribunal in the case of Kajal Prints and Packing Pvt. Ltd. Vs. Commissioner of Central Excise, Mumbai-V – 2018-TIOL3374-CESTAT-MUM, held that the appellants are eligible to the benefit of the exemption Notification. This Tribunal observed as follows: -*
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> > *"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.*
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> *6. Hence, following the aforesaid judgment, we do not find merit in the impugned order. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law."*

4. Since, the issue has already been resolved in favour of the appellant vide order dated 20.06.2019 passed by the co-ordinate Bench of this Tribunal, we are of the view that different stand cannot be taken for deciding the present appeal differently. Thus, we do not find any merits in the impugned order passed by the learned Commissioner (Appeals) in upholding the adjudication order. Therefore, the same is set aside and the appeal is allowed in favour of the appellant.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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