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Coronation Arts and Crafts and B. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : May-31-2002

Reported in : (2002)(83)ECC656

Judge : S Peeran, R K Jeet

Appellant : Coronation Arts and Crafts and B.

Respondent : Cce

Judgement :

1. Both these appeals arise from a common Order-in-Original decided on de novo proceedings as per remand orders passed by the Tribunal and the Commissioner has passed the said Order-in-Original No. 2/2001 dated 15.5.2001 by confirming the demands and imposing penalty under Rule 173Q on the firm and the individual partner and hence these two appeals.

2. The Tribunal in its remand by Final Order Nos. 80 & 81/2001 dated 2.1.2001 noted the facts of the case vis-a-vis facts of the sister concern of the appellant firm namely M/s. Coronation Litho Works who were carrying on the same business of printing on the board and the same were being cleared to individual scorers and laminators which according to the appellant, they were independent in existence. The appellant unit was receiving raw materials from the trading units namely M/s. D.C. Trading Company and M/s. Rasma Trading Company. These trading companies had individual independent partners. Some of the partners were wives of the partners of the appellant firm. There is no dispute that the trading

companies and the appellant firm had common business premises, telephone and some common employees. However, the appellant's claim is that their existence and financial working is totally independent and that they were registered under several authorities independently and that there was no flow back of funds. The trading companies were receiving export orders from exporters for manufacture of printed cartons. The trading firms were supplying raw materials to the appellant firm for mere activity of printing. The printed boards were returned to them. The traders in turn supplied it to individual scorers and laminators who were more than 49 in numbers, having independent partners with individual incorporation and registration under various authorities. They were also carrying on the work of several other similar units and charging small amount as job charges. While the appellant's activity was printing on the board, the major activity after the printing brought into existence separate goods which were classified under tariff sub-heading 4819.12 of CET which covers printed cartons. They were manufactured by the scoring units who brought into existence this separate commodity. Since the scorers and laminators were within the exemption limits they had not paid duty on the printed cartons. Likewise, the appellant were also exempted under the said sub-heading 4811.90 of CET as "NIL" rate of duty during the relevant period and hence they also did not pay any duty. The revenue considered the existence of the trading unit as dummy unit in the show cause notice. The details of how the appellant and the trading unit are dummy have not been brought out with clinging evidence. But the Commissioner in the impugned order has held that the trading unit to be a dummy unit on the basis of appellant's partner utilising the premises of the trading unit. But has not brought out any financial flow back to show that the two units were one and the same.

3. It was argued by the Sr. Counsel that even if the trading unit and the appellant unit are considered to be one and the same unit and that the trading unit is a dummy unit that by itself will not answer the questions that arise in the appeals. According to the Sr. Counsel the questions that arise for consideration in these appeals are as to whether the appellant had manufactured and cleared printed carton and as to whether the independent laminators and scorers can be considered as hired labourers of the appellant and whether the relationship between them is on principal to principal basis? Ld. Sr. Counsel referred to the

Apex Court judgment rendered in the case of Basant Industries v. CCE, Kanpur , wherein in an identical situation, the Apex Court has held that the activity of some processes carried out by the job worker did not make the job worker as a hired labourer. She read out the entire order to show that the judgment has direct bearing on the case and totally covers the facts of the present case. Ld. Counsel also referred to the Apex Court judgment rendered in the case of Rollatainers Ltd. v. Union of India wherein the printed cartons have held to be products of packaging industry and not of printing industry. Therefore, she pointed out that the product undergoes the process of scoring and lamination only in the hands of scorers and laminators who were independent in all characteristics and their relationship between the trading firm and the scorers were on principal to principal basis so also the trading company. There was no nexus relationship between them and geographically they were distinct and separated. She submitted that the trading unit cannot be held as a dummy unit of the appellant and hence their clearances cannot be clubbed with the clearance of the scorer and laminators. She submitted that the Ld. Commissioner has erred in coming to a conclusion that printed cartons were manufactured by the appellant and they should discharge duty. She submitted that the finding arrived at by the Commissioner was against the Tribunal's remand directions.

The Tribunal had clearly given the finding that the case of the appellant and that of M/s. Coronation Litho Works was identical in nature and facts were similar. It was noted in the remand order by the Tribunal that M/s. Coronation Litho Works had been remanded for de novo consideration and, therefore, the Commissioner should decide the case in the same light. She submitted that in the case of M/s. Coronation Litho Works, the Commissioner held independently that scorers were in existence on the same set of facts and further held that the scorers and laminators were independent entity and the printed cartons came into existence in their hands and on that finding, he dropped the demands raised in the show cause notice. She submitted that the Order-in-Original No. 22/96 dated 30.12.96 rendered in the case of M/s.

Coronation Litho Works which was also remanded earlier by this Bench clearly applied to the facts of this case. Ld. Sr. Counsel submitted that the Commissioner

did not follow his own order and the directions of remand order of the Tribunal in the case by Final Order No. 80 & 81/2001 dated 2.1.2001, thereby he has clearly committed a serious error. She submits that there has to be uniformity in line of thinking with the Department. She pointed out that the Order-in-Original No.22/96 dated 30.12.96 rendered in their sister concern of M/s.

Coronation Litho Works has been accepted by the revenue and it has not been challenged and, therefore, similar order is required to be passed.

She took pains in pointing out to the evidence on record to show that the scorers and laminators were more than 49 in numbers and were independent units having set up with separate registration under SSI and IT and they were filing separate returns under various legislations and having independent business. They were also receiving from raw materials for scoring purposes. They have also taken separate loans from the banks and were discharging their liability independently. They had installed heavy duty platen (die) cutting, creasing, embossing presses machines. Likewise, the laminators were independent and were collecting only labour charges. She also submitted that the scorers and laminators were charging small amount as the work involved was not expensive as against the appellants work of printing. The charges are based on the activity carried out by them and has no relationship with each other. The appellant charges involved high cost of printing including colour printing and design. She pointed out to the Commissioner's finding and submitted that he had committed serious error in holding that the scorer and laminators as hired labourers of the appellant. She pointed out there was no such charge in the show cause notice that they were paying hired labour charges. The goods were being sent by the traders who were also independent in existence to the scorers. Therefore, the finding that the traders and the appellant were dummy is equally a perverse finding as Trader were independent and that the appellants did not have any financial flow back and there was no finding to that extent to say that there was financial flow back in all the 3 units to hold that the process of printed carton were manufactured by all the 3 units. She submitted that appellant were having independent business and were filing independent tax returns.

Mere sharing of office premises by the appellant does not imply financial flow back. Financial flow back is a criteria to hold them as dummies. She pointed out that even if they are considered as dummies even then appellants cannot be burdened with duty on printed carton manufactured by various independent 49 scorers and laminators. The scorers and laminators were having relationship on principal to principal basis with the traders and hence their clearance cannot be clubbed. She drew our attention to the Board's Circular No. 56/56/94-CX dated 14.9.94 issued in this regard to argue that it clearly applied to the facts of the case and in terms of the Apex Court judgment rendered in the case of Paper Products Ltd. v. CCE , the same is binding on the revenue.

4. Ld. SDR Shri G.S. Menon reiterated the findings given by the Commissioner. He pointed out that the appellant and the traders were required to be treated as a single unit as appellant had business with the trading company. The scorer and laminators were paid very nominal charges and they are to be treated only as hired labourers. It is his submission that when the activity of the manufacture was completed in the hands of the scorers, then such an activity was incidental to the completion of the final product and hence they being only hired workers of the appellant, therefore, they are to be treated as manufacture of the printed cartons. He relied on the judgment rendered in the following cases: 5. In counter, Sr. Counsel distinguished all the judgments and pointed out that these judgments pertained to valuation and for addition of the cost of processing charges to the assessable value. While in the present case, the very question of relationship between the scorers and laminators with that of the appellant is under challenge and it has been established that they were independent and were acting on principal to principal basis. Therefore, the Apex Court judgment rendered in the case of Basant Industries (supra) and that of Rollatainers Ltd. v. Union of India (supra) has clearly applied to the facts of the case. Ld. Sr. Counsel submitted that the judgment cited by the SDR has no bearing on the facts of the present case.

6. On a careful consideration and on perusal of the entire evidence on record, it is clear that the facts brought out in the show cause notice is that the department has proceeded to raise demands on the appellants on the ground that they are manufacturers of printed cartons falling under chapter sub-heading 4819.12 of

CET. In order to consider the activity carried out by the appellant to bring into existence the printed carton, the Department has considered the traders to be a units of the appellant, without bringing out with clarity with facts to show as to how the trading units, who are independent in nature and acting on principal to principal basis, can be considered as dummy units. The appellant were only sharing the premises and some facilities. The department has not shown that the traders and the appellant were having financial flow back and that the appellant had been set up solely with a view to evade payment of excise duty. Such charges has not been brought out to show that the relationship of the Traders, the appellants and the scoring units are to be considered as one and the same. A dummy unit has been held to be unit which exists only on paper and without any existence in reality by virtue of carrying out any business and filing of returns, etc. as held in the case oft Alpha Toys Ltd. v. CCE . We notice that the appellants were manufacturers of only printed boards which was separately classifiable under sub-heading 4811.90 of CET and in terms of Apex Court judgment rendered in the case of Rollatainers Ltd. v. Union of India (supra), the printed board cannot be considered as "carton" and cartons are classified as products of packaging industries. The revenue has proceeded to club the clearance of the scorers and laminators in whose hands the printed cartons came into existence. The revenue has charged that the appellant was paying only hire charges to the scorer and laminator and hence they are hired labourers. The finding arrived at by the Commissioner is a perverse finding and has deliberately committed a mistake inasmuch as he has not followed the remand directions given by this Bench in the appellant's own case. The facts of the case is identical to the facts of Coronation Litho Works v. CCE which was already remanded by de novo proceedings by the Tribunal. The Commissioner of Central Excise in the case of M/s. Coronation Litho Works in the de novo adjudication order in his Order-in-Original No.22/96 dated 30.12.96 after due analysis has clearly held that Coronation Litho Works has manufactured only printed board and not "carton" which arose in the hands of scorers and laminators who were independent units and the relationship was on principal to principal basis. The finding arrived at by the Commissioner of Central Excise in Order-in-Original No. 22/96 dated 30.12.96 in para 12 to 19 are reproduced herein: 12. As directed by CEGAT, Madras a notice dated 5.10.94 to all the parties concerned was issued

requiring them to appear before the Collector of Central Excise, Madurai on 8.11.94. However, the personal hearing could not be conducted on the stipulated date. The Consultant of CLW, NPC and S/Shri G.D. Nataraj Prabhu and R. Ramaswamy submitted the replies to the Show Cause Notice vide his letters all dated 29.11.94. Subsequently, the case was posted for personal hearing on 28.9.95. Two of the parties, namely STC and JE Cochin represented by their advocates appeared on 28.9.95 and pleaded for dropping for penal proceedings against them as it was held by the then Collector of Central Excise in his Order-in-Original No. 2/92 dated 21.2.92. CLW, NPC and Shri G.D. Nataraj Prabhu requested for adjournment due to the pre-occupation of their consultant.

13. S/Shri G.D. Nataraj Prabhu, partner and N. Ketharinathan, Manager appeared for CLW on 26.10.95 before Commissioner of Central Excise, Madurai alongwith their Consultant Shri R. Ramaswamy (Superintendent, Retd.). The Consultant also submitted a written brief at the time of personal hearing. Main contentions of the Consultant are as follows: a. The printed cardboard (paperboard) sheets cannot be classified as printed cartons falling under Sub-heading No. 4819.12. But the same is to be classified only under sub-heading No. 4811.90 which at the relevant time was exempted from duty under Notification No. 49/87.

The CEGAT Special Bench 'C" in New Delhi in the matter of Collector of Central Excise v. G. Agarwala and Company have held that the printed sheets of craft paper and duplex paper board are classifiable under Heading No. 48.11 and not under heading 48.18 (Sub-heading 4818.12 then covered printed cartons). If the headings read in the light of section or chapter notes are clearly determinative of the classification, the rules for interpretation cannot be invoked. The CEGAT in the case of Rajasthan Synthetic Industries Ltd. v. Collector of Central Excise had also held as above.

b. The exemption contained in Notification No. 175/86 dated 1.3.86 as amended was not available to a D.G. T.D. unit at the relevant time and there is no dispute about this aspect. However, the said Notification did not bar or prohibit a owner of D.G. T.D. unit to act as an agent of the customer by supplying raw materials received from the customers or purchased on behalf of the customers to outside

job workers and getting the products manufactured by them according to the design and specification of the customs. When the entire transaction between the owner of D.G. T.D. unit acting as an agent of his customer and the job workers is on principal to principal basis, no objection can be taken. CLW had undertaken only the job of printing of sheets of paper board which was entrusted to them by NPC. CLW raised bills for printing charges on NPC and received the amounts.

c. CLW is a partnership firm at present consisting of 4 partners and is in-existence from 1936 onwards. The firm as well as the partners are assessed to Income-Tax. The firm has been registered under the General Sales Tax of Tamilnadu and Central Sales Tax Act.

d. NPC consisting of 6 partners is in existence from 1945 onwards.

Trading in paper is the main business of the firm. The firm as well as the partners are assessed to Income-Tax. The firm has been registered under the General Sales Tax Act of Tamilnadu and Central Sales Tax Act. NPC have nothing to do with the printing work. NPC could not be called a dummy unit of CLW since their activities are not similar. NPC after getting the printed sheets from CLW sent the same for lamination to several job workers. NPC had entered into contact with such laminators on principal to principal basis. After lamination of printed sheets, NPC sent the same to job workers for scoring and slitting in order to make the printed laminated sheets into cartons. NPC pays the charges to the job workers. After scoring and slitting the printed laminated sheets of paper board the same were sent by NPC to job workers for pasting (gluing) of bottom and side portions of the cartons. The job workers raised bills for charges of gluing on NPC and received the amount from them. All the movements of materials from the godown of NPC to the job workers and vice versa were covered by proper delivery chits of NPC. The transaction between NPC and the job workers like printers, laminators, scorers and pasters were only on principal to principal basis.

e. NPC raised bills on STC and JE and received the amount and the transaction is on principlal to principlal basis. It has already been settled by the decisions of Courts and Tribunal that the job workers are the manufacturers of excisable goods and not the customers who supply raw materials to the job workers. In the instant

case NPC were suppliers of raw materials to the job workers on behalf of their customers.

f. Scoring of printed cardboard has been treated as manufacturing activity and the scorers have been treated as manufacturers of printed cartons vide summary based on MF (DR) Circular No. 6/89/Ex 4 dated 14.2.89 available in R.K. Jain's Central Excise Tariff of India 1990-91.

g. For the activities of NPC in representing as local agent of their customers STC and JE in getting printed cartons by engaging independent job workers viz. scorers, CLW are not responsible in any way. NPC also cannot be treated as manufacturer of printed cartons.

Samples of following items when produced at the time of personal hearing.

14. Since the earlier Collector could not decide the issue, the parties were heard by me again on 26.12.96, when they reiterated the earlier submissions.

15. I have carefully gone through the records of the case. The points to be decided in this case are: i. Classification of printed Board in sheet form as to whether it falls under Sub-heading No. 4819 12. or not; ii. Whether the manufacturer of printed board as above is to be treated as 'manufacturer' of printed cartons or not; 16 As regards the first point, the duplex paper board falling under chapter 48, after undergoing the process of printing, becomes printed paper board, and is to be classified only under chapter sub-heading 4811.90, inasmuch as chapter heading 48.11 specifically includes the word 'printed' in rolls or sheets. The Hon'ble Supreme Court in the case of Rollatainers Ltd. and Anr. v. UOI and Ors. has made the following observations: ...A carton is used for packing goods whether it is made of printed paper or not, and therefore the printing of cartons does not add to its essential function as a container. Mere printing does not make a carton. An ordinary man in the trade has no use for the printed paper, unless it can be given shape as a container in which he can pack his product. What makes it a carton is its capacity to contain which is its essential characteristic and not the printing work no it, which is merely incidental. In our view, the fact that sometimes more money may be spent on printing than other things, will make no difference. The printing

industry by itself cannot bring the carton into existence. Any amount of fancy printing on a cardboard would not make it a carton". Further CEGAT in the case of CCE v. G. Agarwala & Co. have held that printed sheets of craft paper and duplex board are classifiable only under Chapter 4811.90 and not under 48.18 or 49 01.

17. in view of the above decisions, printed paper board is rightly classifiable under sub-heading No. 4811.90 and not under 4819.12. A plain reading of Rules of the interpretation of the schedule to the CETA, 1985 reveals that the classification of a product should be determined according to the terms of the HEADINGS AND ANY RELATIVE SECTION OR CHAPTER NOTES and, provided such heading or Notes do not otherwise require, according to the provisions of the other interpretation rules. As already pointed out, since chapter heading 4811 covers 'printed boards' specifically, there is no necessity to invoke Rule 2(a) of Interpretative Rules to the Schedule to CETA, 1985 for the classification of the product in question. This is also the ratio of the decision of CEGAT in the case of Rajasthan Synthetic Industries Ltd. v. CCE 18. The Supreme Court, while defining the process of manufacture in the case of Mis. Ujagar Prints etc. have observed that "the prevelant and generally accepted test to ascertain that there is 'manufacture' is whether the change of the series of changes brought about by the application of processes take the commodity to the point, where, commercially, it can no longer be registered as the original commodity but is, instead, recognised as a disctinct and new article that has emerged because of the result of the processes.

"Inline with the above judgment, I view that the process of scoring or creasing the printed paper board as discussed earlier, brings into existence a new product, commercially known as 'printed cartons' in flattened form, falling under chapter heading 4819.12.

Therefore, the said process, namely scoring, is a process of manufacture and the resultant product is different in all aspects from the printed paper board, as envisaged in the above judgment.

19. As such, the persons who undertake the process of scoring, commercially known as scorers, are the manufacturers of printed cartons, and are liable to

discharge appropriate duty liability and not the suppliers of raw materials.

As far as the exporters are concerned, they have exported package tea using the printed cartons, thus procured from NPC, observing all Central Excise formalities. Since the scoring units are considered to be the manufacturers of the printed cartons, duty liability, (if any, ought to have been discharged by them. Such liability) has not been quantified against the scoring units and perhaps some of them could be also in the fully exempted ceiling limit of Rs. 30 lakhs under Notification No. 1/93. In view of the above, it is not possible to sustain the allegation that the exporting units have dealt with non-duty paid excisable goods.

7. It can be seen from the findings extracted above that the issue is identical with the present case. The revenue has accepted the findings given by the Commissioner in Coronation Litho Works. We notice that the product in the hands of M/s. Coronation Litho Works have been held to be a product of printing industry and that a new product of printing carton have arrived only in the hands of scorers and laminators who have been held to be independent units. Merely because appellant had paid small amount that by itself cannot be a factor to treat them as hired labourers. The Apex Court in the case of Basant Industries (supra) in an identical situation as held in para 2 to 4 are reproduced herein: 2. The appellant, a partnership firm registered under the Indian Partnership Act, was engaged in the manufacture of combustion and diesel engines bearing brand name 'Atul Shakti' for which it was duly licensed under the Central Excise & Salt Act, 1944 ('Act', for short). It also carried on trading in pumps. It entered into agreements with different units who were duly licensed under the Act for manufacturing pumps and power driven pumps. In October 1977 the appellant was served with a show cause notice by the Central Excise Department that they got the power driven pumps manufactured with brand name 'Atul Shakti' from the different manufacturing units who in fact were manufacturing these pumps on behalf of the appellant.

In reply it was stated that the appellant had given raw materials to independent units who were not under control or direction of the appellant. According to the appellant, to the raw material supplied by it the independent units had manufactured according to specification given by the appellant. Therefore, the

work carried on by the independent units could not be deemed to be on behalf of the appellant and the appellant could not be denied the benefit of exemption under Notification No. 85/72. The Tribunal did not agree even through it held that appellant had no control over manufacturing process and the manufacturing parties but what persuaded the Tribunal to take the view against the appellant was that it found that the appellant sent components in the shape of casting which by a little machining and grinding became pumps.

Therefore, even though the manufacturing units were independent, yet it did not make any difference in law as the pumps having been manufactured on behalf of the appellant, it was not entitled to exemption. The Tribunal further held that if the claim of the appellant that it had only supplied the raw material was found to be correct, probably there would have no difficulty in accepting its claim but from the material it transpired that the appellant had supplied components of pumps and this was done in order to get over the legal difficulty and claim exemption under the excise notification. The Tribunal further found that some of the independent units charged a sum of Rs. 10 per pump. It was demonstrative of the fact that the amount was so ridiculously low that no independent unit manufactures a pump for such a low cost.

3. The exemption under Notification No. 85/72, dated 17th March 1972 was available for power driven pumps if the value did not exceed Rs one lakh. This restriction was extended even if the pumps were got manufactured by others. In other words if value of the pumps sold by the appellant did not exceed Rupees One Lakh whether manufactured by the appellant or on its behalf by others, then only it was entitled to exemption. The appellant has cleared goods which exceeded Rupees One Lakh in the years in dispute. Therefore, it was not entitled to exemption unless the value of pumps manufactured by different parties under the agreement was excluded for its clearance. The appellant did not dispute that it supplied castings, pump tape, shafts, impeller etc. to the manufacturer. The question, therefore, that arose was whether the pumps brought out of all this resulted in manufacture. This word was explained by the Constitution Bench in Ujagar Prints and Ors. v. Union of India and Ors. .

It was held that the test to determine leviability under the Act is whether a new commercial commodity has emerged. Since the goods which were manufactured by different units on raw material supplied by the appellant was a new commercial commodity it cannot be said that it did not amount to manufacture. And that was not the dispute in the show cause notice which called upon the appellant to explain as to why the duty may not be levied on it as it was manufactured on its behalf. The ambit of controversy thus was not so much whether pumps were manufactured by different parties but whether it was manufactured on appellant's behalf. The Tribunal in this regard found it as fact that the appellant had no control either over the manufacturing process or manufacturing parties. Once the Tribunal recorded this finding it misdirected itself in entering into the question whether the pumps manufactured by third parties was mere assembling on raw material or component supplied by the appellant or it was manufacture. Even assuming that what was supplied was component, but that by itself was not sufficient to fasten liability on the appellant. The component unless processed did not result in production of pump. And that having been done by independent units for payment the findings that it was manufactured on behalf of the appellants without any material cannot be upheld. In fact, no such finding has been recorded by the Tribunal nor any material could be pointed out which could establish that it was the appellant who manufactured the pumps or the independent units from whom it got the pumps manufactured were doing so on behalf of the appellant. The Tribunal in extending the meaning of the expression 'manufacturing' on behalf of the appellant by introducing the concept of supply of components went beyond the ambit of the Notification.

4. In the result, this appeal succeeds and is allowed. The order passed by the Tribunal is set aside. The question of law raised by the appellant is decided by saying that the oil driven pumps sold by the appellant having not been manufactured by it, it was entitled to claim exemption under Notification No. 85/72, dated 17th March, 1972.

8. The Board of Central Excise has also issued a Circular No.56/56/94-CX dated 14.9.94 issued in this regard which applies to the facts of the case are reproduced herein: Ministry of Finance (Department of Revenue), Central Board of Excise and

Customs, New Delhi Subject: Whether goods manufactured by SSI manufacturer output of raw materials supplied by another person/manufacturer would be entitled to exemption under Notification No. 1/93-C.E. (NT), dated 28.2.1993 I am directed to invite your attention to Board's Circular No. 50/08-CX-8, dated 20.9.1988 (F. No. 267/31 /88-CX-8) wherein it was clarified in consultation with the Ministry of Law that if the raw materials are supplied by a principal manufacturer for the manufacture of any goods on job work basis, then the same would not be entitled for SSI exemption (unless principal manufacturer himself is entitled for the SSI exemption) even if the job worker is otherwise entitled for the SSI exemption. This circular was further modified by Board's Circular No. 49/90/CX-8, dated 23.7.1990 (F.No. 267/ 144/89-CX-8) clarifying that if the relationship between the raw material supplier and the job worker is one of principal to principal, then the job worker will be the actual manufacturer and if from the facts of the case and the terms of agreement between the raw material supplier, and the job worker, It can be established that job worker is a dummy unit, or is just a hired labour of the raw material supplier, then the raw material supplier would be the principal manufacturer and the job worker would be his workman or hired labour. This clarification has been a subject matter of several audit paras and has also been examined by the public Accounts Committee.

2. The Public Accounts Committee in its 32nd Report (10th Lok Sabha). considered the matter and found certain deficiencies in the Circular No. 49/90 referred to above. The Committee viewed that the said Circular should have clearly defined terms such as raw material supplier/ job worker and their relationship and should have been legally vetted. The committee has desired that the said Circular should be modified taking into consideration the deficiencies noticed, in consultation with Law Ministry, with a view to eliminating any ambiguity and scope for misinterpretation which may not only involve the department in legal wrangles, but also effect revenue collection. The matter has accordingly been examined by the Board in consultation with Law Ministry.

3. It may be mentioned that the issue as to whether the raw material supplier or the job worker will be treated as manufacturer came for consideration before the CEGAT, Special Bench, New Delhi in the case of Kerala State Electricity Board v.

Collector of Central Excise . In that case the Kerala State Electricity Board used to get PSC/PCC and RCC poles produced according to their specification and satisfaction with the help of material supplied by them, through contractors. On detailed examination of the terms and conditions of the contract between the two, the CEGAT came to the conclusion that the contractors were not merely working as hired labour under the Board. Instead, the agreement between the Board and the contractors was on principal to principal basis. Accordingly, the Tribunal held the contractors to be the manufacturers in that case. The decision of the Tribunal has been confirmed by the Supreme Court. A copy of the -Tribunal's judgment is enclosed for your reference and guidance.

4. In view of the above, in cases where the goods are manufactured by a job worker out of raw materials received from a person or a manufacturer and where the relationship between the raw material supplier and the job worker is on principal to principal basis, the job worker will be the actual manufacturer. The question as to whether the relationship between the raw material supplier and the job worker is on principal to principal basis will depend on the relevant facts and circumstances of the case. This relationship could be ascertained with reference to the facts such as whether the job worker has received any financial assistance from the supplier of the raw material, whether the supplier of the raw material exercises any control over the management of the affairs of the job worker and whether the job worker is an independent entity and not merely a dummy or an agent of the raw marterial supplier. If it is found that the job worker is an independent entity and carries out the manufacturing activities independently and is not an agent, of the raw material supplier or a dummy, then the job worker will be treated to be the manufacturer.

5. The Board has also considered the terms "raw material supplier" and "job worker". "Raw material supplier" includes a person who supplies raw material to a job worker to manufacture a product or to undertake any process incidental or ancillary to the completion of a manufactured product or to do anything which is specified under the Central Excise and Salt Act, 1944, in relation to any goods, as amounting to manufacture 'job worker' includes a person or a manufacturer who manufactures a product or undertakes any process incidental or ancillary to the

completion of a manufactured product or does anything which is specified under the said Act, in relation to any goods, as amounting to manufacture from the raw material supplied by the other person.

6. The above principles may be kept in mind while assessing the goods.

9. As can be seen from the above extract the relationship between the raw material supplier and the job workers should be on principal to principal basis. The fact that the job workers have not received any financial assistance from the raw material suppliers would make the job workers as independent units and they are required to be treated as an independent one.

10. In the present case the raw material supplier are the trader. They are different units and have independent existence with separate business transaction. The appellant completed the job work of printing and returned the printed board to the Traders. The traders independently distributed the same to 49 units of scorer and laminator who brought out into existence the printed carton, which were different product classifiable under chapter sub-heading 4819.12 of CET. There is no charge that the traders were giving any financial assistance to the scorer and laminator unit. Hence, there is no relationship of hired labourer between them and the scorers and laminators. The records and evidence clearly show that the traders and appellant are independent in existence. The scorers and laminators are equally independent and their relationship is on principal to principal basis. The Commissioner has overlooked and has not analysed the evidence which has been placed before him. He has noted the nature of evidence but has refused to give a detailed finding and has also refused to follow the Board's circular and the findings rendered by the Commissioner in the case of M/s.

Coronation Litho Works in Order-in-Original No. 22/96. This Bench while remanding the matter clearly held that the facts of the present case and that of Coronation Litho Works were identical as can be seen from the Final Order No. 80 & 81/2001 dated 2.1.2001 in the appellant's own case. The findings given in para 6 to 8 are reproduced: 6. On a careful consideration of the rival submissions and on perusal of the records, we notice that the department had initiated proceedings against the appellant as well as M/s. Coronation Litho Works. The record clearly

indicates that the CLW was also a sister jnit of the appellant company. Both the units were receiving raw material from the same supplier. The set of facts are all identical.

The allegation in the SCN and the replies made by them are identical and the same as can be seen from the paper book produced. The Commissioner has passed identical orders in the above case and that of CLW case in Order-in-Original No.2/92 dated 30.12.92. Appeals had been filed by the appellants before the Tribunal. However, the present appeals had not been linked and the appeal of only Coronation Litho Works (CLW) came up for consideration. Several pleas had been advanced by that party and the Tribunal after a very detailed consideration and examining, at length, number of judgments including the Apex Court judgment rendered in The King v. Sussex Justices Ex.parte McCarthy, etc. concluded that the order of the Commissioner was bad in law and remanded the case for fresh adjudication. Ld. Senior Counsel has drawn great reference from this Tribunal judgment to argue that even the present order has to be held to be bad in law in the same light of earlier findings given by the Tribunal. Although, we notice that the Commissioner had made some confusion in recording the replies of the present appellant earlier in that case, while in the present case, the Commissioner has not committed such an error. Further, Ld. Sr. Counsel has shown to us that Commissioner has not examined fully the detailed explanation given by them in reply to the SCN and all the case-law cited has not been examined. To this extent, we agree with Ld.

Counsel's argument that the order is not a speaking order.

Furthermore, we notice that there were independent charges made against the appellants as well as the traders and traders were put to notice for penalty under Rule 209A. However, in the order the Commissioner has proceeded to hold that all the three units are one and the same. To that extent, the Commissioner has proceeded beyond the terms of the SCN. Further, we notice that the aspect of classification and the manufacture should have been addressed initially by the Commissioner and the Commissioner should have given a categorical finding whether mere printing would bring into existence a fully finished goods namely

printed cartons for the classification purpose under chapter sub-heading 4811.12 as held by him. Much water has flown after the order of the Commissioner has been passed. By several judgments being passed by the Tribunal and matter having reached Apex Court, the matter has culminated in the judgment of Rollatainers Ltd. (supra) and the similar judgment of Apex Court and also the Larger Bench judgment of the Tribunal.

Therefore, in the remanded matter of Coronation Litho Works, the Commissioner re-examined in the light of further development of law on classification of this product and concluded that the scorer is the manufacturer. We do not wish to give our opinion as we agree with the Ld. Counsel for remanding the matter for de novo consideration. As we agree with the Ld. Counsel's contention that there are several infirmities in the order and also which requires to be set aside on those grounds, therefore we set aside the impugned order and remand the case to Commissioner of Central Excise, Madurai for de novo consideration. The Commissioner shall grant personal hearing to the appellants and reconsider all the pleas made by the appellants in their reply to the SCN and in the light of the judgment of the Apex Court on the classification and also on manufacture.

7. At this stage, Ld. Counsel submits that appellant may be given liberty to adduce such other evidence as may be required to show that no duty liability affixed on them. The Commissioner shall grant full liberty to the appellants in the matter as pleaded by them.

Since the matter is an old one read judication shall be completed within three months from the date of receipt of this order. Both the appeals are allowed by way of remand.

8. We also notice that the impugned order confirms the fine of Rs. 15,000 on Sharaf Trading Company and Rs. 1 lac fine on Nava Bharat.

Enterprises as noted earlier. Their appeals are not considered and hence that portion of the order is not disturbed.

11. Ld. SDR has referred to large number of judgments noted in the impugned order. We notice that the issue of the trader being an independent manufacture or to be treated as a hired labourer was not the question in the cited cases. The definition of "manufacture" and as to whether one of the process was required to be considered as a process of manufacture for completing the activity and bringing into existence goods was the question under consideration. The question of relationship between different units was not a factor under consideration. The judgments are clearly therefore distinguishable and the same does not have any bearing on this case. In that view of the matter, we held that the trader and the appellant are independent units and so also scorer and laminator. The relationship is on principal to principal basis. Hence in the light of the judgment rendered in the case of Basant Industries (supra), Board's Circular referred to and the finding arrived by the Commissioner of Central Excise in Order-in-Original No. 22/96 dated 30.12.96 in the case of Coronation Litho Works and on re-examination of the entire evidence, we hold that the appellant were only performing the activity of printing on paper board, which are classifiable as printed board under chapter sub-heading 4811.90 of CET. The "cartons" are used for packaging goods and that product is considered as for packaging goods to be classified under chapter sub-heading 4819.12 of CET in the light of the Apex Court judgment rendered in the case of Rollatainers Ltd. v. Union of India (supra). The cartons come into existence in the hands of independent scorers and laminators and not in the hands of the appellant. Their relationship with the appellant is also on principal to principal basis and hence the show cause notice demanding duty on the appellant on the ground that the manufacture of printed carton by getting the work completed from hired labourers that is scorer and laminator is against the evidence on record. Hence the impugned order is set aside and appeals allowed.

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