

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Decision Delivered on: 15th September, 2011

+ **CEAC NO.27/2011**

S.R.V. PRINT PACK PVT. LTD.Appellant
Through: Ms. Aditi Pandey, Advocate.

-versus-

COMMISSIONER OF CENTRAL EXCISERespondent
Through: Mr. Mukesh Anand, Advocate with
Mr. Shailesh Tiwari and Mr. R.C.S.
Bhadoria, Advocates.

CORAM:

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers may be allowed to see the Order?
2. To be referred to the Reporter or not?
3. Whether the Order should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. Notice. Mr. Anand, Advocate, accepts notice on behalf of the Respondent.

2. Since both the parties are ready to argue the matter finally, we have heard the arguments and proceed to dictate the order.

3. This Appeal is filed against the Order dated 18th March, 2011 passed by the learned Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as 'the CESTAT') on the stay application filed by the Appellant in the Appeal which is still pending before the CESTAT. Vide impugned Order, the Appellant is directed to deposit 60% of the amount demanded within a period of eight weeks while waiving the amount of interest and penalty demanded by the Adjudicating Authority.

4. We may record that CESTAT has passed the impugned Order along with two other Appeals on identical facts on the same date i.e. 18th March, 2011. Orders were passed by the CESTAT directing those appellants as well to deposit 60% of the demanded amount.

5. In the instant case, the CESTAT has simply followed those orders in view of the commonality of facts and has directed the Appellant to make a deposit of 60% of the amount demanded as a pre-condition for hearing the Appeal. The cases referred in Paragraph 5 of the impugned Order include M/s A-One Laminators Pvt. Ltd. M/s A-One Laminators Pvt. Ltd. has

challenged the said order by filing CEAC No.15/2011 in this Court and that Appeal was allowed by this Court vide Order dated 4th July, 2011. Keeping in view that facts of the two cases are identical, and following the said order, we allow this Appeal as well.

6. We may put on record that the Appellant is engaged in printing and lamination of polyester film with metalized film/polyester film. These metalized films are polyester which are further converted into pouches and bags. The Appellant has been treating the aforesaid activity as manufacturing activity and has been paying the excise duty thereupon. On this premise, the Appellant took Cenvat credit on the duty paid on inputs. However, the Adjudicating Authority reversed the Cenvat credit and directed the Appellant to pay back the same holding that the aforesaid business activity of the Appellant does not amount to manufacture and, therefore, the Appellant was not entitled to credit on duty paid on inputs. In the orders dated 4th July, 2011 passed by this Court in the case of M/s A-One Laminators Pvt. Ltd., the contention of the Appellant, in

these circumstances, was noted and dealt with in the following manner:

“5. The neat submission made by the learned counsel for the appellant is that if the aforesaid process is not to be treated as manufacturing process and the appellants are not entitled to Cenvat credit on that basis, then the appellants were also not required to pay any excise duty. It is also pointed out that the excise duty paid by the appellants is much more than the Cenvat credit availed by the appellant. It is also pointed out that Cenvat credit was not claimed or paid to the appellant in cash but was utilized in payment of excise duty only. There is adequate force in this submission of the appellants and we are of the view that the CESTAT while passing the impugned order could not have glossed over these glaring facts which would clearly disclosed a prima facie case like this and the appellant should not be fastened with any liability of making pre-deposit, as directed.

6. In the aforesaid circumstances, are of the view that the appeals of the appellants should be heard without any condition of pre-deposit. These appeals are accordingly allowed and the impugned directions of the Tribunal are set aside.”

7. Mr. Mukesh Anand, learned Counsel appearing for the Respondent has drawn our attention to the orders passed by the Adjudicating Authority on the basis of which argument is raised that the Adjudicating Authority took into consideration Judgment of the Supreme Court in the case of *Metlex India Pvt. Ltd. vs. Commissioner of Central Excise*, 2004 (165) ELT 129,

wherein the Supreme Court held that the process of lamination/metallization of duty paid plastic films would not amount to manufacture. On this basis in Paragraph 20 of the order it is stated that the goods did not qualify the definition of manufacture and therefore no Cenvat credit was payable. At the same time we find that the Adjudicating Authority has not dealt with the issue that if the process was not to be treated as manufacture then why the excise duty was collected from the Appellant. Mr. Anand did not dispute that the excise duty paid by the Appellant is much more than the Cenvat credit paid. For this reason we are of the opinion that in a matter like this the Appeal should be heard without any condition of pre deposit.

A.K. SIKRI, J.

SIDDHARTH MRIDUL, J.

SEPTEMBER 15, 2011

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