AUTHORITY FOR ADVANCE RULINGS
(CENTRAL EXCISE, CUSTOMS AND SERVICE TAX)
HOTEL SAMRAT, 4TH FLOOR, KAUTILYA MARG, CHANAKYAPURI
NEW DELHI

The 24th August 2012

Ruling AAR/ CE/04/2012
In
Application No. AAR/44/CE/13/2012

Applicant	:	M/s. Amazon Seller Services Private Limited, 8th Floor, Brigade Gateway, 26/1, Dr. Raji Kumar Road, Bangalore-560055
Commissioner Concerned	:	The Commissioner of Central Excise, Thane-I, Navprabhat Chambers, 3rd Floor, Ranade Road, Dadar, Mumbai-400 028
Present for the Applicant	:	Sh. Sujit Ghosh, Advocate
Present for the Commissioner	:	Sh. Sumit Kumar (AR)

Ruling

(By Y.G.Parande)

This is an application filed under Section 23C of the Central Excise Act, 1944 by M/s Amazon Seller Services Private Limited, Bengaluru (the Applicant), which is a wholly owned subsidiary of M/s Amazon Asia Pacific Resources Pvt. Limited, Singapore. The question on which the applicant has sought a ruling is whether the activities, which it proposes to undertake in its warehouse, amount to manufacture for the purposes of Central Excise Act, 1944 (the Act, for short) and therefore liable to Central Excise duty.

2. The relevant facts having a bearing on the determination of the point at issue are as follows:

The applicant proposes to provide an online platform to facilitate the sale of goods by various merchants. Broadly, it will provide two types of services to the merchants who use its website and associated services, for which it would charge a fee to the merchants. First, the platform will furnish listing services to such merchants who will list and market their products on the website of the applicant. The same website will enable customers to place orders for purchase and delivery of the products selected by them. Secondly, the applicant would also provide logistical services (storage, packing and shipping) in relation to the goods sold by the merchants. For this the applicant proposes to establish a warehouse to store the merchants' products for their sale and onward shipment to merchants' customers. The activities that would be undertaken by the applicant in the warehouse are stated mainly to be assortment, packing and stickering (affixing of stickers) in relation to the goods purchased by the customers of the various merchants through the applicant's website. The merchants who wish to sell their goods through the applicant's website have to enter into an agreement with the applicant that sets out the terms and conditions of the contract between the two. It is necessary to note that the transaction of sale and purchase is strictly between the merchant and their customers and the applicant only provides the website and logistics services. It is the activities that the applicant performs in the warehouse that are the subject matter of the issue before us.

3. Based on the information furnished by the applicant, a short description of the sequential activities might be set down as below:

Step 1: Receipt of goods from the Merchants (or their suppliers) at warehouse;

Step2: **Debundling**: This activity involves the fragmentation of various products received in the warehouse from wholesale packages into individual retail packages.

Step3: **Sorting**: This involves re-arrangement of similar/identical products from wholesale packs and is undertaken where wholesale packs contain dissimilar articles and where two or more articles are to be sold as a set.

Step 4: **Sold as set stickering**: This is undertaken where a group of articles is to be sold as a set. They may also undertake bubble wrapping and sensitive material covering in the cases where such requirements exist, e.g. fragile goods, goods requiring special care etc.

Step5: **Bagging:** This protects the products from dust and facilitates ASIN/ FNSKU stickering.

Step 6: **Bundling**: The applicant may also resort to bundling where two or more individual products are to be sold as combined pack.

Step7: **Blank Stickering**: Where the articles sold by the merchant bear multiple barcodes leading to possible confusion, a blank sticker is affixed on the goods or the original packages to avoid confusion as to which barcode is the actual identifier.

Besides the above, ASIN stickering (a proprietary system of the applicant) is resorted to where the goods of a merchant either do not have a barcode or have a barcode which is not readable. This sticker basically provides the necessary details of the product such as brand, colour and size etc. According to the applicant, this is entirely the applicant's internal system for tracking and identifying the goods and is not due to any regulatory requirement.

Similarly, FNSKU stickering (another proprietary system) is a unique number assigned to each and every product belonging to a merchant. Here again the applicant submits this is entirely their internal system that assists in identification of the product and the merchant to whom it belongs and is .unrelated to any regulatory requirements.

4. After completion of the above activities the goods are stored in the applicant's warehouse. Upon a merchant's customer placing a purchase order on

the merchant's product through the applicant's online platform, the goods are boxed appropriately and dispatched to the customer.

5. The applicant also states that in addition to the foregoing activities certain other kinds of stickering is done for inventory management and warehouse operations. These are pallet label stickering, which refers to stickers put on the pallet to identify inbound shipments, goods to be returned to the merchant in some cases, and quality check stickering.

6. The applicant further states that none of the activities proposed to be performed alter the primary packing or the original labeling affixed by the merchant under applicable regulations. Also no change is made in the MRP/RSP of any item received in the warehouse. All the labeling requirements are required to be fulfilled by merchants themselves and the goods as received in the applicant's warehouse would have the MRP/RSP already pre-affixed or pre-printed. The applicant claims that all their activities are intended to protect the merchant's goods, facilitate inventory management and the logistics of storage, retrieval, shipment and transportation of goods. None of the activities results in any value addition *vis-à-vis* the product itself.

7. It is in the above factual background that the applicant has sought a ruling as to whether the proposed activities would constitute "manufacture" under Section 2(f) of the Central Excise Act, 1944. Its own view is that they would not, while the Commissioner argues that they would.

8. The Act defines "manufacture" thus:

> Sec. 2(f) "manufacture" includes any process,-
>
> (i) incidental or ancillary to the completion of a manufactured product;
>
> (ii) which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture; or

(iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labeling or relabeling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer.

9. There is a large body of case law on what constitutes “manufacture” for the purposes of the Act. The principle that has emerged is that for a process to be regarded as “manufacture” it must result in the emergence of a new product having its own distinct identity, character and use. That cannot be said to be the case here. On the whole we can say that it is common ground between the parties that in its ordinary sense, the expression manufacture cannot encompass the activities of the applicant and therefore clause (i) of Sec. 2(f) is not relevant. Even though in the Commissioner’s initial comments vide his letter dated April 10, 2012, a general statement was made that products other than those of certain chapters such as Ch. 20, 33, 62, 70 etc. would be covered by the main definition of manufacture, the learned AR during the hearing fairly stated that the activities in question could not amount to manufacture in the ordinary sense but became so only due to the deeming fiction. The applicant too has addressed detailed arguments on why their activities do not meet the ordinary definition of manufacture, stating that contrary to the AR’s submission, the primary definition of “manufacture” vide S. 2(f)(i) is relevant, albeit only for a few items, namely printed books, sunglasses and sporting/gaming articles. However, given the nature of activities, and considering that there is no serious argument even from the Revenue that S. 2(f)(i) is attracted, we feel that no purpose would be served by going into the amplitude of this provision. The issue really arises in the context of the special meaning assigned to “manufacture” through the legal fiction created in clauses (ii) and (iii) of the definition and it is with this aspect that we shall deal.

10. Clauses (ii) and (iii) of Sec. 2(f) create legal fiction in two situations. First, according to Cl. (ii), a process is deemed to be manufacture if it is so specified in any of the section or chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 (the Tariff, for short). Secondly, according to Cl. (iii), in relation to

the goods mentioned in the Third Schedule to the Tariff, any process that involves packing or repacking of such goods in a unit container or labeling or relabeling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer, is deemed to be amounting to manufacture.

11. Examples of the former are to be found in many section and chapter notes of the Tariff. As illustrations, instances that are relevant to the facts of this application can be found in the notes to Chapters 20, 62 and 70 of the Tariff. Broadly, in terms of these notes, the following processes have been deemed to be amounting to manufacture:

a. Repacking from bulk to retail packs;
b. Labeling or relabeling of containers intended for consumers; or
c. Adoption of any other treatment to render the product marketable to consumer.

Examples of the latter that the applicant deals with would be Beauty or makeup preparations (HS Code 3304), Water filters and purifiers (HS Code 8421), Cellular or mobile phones and telephones (HS Code 8517), Watches (HS Code 9101) etc. These are all goods mentioned in the Third Schedule to the Tariff and, in relation to them, the following processes would be deemed to be amounting to manufacture:

a. Packing or repacking them in a unit container;
b. Labeling or relabeling of the goods including the declaration or alteration of retail sale price on it; or
c. Adoption of any other treatment on such goods to render the product marketable to consumer.

While in terms of the chapter notes in different chapters of the Tariff a large number of processes, such as printing, decorating etc. are deemed to amount to manufacture in relation to goods of different chapters, having regard to the activities of the applicant, we are only concerned with the processes mentioned above and therefore the discussion is limited to their scope.

12. The rival submissions may be summarized as below.

Revenue

13. Revenue argues that:

A. Packing and repacking and labeling and relabeling are clearly specified as processes of manufacture in the Act. They rely on CESTAT's order in Nitin Patki vs CCE, Thane II [2011 (273) ELT 104 (Tri-Mumbai)] in which the Tribunal held that affixing of MRP stickers and bar codes amounted to manufacture. They refer to CESTAT's order in Cipla vs CCE, Raigad [2007 (208) ELT 140 (Tri – Mumbai)] in which the tribunal held that de-foiling and repacking of medicines did amount to process of manufacture.

B. in S.D. Fine Chemicals [1995 (77) ELT 49 (SC)] it was held that the definition of manufacture is expansive and includes processes deemed to be manufacture even if they were not actually manufacture. Deemed manufacture has been upheld by the Supreme Court in CCE, Goa vs M/s Phil Corporation Ltd. [2008 (223) ELT 9(SC)].

C. processes of the applicant clearly fall within the scope of "labeling or relabeling", "packing or repacking" or "adoption of any other treatment to render the products marketable to the consumer". Hence, they would be squarely covered by the definition of manufacture in the Act.

14. During the hearing the learned AR argued that all the activities of the applicant are designed to make the goods available to the consumer and therefore they amounted to making the goods marketable. According to him, these are essential processes and without them goods would not be marketable. He submitted that each of the processes by itself could be regarded as satisfying the legal fiction as the goods as they are shipped to the warehouse of the applicant were not marketable in the given circumstances. He relied on the CBEC circular F. No. 576/13 – 2001 CX dated 16/5/2001. According to him, the term 'marketable' has not been defined in the Act and its meaning will have to be based on the understanding of the expression by people in the trade and industry and those

involved in marketing. As was observed by the Supreme Court in CCE, Kanpur vs Krishna Carbon Paper [(1989) 1SCC 150] it is a well settled principle of construction that where a word has a scientific or technical meaning and also an ordinary meaning according to common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the Legislature. He further argued that the applicant's propositions would amount to reading words in the statute that do not exist therein, thereby limiting the scope of the deeming fiction. This is impermissible. As held by the Supreme Court in State of Bombay vs Pandurang Vinayak (AIR 1953 SC 244), in interpreting a provision creating a legal fiction the Court is to ascertain the purpose of the fiction and assume all the facts and consequences which are incidental or inevitable corollaries for giving effect to the fiction. Therefore, the fiction must be carried to its logical end.

15. He submits that the expression "marketing" has a very wide connotation and includes all activities, including supply chain management that are conducted with a view to reaching the goods to the customer. He relies on the book "Marketing Management" by Philip Kotler et al to substantiate this argument. In dealing with marketing management, the authors touch upon a wide canvas of activities that cover the entire supply chain management – from inbound movement of inputs to outbound movement of final goods through diverse distribution channels. Market logistics thus includes planning flows of material to meet demand and involves four key elements

1. Deciding company's value proposition to its customers
2. Deciding channel design for reaching customers effectively
3. Implementing efficient logistics including warehouse and material management and transportation management.
4. Using technology for efficient and effective operations.

According to him all related activities amount to making goods marketable and each of the activities undertaken by the applicant is intended to make the goods available to the consumer and thus has to be regarded as making them marketable. He also submits that the goods as they are received in the

warehouse from merchants are clearly not marketable. The learned AR also submits that the CESTAT orders cited by the applicant, to the extent they are contrary to Supreme Court's decisions, cannot have any precedential value as has been held by the Supreme Court in Motor Industries Co. Ltd. vs Commissioner of Customs [2009 (244) ELT 4 (SC)]. Relying on Principles of Statutory Interpretation by Justice G.P. Singh, he reiterates that full meaning is to be given to the intention of legislature in interpreting statutes that create deeming fiction.

Applicant

16. The applicant, on the other hand, contends that none of the activities occurring in its warehouse can come within the mischief of the deeming fiction. Their main arguments are:

1. Their activities do not come within the ambit of packing or repacking contemplated in either cl. (ii) or (iii) of S. 2(f) of the Act. These provisions contemplate either (a) packing or repacking from bulk to retail packs or (b) packing or repacking of goods in unit containers. In their case, they do not interfere with the retail packing of the goods received from merchants. The goods are already in retail packs with the labeling of the merchant carrying information prescribed under relevant regulations. They rely on CESTAT's order in Johnson and Johnson vs CCE [2003 (156) ELT 134 (Tri)] which was later upheld by the Supreme Court [2005 (188) ELT 467 (SC)] in which it was held that mere repacking was not enough and it had to be repacking from bulk to retail packs. And bulk packing is different from wholesale packs. Bulk means the goods would either be in loose condition or in quantities that are not suitable for commercial sale. Conversion from wholesale to retail packing would not involve repacking as all that is required is to take the retail pack out of the wholesale pack in which it has been put. Conversion from bulk would on the other hand require such repacking. The goods they receive are in wholesale packs as distinct from bulk packing. Hence, theirs is not a case of repacking amounting to

manufacture. Further, “Unit Container” is defined in Note 5 to Chapter 4 as a container, whether large or small (for example tin, can, box, jar, bottle, bag or carton, drum, barrel or canister) designed to hold predetermined quantity or number. The secondary packing done by them for logistical reasons is not a unit container as it is not designed to hold any predetermined quantity or number of the goods dispatched from their warehouse. This packing is in the nature of transit packing and the same cartons can be used for a large variety of diverse goods. In fact, the goods as received from the merchants would mostly be in unit containers and in no case do they tamper with the original retail packing of merchants. They rely on Dodsal Corporation Vs CCE [2011 (263) ELT 719 (Tri)] and CCE vs Shalimar Super Foods [2007 (210) ELT 695 (Tri)] to support the argument that the secondary packing resorted to by them cannot be equated with packing in unit containers.

2. As regards labeling or relabeling, they argue the word ‘label’ has a definite connotation. As noted by the Supreme Court in Metagraphs Pvt. Ltd. vs CCE [1996 (88) ELT 630 (SC)], it imparts information to the customer about the product on the basis of which he chooses whether or not to buy the product. A similar view was held in Taxchem vs CCE [2003 (151) ELT 610 (Tri)], which was affirmed by the Supreme Court [2006 (202) ELT A21]. Referring to the explanation A to notification 8/98 – CE dated 2/6/98, which explains “brand name” or “trade name” for the purpose of that notification, they submit that there a label has been used synonymously with a symbol, monogram etc. that indicate a connection in the course of trade between the goods and the person using such symbol etc. as noted by CESTAT in Ammonia Supply Co. vs CCE [2001 (131) ELT 626 (Tri). In Shreeleathers vs CCE [2012 (275) ELT 225 (Tri)] it was held that fixing of barcodes on card board boxes for delivery of footwear to showrooms etc. would not amount to manufacture. In Manisha International, Chemcrown and Panchsheel Soap Factory (supra) also it was held that fixing of stickers would not amount to labeling or relabeling.

A similar view was expressed by the Supreme Court in CCE, Mumbai vs BOC (I) Ltd. [2008 (226) ELT 323 (SC)]. Following these decisions, the CESTAT in Chemcrown Export Ltd vs CCE [2010 (256) ELT 108 (TRI)] held that merely removing old label and putting a new label did not amount to manufacture. Again in disposing of government's appeal against CESTAT's order in German Remedies vs CCE [2006 (204) ELT A42 (SC)], the Supreme Court followed the decision in Johnson and Johnson case. The CESTAT had held that affixing of labels for complying with the requirements of Standards of Weights and Measurements Act or Drugs and Cosmetics of Act did not attract the provisions of Note 5 to Chap. 30 of the Tariff and hence the activity did not amount to manufacture. The same view has been held in a number of cases CCE vs Manisha International Pvt. Ltd [2003 (152) ELT 345 (Tri)], CCE vs Panchsheel Soap Factory [2002 (145) ELT 527 (Tri)]. In their case, the proprietary bar codes put by them do not convey any information to the customer and cannot be regarded as labels contemplated in S. 2(f) (ii) or (iii). As far as they are concerned, the fixing of stickers (referred to as stickering) is entirely from an inventory management and logistical perspective and does not convey any information to the customer or consumer. In terms of their agreement with the merchants, the compliance with the applicable marking, labeling and other statutory requirements is the responsibility of the merchants, which they are required to ensure before the goods are received in the applicant's warehouse. They make no alteration in the labels already affixed on the packages of goods by the merchant. Their logo affixed on the outward transit cartons, bubble wraps etc. cannot be equated with the process of labeling or relabeling contemplated in the Act. Therefore, the different types of stickering done by them cannot come within the meaning of the expression labeling or relabeling for the purposes of the Act and would not amount to manufacture.

3. According to them the reliance placed by the Commissioner on the decisions in Nitin Patki and Cipla cases is wholly misplaced as the facts of those two cases are completely different from theirs. In Nitin Patki, the

assesse was putting fresh labels with higher MRP while in Cipla tablet strips were being defoiled and repacked and the activities were not merely fixing of stickers for internal purposes.

4. Further, none of their activities can be regarded as “adoption any other treatment on the goods to render the product marketable”. Relying on the dictionary meaning of ‘render’, they argue that the goods as received are already fully marketable, capable of being sold as such and nothing they do by way of assortment, stickering etc. in any way affects or enhances their marketability. Customers would be attracted to their site by various factors such as discounts, pricing below the RSP, convenience of home delivery and other service offerings negotiated with the merchant. These are normal marketing or sales promotion activities which are dependent on the merchants’ strategies and policies. In no way can the processes in their warehouse be regarded as a treatment to make the products marketable to the consumer. The goods as received in the warehouse are already marketable and any treatment done on goods that are already marketable cannot amount to manufacture. They rely on Mega Pro (India) vs CCE [2007 (216) ELT 637 (Tri)] in which it was held that “making the product marketable” could only mean making the product ready and fit for marketing and not making the product ready for every stage of sale. Similarly in Lupin Laboratories vs CCE [2002 (139) ELT 366 (Tri)], the Tribunal, relying on its earlier order in the case of Lakme Lever, held that the activity of putting tablets of different anti-TB drugs into a combination pack of a day’s dosage for the convenience of users did not amount to manufacture as the tablet, individually were already marketable. This decision was affirmed by the Supreme Court as the Civil Appeal against was dismissed [2004 (166) ELT A116 (SC)]. Even if such treatment may enhance the marketability of the goods, as has been held in Lakme Lever vs CCE [2001 (127) ELT 790] and Adi Enterprises vs CCE [2002 (144) ELT 379], it does not amount to manufacture if the products in question were already marketable. It was held that combining various items in a combination pack or a set did not amount to manufacture as each of the

items were already marketable and the act of combining did not impart any attribute of marketability that they did not possess earlier.

5. They rely on the Ministry of Finance Circular F.N. 354/285/2011 – TRU dated Dec. 8, 2011 in which TRU has explained that the purpose of the provisions of S. 2(f) (ii) and (iii) is to capture value addition and clarified that the activity of repacking pre-packed duty paid goods in retail packs into boxes for transit bearing the name (of the firm in that case) and details of call centre and website etc. cannot attract excise duty.
6. With regard to the argument based on Kotler's Marketing Management, they submit that it would be incorrect to equate "marketability" as contemplated in the Act with the definition of marketing. The term "marketability" has acquired a specific connotation through various judicial rulings and it is this meaning that is relevant for adjudging excisability. According to the case law cited by them "marketable" refers to a product with is fit and ready for marketing. Kotler's textbook on the other hand talks of marketing embracing all aspects of customer experience "meaning that marketing must properly manage all touch points – store layout, package design, product functions, employee training and shipping and logistics method". This is obviously a very wide definition and has no relevance to the question of excisability.
7. Acceptance of the department's argument would mean that every retailer, large or small, will become a manufacturer and there would be no limit to excise levy right up to the final sale. There is no warrant in law for stretching the definition of manufacture to such absurd extremities.
8. What they provide at the warehouse are primarily logistical services such as storage, inventory management and dispatch. The applicant's customers are themselves largely (over 95%) traders and not manufacturers. Thus the applicant is primarily a logistics service provider. The processes carried out by the applicant are already being carried out by a large number of businesses in the conventional supply chain without any excise implications. In fact their activities properly fall within the scope

of “Business Auxiliary Service” and they propose to take registration and pay service tax accordingly. The entire question is therefore revenue neutral.

17. We have considered the submissions. As far as the cases relied upon by the Commissioner are concerned, viz Nitin Patki, Cipla, S.D. Fine Chemicals and Phil Corporation, they are clearly distinguishable on facts. They involved something more than just affixing of labels and cannot be compared with the facts of the present case. As regards the observation in these decisions (i.e. S.D.Fine Chemicals and Phil Corporation) that, by virtue of the deeming fiction, processes that might not ordinarily be “manufacture” would be manufacture for the purpose of excise levy, it is to be noted that the issue here is not the validity of the deeming fiction but whether it applies to the facts at hand. Besides, S.D.Fine Chemicals was a case where the Supreme Court remanded the matter to the third Member of the Tribunal with a specific direction as her findings were not clear and, as pointed out by the applicant, the final finding was that the process (in that case purification) did not constitute manufacture.[1997(91) ELT (10 (Tri)]

18. The main contention of the applicant is that all their activities in the warehouse are from a logistical perspective and they would not be making any changes or alterations in the retail packs of the merchants. All the labeling requirements, declaration of MRP/RSP etc. have to be complied with by the merchants and they have no role in this nor do they make any changes in respect. The only stipulation they require from their merchants is to maintain price parity with vis a vis other channels. The sales happen at or below the MRP/RSP depending upon the sales promotion and marketing strategies of the merchants who use their website. This has not been controverted. Against that background, it needs to be considered whether the activities of affixation of different stickers, barcodes, assortment, debundling and bundling of different goods etc. can be regarded as “manufacture” within the meaning of S. 2(f) (ii) and (iii) of the Act.

19. It is evident that the intention of the legislature in creating the deeming fiction of “manufacture” is to capture the value addition that occurs in course of making goods marketable, through processes that would not fall within the ordinary definition of manufacture. An example would be the one mentioned in the Tribunal’s order in Taxchem (supra), which was also upheld by the Supreme Court, of a cosmetic preparation being presented in an attractive jar the cost of which could exceed that of the contents. Similarly a brand creates value in the eyes of the customer and commands premium. In deeming the specified processes to be manufacture, it is this value addition that is sought to be captured. It cannot be the intention to stretch the definition of manufacture indefinitely. To do so would be do violence to the basic concept of excise. It is common experience that most retailers, including corner grocers, often put their own label of price on the goods they sell. If each and every case of putting such stickers is to be regarded as manufacture, every trade shall be a manufacturer and the very nature of excise duty, which is a tax on manufacture, shall be called into question. It is true that full effect has to be given to a piece of legal fiction. However, in doing so, one must be guided by the purpose for which the fiction has been created and “after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to giving effect to that fiction. **But in so construing the fiction it is not to be extended beyond the purpose for which it is created**”. As observed in Bengal Immunity Co. Ltd vs State of Bihar (AIR 1955 SC 661) “legal fictions are created only for some definite purpose”, and a legal fiction is to be limited to the purpose for which it was created and should not be extended beyond that legitimate field” (vide Principles of Statutory Interpretation by Justice G.P.Singh. Emphasis added). It is this principle that courts have followed in interpreting these provisions. Based on the decisions cited, it is clear that each and every case of fixing a label or a sticker cannot come within the purview of S. 2(f) (ii) and (iii). Value addition is a relevant consideration. The operations of the applicant may introduce greater efficiencies by improved logistics thereby reducing costs and permitting more competitive pricing. That indeed appears to be their value proposition to their customers. But, subject to the rider that the merchants maintain channel parity, viz their offering through the

applicant's online channel must be equal to or exceed the other channels of distribution, the MRP/RSP is decided by the merchant and not altered by the applicant. One fails to see what value addition is happening in the present case, where admittedly the position is that the original labels including the declaration of MRP/RSP is not being altered by the applicant. It is also clear that "label" within the meaning of these provisions has to be one that conveys information relating to the product and its producer or supplier to the consumer. Stickers that are affixed to goods for the purposes of inventory management, and which convey no information about the product to the consumer cannot come within its scope.

20. As regards packing or repacking, it is clear from the facts that this is neither a case of repacking from bulk to retail packs nor one of packing into unit containers. The outer packing adopted for safety during transit cannot be equated with the processes of packing and repacking contemplated in S. 2(f)(ii) and (iii) of the Act.

21. Turning now to the other proposition of the Ld. AR, that the expression "adoption of any other treatment to render the product marketable to consumer" encompasses all activities that lead to the goods reaching the consumer, we are unable to accept this proposition based on the definition of marketing. We are not persuaded that "marketing" and "marketability" can be treated synonymously, as he would wish us to do. The expressions "marketable" or "marketability" have a specific connotation in excise law, which has evolved through a series of judicial rulings. Marketability has been regarded as an essential ingredient in determining whether goods are excisable or not and "marketable" has been held to mean that goods are ready and fit for sale or are capable of being bought and sold. On the other hand, marketing as a discipline of business management is quite another thing. It is indeed a core element of business strategy and is bound to encompass a vast range of activities that enable businesses to create value in the eyes of their customers and compete effectively with their competitors. The contexts are completely different and, considering that the concept of marketability is well settled in excise law, we find no valid basis for arriving at a conclusion based on

the definition of marketing as adopted in the study of business management. We also fail to see, in the facts of the case, what is the “treatment” that is being adopted on the goods to make them marketable.

22. We find that no reason has been given by the Ld. AR for the argument that the goods as they are received by the applicant are not marketable. The applicant’s contention that the goods as received would be in retail packages with all required labeling and marking has not been disputed. We have to bear in mind that the applicant’s facility is only one of the channels for distribution available to the merchants who use it. The products that they list on the applicant’s website would also, in the vast majority of cases, get distributed and sold through other conventional channels of retail trade and in the very form in which they are received in the applicant’s warehouse. Hence the conclusion that inexorably follows is that they are already marketable.

23. As far as reliance on the CBEC circular dated 16/5/2001 is concerned we find that it was issued in the context of labeling for the purposes of Drugs and Cosmetics Act, 1940. Admittedly, no such labeling happens here. Further, the 2001 circular can be said to have been overtaken, so far as the facts in the present application are concerned, by the TRU clarification F. No. 354/285/2011-TRU dated 8/12/2012. The said circular clearly elucidates the purpose behind the deeming fiction and, according to us, would apply to the fact of the present case.

24. Looking at the issue holistically as well, what the applicant is providing is an online retail distribution channel and the associated logistical services. His value proposition to customers (which would include both the participating merchants and consumers) would be efficiencies thereby bringing down costs and enhancing competitive pricing and convenience. His role therefore does come across clearly as one of service provider.

25. For the foregoing reasons, we find ourselves in agreement with views of the applicant and hold that the activities described in the application do not amount to manufacture within the meaning of S. 2(f) of the Central Excise Act, 1944 and we rule accordingly. Although it is not directly the issue before us, we have noted the averment of the applicant that according to them they are a service provider liable to pay service tax on the activities in respect of which they have sought this ruling and would be taking registration for this purpose.

26. Pronounced on this day of August 24, 2012.

Sd/-

(Y.G.Parande)
Member

Sd/-

(P.K. Balasubramanyan)
Chairman