

AUTHORITY FOR ADVANCE RULINGS
(Central Excise, Customs and Service Tax)
Hotel Samrat, 4th Floor, Kautilya Marg, Chanakyapuri
New Delhi

Present:

Justice V.S. Sirpurkar (Chairman)
Shri S.S.Rana (Member)
Shri R.S.Shukla (Member)

The 19th day of February, 2016

Ruling No. AAR/CE/ 06 /2016
in

Application No. AAR/44/CE/30 /2013

Name & address of the applicant : M/s Amazon Seller Services Private Limited,
Bangalore

Commissioners concerned : The Commissioner of Central Excise,
Thane-I, Navprabhat Chambers, 3rd Floor,
Ranade Road, Dadar(West),
Mumbai-400028

Present for the applicant : Shri Tarun Jain, Advocate,
Shri Shankey Agarwal, Advocate

Present for the Department : Shri Amresh Jain(AR)

Ruling

M/s Amazon Seller Services Private Limited (hereinafter also referred to as applicant) is a private limited company incorporated in India under the Companies Act, 1956. Applicant provides an IT enabled / online platform to third party manufacturers / merchants to list and market their products; that this platform is offered on www.amazon.in for which a fee is charged to merchants for such online listing services; that for this purpose, as an additional service offering, the applicant has established a fulfillment center at the said warehouse(s) that receives, stores, packages and ship the products listed online for sale by the merchant to the customers purchasing the products; that the sale of goods will be directly by the merchants; that the applicant only operates as an IT enabled

platform which enables the sale by listing the goods and by providing incidental services such as stocking the goods in its warehouse and undertaking activities such as assortment, packing and stickering prior to delivery of the goods to the merchant's customer; that after completion of the above activities, the goods are stored in the applicant's warehouse; that upon a merchant's customer placing a purchase order on the merchant's product through the applicant's online platform, the goods are appropriately dispatched to the customer after performing the necessary activities. The applicant has already sought the advance ruling in respect of such activities undertaken by them at the warehouse(s) prior to delivery of the goods to the merchant's customer and it was ruled that such activities do not amount to "manufacture" or "deemed manufacture" as per Section 2(f) of the Central Excise Act, 1944.

2. The applicant now proposes to offer additional activities to its clients (i.e., merchants) besides assortment, packing and stickering activities which were the subject matter of the earlier advance ruling. The additional activities would typically include activities such as inspection, cleaning, touching-up and re-stitching, etc on goods received by the applicant from the merchants in the warehouse(s) or on shipment of goods to the merchant's customer or on customer returns for which the applicant may charge a separate consideration / fees; such consideration / fees would be subject to Service Tax. The proposed new activities on which the current ruling is being sought by the applicant would be undertaken at the said warehouse(s) and at other warehouses operated / to be operated by the applicant or third parties on its behalf or at a premises located outside the warehouse of the applicant wherein such premises is either owned, leased or is in the possession of the applicant under such other similar arrangement.

3. Applicant submits that the activities proposed to be performed by the applicant would not alter the primary packing or original labeling affixed by the merchant of the goods under the applicable regulations. Further, all the proposed activities would not involve affixation, alteration or change in the Maximum Retail Price / Retail Sales Price ('MRP/RSP') of any product / item received in the warehouse. All items, where required, would already have an MRP / RSP affixed

or pre-printed. That the activities proposed to be undertaken by the applicant at the inbound, outbound and customer return's stage is not different from the conventional supply chain adopted by the consumer goods industry and the overall intent is to facilitate the sale of products to the merchant's customers. No value addition is undertaken vis-à-vis the products itself.

4. Applicant seeks an advance ruling on the following question:

Whether following additional activities proposed to be undertaken by the applicant would be regarded as manufacture or deemed manufacture under Section 2(f) of the Central Excise Act, 1944;

- 1. Inspection, testing and installing batteries*
- 2. Cleaning, lint brushing and deodorizing*
- 3. Touching up and re-stitching*
- 4. Filing, debundling and jewellery correction*
- 5. Activities related to spectacles and frames*
- 6. Folding, hanging and ironing*
- 7. Polishing, shinning and coating*
- 8. Tagging*
- 9. Freebies*
- 10. Protective stickering*
- 11. Placing the products in original box*
- 12. Inserting warranty card*
- 13. Inserting moisture absorbing tablets*
- 14. Inserting books mark*
- 15. Replacing shoe laces*

5. Revenue in response to the application replied that all the activities mentioned at S. No. 1 to S. No.15 above will not constitute manufacture, except for activities relating to spectacles and frames (placing in case, tightening screws on eyewear)(S. No. 5) and tagging of jewellery (S. No. 8), which are explained by the applicant, as under;

Various activities related to spectacles and frames are undertaken in the warehouse. The illustrative list of activities performed under this category is:

Placing spectacles/sunglasses frames inside cases: Cases are generally received separately from the spectacles and sunglasses from the Manufacturers. Under this activity, matching case with sunglasses/spectacles is identified and is kept inside the case.

Tightening screws on eyewear: In case of customer returns, screws at the temples and hinges on the eyewear can become loose during storage. Such screws are tightened with the help of a screwdriver. This activity may also be carried when the items are received from Manufactures and it is noticed that the screws are loose.

6. Revenue submits that when suitable lenses are fitted in frames, only the product can be sold as spectacles/sunglasses. This activity is rendering the product marketable since without proper lenses, the said product can be treated merely as frame and not as spectacles/sunglasses and cannot be sold to the customer. Also a differently known distinct commercial product comes into existence. Applicant relied upon Hon'ble Calcutta High Court judgment in case of Bholanath Sreemony Vs Additional Commissioner of Commercial Taxes and other MANU/WB/0397/1978 wherein it was observed that it cannot, by any stretch of imagination, be held that the petitioner is a manufacturer of spectacles by assembling of frames of the spectacles and thereafter upon prescription fitting glasses to individual frames and then selling them to the customers. Assembly of parts of the frames does not create something new and hence it cannot be termed to be manufacture to come within the meaning of Section 4(5) of that Act. In view of Hon'ble High Court judgment, we hold that the activity relating to spectacles and frames (placing in case, tightening screws on eyewear) will not amount to manufacture under Section 2(f) *ibid*.

Freebies: This activity involves putting freebies of any category that are either received from merchants or offered by the applicant with other products to be sold together. For instance, a Targus bag may be sold with every HP laptop as a combined package. The activity of putting freebies on the product does not result

in opening or altering the primary packaging. Generally, the freebies offered at the online platform does not enhance the price of the original product and the offer price of the product would remain same as it was before the freebies being offered. The intent of the freebies is to offer incentives to customers to purchase items on the platform to promote the business of the manufacturer/ merchants and the applicant.

7. Revenue submits that if combo packs of certain products are prepared in such a way that additional labels, stickers, MRP tags are supplied on the products, then said activity shall appear to be amounting to manufacture under Section 2 (f) of the Central Excise Act, 1944 and Third Schedule to the CETA, 1985 depending on the goods involved. We observe that the applicant in their application had made it clear that all the proposed activities would not involve affixation, alteration or change in the Maximum Retail Price / Retail Sales Price ('MRP/RSP') of any product / item received in the warehouse. Further, all items, where required, would already have an MRP / RSP affixed or pre-printed. In view of this, we hold that putting of free items with other products, in this case, shall not amount to manufacture under Section 2(f) *ibid*.

Tagging: This activity involves reapplying the tags in case they have come out. The activity does not involve applying applicant's additional tag. It involves flipping the tags of items for which the tags are not visible. This method is used when ASIN Stickers or Blank Stickers is not sufficient. Ex: A shirt in polybag – with the barcode tag overturned. The activity involves opening the bag, flipping the tag and the re-sealing the bag. In case where jewellery has to be shipped to the customers, an applicant's tag is applied while placing the item in the box to prevent the return of counterfeit items. This activity serves as a way to identify the particular unit is sent to the customer.

8. Revenue submits that on verification of the Xerox copies of the photographs of the tags submitted by the applicant on 16.11.2015, it is seen that they contain the names of brands such as "NEXT Jewellery", "Bare Monkey", "Abraxas" etc. The applicant is attaching these tags to the jewellery before dispatch. It has to be ascertained whether the said brands are registered brands

and as to whether the said brands' name is already embossed on the said jewellery or otherwise. If the applicant is tagging on bare jewellery without any brand mark and if they are registered jewellery brands, then, the activity may amount to manufacture. However, the assessee has not submitted the samples of the jewellery till date.

9. In this connection, applicant has relied upon Central Board of Excise & Customs (CBEC) clarification issued from F. No. 354/38/2011-TRU dated 02.03.2012. Relevant paragraph is reproduced as under:

5. It is clarified that the excise duty leviable on precious metal jewellery, manufactured or sold under a brand name, is attracted only on such jewellery on which the trade/brand name or any such mark or symbol or even a number which is cross referred with such trade/brand name (not being a house mark used by jewellers for identification of jewellery at the time of exchange/resale) is indelibly marked or embossed. If such brand name is not affixed or embossed on the jewellery or article itself but appears on the packing such as the jewellery box or pouch or even on the warranty card or certificate of quality, such goods will not be treated as branded jewellery and thus will not be liable to excise duty. The clarification issued in this regard vide D.O.F. No. B-1/3/2011-TRU, dated the 25th March, 2011 stands modified to this extent.

10. It is observed that as per the clarification dated 02.03.2012 issued by CBEC, if brand name is not affixed or embossed on the jewellery but appears on the packing, such as jewellery box or pouch or warranty card or certificate of quality, such goods will not be treated as branded jewellery and thus will not be liable to excise duty. In the instant case, the applicant has submitted that the tag is applied by them while placing the jewellery in the box to prevent return of counterfeit items. Application does not mention that applicant would affix or emboss brand name on the jewellery. Tagging in this case is not embossing or affixing. Therefore, the activity of tagging of jewellery would not amount to manufacture under Section 2(f) *ibid*.

11. In view of the above, we hold that following *activities undertaken by the applicant would not amount to manufacture or deemed manufacture under*

Section 2(f) of the Central Excise Act, 1944, namely; Inspection, testing and installing batteries, Cleaning, lint brushing and deodorizing, Touching up and re-stitching, Filing, debundling and jewellery correction, Activities related to spectacles and frames, Folding, hanging and ironing, Polishing, shinning and coating, Tagging, Freebies, Protective stickering, Placing the products in original box, Inserting warranty card, Inserting moisture absorbing tablets, Inserting books mark and Replacing shoe laces.

Sd/
(S.S.Rana)
Member(R)

Sd/
(V.S.Sirpurkar)
Chairman

Sd/
(R.S.Shukla)
Member(L)

