

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/ 05 /2016
in

Application No. AAR/44/CE/29 /2013

Name & address of the applicant : M/s Amazon Wholesale (India) Private
New Delhi

Commissioners concerned : The Commissioner of Central Excise,
Bangalore-I, C.R.Building, Queen's Road,
Bengaluru-560001

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

Present for the Department : Shri Amresh Jain(AR)

Ruling

M/s Amazon Wholesale (India) Private Ltd (hereinafter also referred to as the applicant) is a private limited company incorporated in India under the Companies Act, 1956 and the Companies Act, 2013. The main objects of the applicant *inter alia* includes; to carry on the business of wholesale trading of all kinds of goods and products including all kinds of consumer goods, commodities, durables, merchandise, articles and products either physically or online platform or through any other mode including engaging in B2B e-commerce in the nature wholesale distribution of all kinds of goods and commodities in India or in any part of the world; to carry on the business of storage, warehousing, transportation and handling of all kinds of products, goods, and articles from one place to another either by land, air, sea or by means of motor vehicles and/or aero-planes or by any other means of transport; to carry on the business of marketing, advertising and promotional support for all kinds of consumer goods and products on its

own account or on behalf of persons, companies located in and outside India; and to engage in the business (whether as owner, manager, operator, consultant, partner, adviser, etc) of creating technology and developing software for the purpose of facilitating wholesale trading, online sale and purchase of any kinds of goods, commodities and merchandise and to carry out any and all such activities as may be related to or in connection with carrying on the trading activities.

2. The question of law for which an advance ruling sought is;

Whether following proposed activities to be undertaken by the applicant can be regarded as 'manufacture' or 'deemed manufacture' under Section 2(f) of the Central Excise Act, 1994.

1. *Inspection and testing*
2. *Cleaning and lint brushing*
3. *Jewellery correction*
4. *Activities relating to spectacles and frames (placing in case, tightening screws on eyewear).*
5. *Folding and hanging*
6. *Tagging*
7. *Inserting freebies*
8. *Placing the product in original box / pack*
9. *Inserting warranty cards*
10. *Inserting moisture absorbing tablets*
11. *Inserting bookmark*
12. *Debundling*
13. *Sorting*
14. *Wrapping*
15. *Sensitive material covering*
16. *Bagging*
17. *Bundling, set creation and rubber banding*
18. *Stickering*
19. *Boxing*
20. *Stuffing and adding dunnage to glassware*
21. *Taping*
22. *Consignee detailing*
23. *Cardboard foot printing*

3. Applicant is an entity incorporated for undertaking wholesale operations in India. The applicant will enter into vendor procurement contracts to purchase products from

the manufacturers, hold inventory on its own account and sell the same to retailers, industrial users or other wholesalers. Effectively, the applicant will be involved in the activity of buying and selling the goods on a B2B basis. Applicant proposes to set up warehouse(s) to store the goods purchased from the manufacturers/channel partners ('Manufacturer(s)') at the warehouse(s). Applicant will be undertaking the activity of assortment, packing, wrapping, folding, inspection, cleaning and stickering on the goods purchased from the manufacturers and will subsequently sell the goods to retailers, industrial users or wholesalers. The proposed activities would be carried out at the time of inbound shipment of goods into the warehouse or on shipment of goods to the customer or on customer returns. The applicant may charge additional consideration/fees for undertaking (certain) proposed activities, the additional consideration/fees charged, if any, would be subject to Service Tax. The activities on which the ruling is being sought by the applicant would be undertaken at the said warehouse(s) or at other warehouses operated/ to be operated by the applicant or at third party locations on its behalf in India. Currently the applicant intends to operate from several warehouse located in or around the major cities and towns across India.

4. Applicant submits that the activities proposed to be performed by the applicant would not alter the primary packing or original labeling affixed by the manufacturer of the goods under the applicable regulations. Further, the proposed activities would not involve affixation, alternation or change in the MRP/RSP of any product/item received in the warehouse; that all items, where required, would already have an MRP/RSP affixed or pre-printed; that the activities proposed to be undertaken by the applicant is intended to protect the goods and facilitate the inventory management, storage, minimization error shipment, pilferage, etc; that the activities proposed to be undertaken by the applicant 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 of applicant on a wholesale basis; that no value addition is undertaken vis-à-vis_ the products itself.

5. Revenue in response to the application replied that all the activities mentioned at S.No.1 to S. No. 23 will not constitute manufacture, except for following activities described by the applicant as under;

I. ASIN Stickering: The ASIN stickering refers to affixing a barcode on the goods when the original barcode on the products does not exist or is not readable. It provides the description about the product (such as brand, colour, size, etc.). It assists in tracking the goods warehoused. The ASIN stickering is affixed on the bubble wrap, bag, box, etc, as the case may be. For instance, affixing the barcode on the calculator when the original barcode does not exist or is not readable. The ASIN stickering is applicant's internal system for tracking and identifying goods and is not affixed due to any regulatory requirements.

II. Blank Stickers: Blank sticker refers to affixing a blank sticker on the goods sold by the applicant when there are multiple barcodes on the item. At times there are multiple barcodes on the item, while one of them is the identifier of the item, the others represent information like batch number, lot identifier, etc. The blank sticker is affixed on the goods / original box to avoid confusion as to which barcode is the actual item identifier. The blank stickering is typically not required after a packing.

III. Quality Check Stickers: If goods in the applicant's warehouse are identified to be defective or not in compliance with their description, they are sidelined for inspection by the quality control team. A quality check sticker is affixed on such goods for identification purpose.

6. Revenue submits that ASIN and Blank Stickers may not amount to manufacture as it is done only to provide the description about the product. However, if the stickering includes even affixing / altering MRP, then it may amount to manufacture depending on case to case basis. It is observed that the applicant has made it clear that the proposed activities would not involve affixation, alternation or change in the MRP/RSP of any product/item received in the warehouse. Further, all items, where required, would already have on MRP/RSP affixed or pre-printed. In view of this, activity of ASIN and Blank stickering will not amount to manufacture under Section 2 (f) of Central Excise Act, 1944.

7. Revenue submits that affixing of Quality Check Stickers may not amount to manufacturing. However if the quality checking/testing conducted on the goods is incidental or ancillary to the completion of manufactured product, then the same may amount to manufacture.

8. It is observed from the reply submitted by the Revenue that quality check stickering will amount to manufacture if quality checking/testing conducted on the goods is incidental or ancillary to the completion of manufactured product. Applicant in the application have made to clear that in this activity, such goods are identified to be defective or not in compliance with the description and sidelined for inspection by the quality control team. However, in this activity, quality check/testing is not undertaken. Therefore, activity of Quality Check Stickers will not amount to manufacture under Section 2(f) *ibid*.

9. Further applicant submits that for the activities, mentioned at S. No. 12 to 23 above, this Authority vide Ruling AAR/CE/04/2012 dated 24.08.2012 in case of M/s Amazon Seller Service Private Ltd., had ruled that they do not tantamount to manufacture. Since the activities mentioned at S. No. 12 to S. No. 23 above are same (which also includes ASIN and Blank Stickers as also Quality Check Stickers under the head Stickers at S. No. 18 above) as were held not to be manufacture under

Section 2(f) of the Central Excise Act, 1944 in case of M/s Amazon Seller Service Private Ltd., we hold that the said proposed activities will not constitute manufacture.

10. Activities mentioned at S. No. 1 to 11 above are activities, for which, advance ruling has been sought by the applicant i.e. whether these activities amount to manufacture under Section 2(f) of the Central Excise Act, 1944. Revenue agrees with the applicant that said activities do not amount to manufacture except activities relating to spectacles and frames (placing in case, tightening screws on eyewear)(S.No.4) and tagging of jewellery (S.No.6), 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.

11. 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*.

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.

12. 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.

13. 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.

14. 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, 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*.

15. 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 and testing, Cleaning and lint brushing, Jewellery correction, Activities relating to spectacles and frames (placing in case, tightening screws on eyewear), Folding and hanging, Tagging, Inserting freebies, Placing the product in original box / pack, Inserting warranty cards, Inserting moisture absorbing tablets, Inserting bookmark, Debundling, Sorting, Wrapping, Sensitive material covering, Bagging, Bundling, set creation and rubber banding, Stickers, Boxing, Stuffing and adding dunnage to glassware, Taping, Consignee detailing and Cardboard foot printing.

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

Sd/-
(V.S.Sirpurkar)
Chairman

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

