CUSTOMS,EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH : COURT NO. 3

EXCISE Appeal No. 12485 of 2014-DB

[Arising out of Order-in-Original/Appeal No BHV-EXCUS-000-COM-007-13-14 dated 21.03.2014 passed by Commissioner of Central Excise-BHAVNAGAR]

Prince Web ...Appellant

Plot No. 364/a, Gidc,
Chitra, Bhavnagar, Gujarat-364004

VERSUS

C.C.E. & S.T.-Bhavnagar ...Respondent

Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat-364001

With

EXCISE Appeal No. 12486 of 2014-DB

[Arising out of Order-in-Original/Appeal No BHV-EXCUS-000-COM-007-13-14 dated 21.03.2014 passed by Commissioner of Central Excise-BHAVNAGAR]

Sureshbhai Jivrajbhai Sakariya ...Appellant

Partner Of M/s, Prince Web,
Plot No. 364/a, Gidc, Chitra,
BHAVNAGAR, GUJARAT-364004

VERSUS

C.C.E. & S.T.-Bhavnagar ...Respondent

Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg, Beside
Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat- 364001

APPEARANCE:

Shri Sarju Mehta, Chartered Accountant for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 12302-12303/2024

DATE OF HEARING : 03.06.2024
DATE OF DECISION: 03.10.2024

RAJU

This appeals have been filed by M/s. Prince Web and Shri Sureshbhai Jivabhai Sakaria.

2. Learned Counsel pointed out that the appellant are manufacturing the branded products of Ms. Price Care Pharma Pvt Ltd who has assigned their brand name to the appellant. The dispute relates to the eligible to Notification No. 8/2003-CE dated 01.03.2003.

2.1. The learned Counsel submits that brand name Price Care was assigned by Ms. Prince Care to the appellant vide agreement dated 25.04.2008 only for manufacture of glucose and also under deed of assignment of trade mark dated 20.05.2010. The impugned order observes that the said agreement and deed of assignment are made without any lawful consideration and are not registered and therefore, not valid documents. The impugned order considers the said documents as void under law. Consequently, the impugned order denies the benefit of Notification No. 8/2003-CE.

2.2. Learned Counsel pointed out that the appellants were handling work of marketing of various products manufactured by M/s. Prince Care Pharma Pvt Ltd (formerly known as M/s. Prince care).

2.3. The appellants were marketing product of M/s. Prince Care Pharma Ltd in small and big cities of Gujarat resulting in tremendous benefits to M/s. Prince Care Pharma Pvt Ltd. After considering the said benefits in Web Prince Care Pharma Ltd they assigned the brand name of Prince Care glucose to the appellant.

2.4. He pointed out that as per explanation No. 2 Section 25 of the Indian Contract Act, 1872, the consent of the promisor is freely given.

2.5. Learned Counsel relied on the decision of the Hon'ble High of Madhya Pradesh in the case of Jepika Paint 2008 (232) ELT 424 (MP). He pointed out that both the companies that is the appellant and Prince Care Pharma Pvt Ltd are not manufacturing the same product, the product has been assigned to the appellant.

2.6. He also relied on the decision of the Tribunal in the case of Que Pharma Pvt Ltd 2013 (288) ELT 563 (Tri. Ahm.) and Sadana Foods-2012 (284) ELT 257 (Tri.-Bang.).

2.7. Learned Counsel further pointed out that the product of manufactured by them namely, glucose powder, falls under heading 17023039 and is not covered by Sr No. 2 Notification No. 14/2008-CE (NT) dated 01.03.2008 and Notification No. 49/2008-CE (NT) dated 24.12.2008. The goods manufactured by them namely, glucose powder are not to be subjected to Section 4A of the Central Excise Act.

2.8. He further argued that they have no penalty under proviso to Section 11AC of Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002 can be imposed as they have not suppressed any information and there was no intention to evade payment of duty.

3. Learned AR relies on the impugned order.

4. We have considered the rival submissions. The entire case is based on the determination of the rights to use brand name between the appellant and Prince Care Pharma Private Limited. The Commissioner in the impugned order has argued that the said agreement and deed of assignment has not been registered and then no consideration was paid for the said assignment to transferee.

4.1. Learned Counsel has seriously contested that there was no consideration. He has argued that the consideration need not be in the form of money, it can be in the form of services. The appellants have contended that appeals had provided the marketing services to Prince Care Pharma Pvt Ltd for long time which helped them in expanding their business. In these circumstances, it cannot be said that there was no consideration. The title of the agreement dated 25.04.2008 itself records that the said agreement is made on the basis that earlier verbal understanding. At the material time the appellants were providing marketing services to Prince Care Pharma Pvt Ltd. As regards the second objection in the impugned order that agreement was not registered, the appellants have relied on the Hon'ble High Court of Madhya Pradesh Jepika Paint 2008 (232) ELT 424 (MP). In para 8 of the following has been observed. :-

> *" 8. Learned Counsel for the appellants has submitted that although assignments under the erstwhile Trade and Merchandise Marks Act, 1958 require registration, the Supreme Court in Collector of Central Excise, Ahmedabad v. Vikshara Trading & Invest. P. Ltd. 2003 (157) E.LT. 4 (S.C.) has observed that when as a matter of fact it is held that there was an assignment of trade mark in favour of the party and that fact was not in serious dispute, the mere fact that the agreement was not registered could not alter the position. It was stated that it was permissible in law to have same brand name for different classes of goods owned by different-persons.*
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> *Paragraph 3 of the said report reads as under*
>
> *3. The contention put forth before the Tribunal as well as before us is that no document has been shown that the subsequent assignment in favour of M/s. Vikshara Trading & Invest. P. Ltd. was registered as contemplated under the Trade and Merchandise Marks Act, 1958. This aspect was taken note of by the Tribunal that the trade mark need not necessarily be in respect of all goods unless registration has been so acquired and it is therefore, permissible in law to have same brand name for different classes of goods owned by different person, and in that background found in favour of the respondent and held that the Notification No. 223/87-C.E., dated 22-9-1987 was applicable. When as a matter of fact it is held that there was an assignment in favour of the first respondent and that fact was not in serious dispute the mere fact that the assignment was not registered could not alter the position. Therefore, we decline to interfere with the order made by the Tribunal and to that extent the appeal is dismissed in respect of respondent No. 1 . "*

In view of the above it could appear that registration of the such deeds is not necessary when the facts are not in dispute. This issue has also been examined by Tribunal in the case of Que Pharma Pvt Ltd wherein relying on the decision of Hon'ble High Court of Madhya Pradesh in case of Jepika Paint 2008 (232) ELT 424 (MP) benefit of small scale exemption has been extended in case of an unregistered assignment deed. Similarly, in case of Sadana Foods-2012 (284) ELT 257 (Tri.-Bang.) following has been observed :-

> *"2. After considering the submissions, we have found valid reasons to hold that SSI benefit cannot be denied to the appellant in respect of the subject goods on the ground that these goods were supplied to customers under a brand name belonging to another person. It is not in dispute that the brand name "HOT BREADS" was assigned to the appellant by M/s. Chaitanya Foods, Madras and that the appellant thereby acquired exclusive right to use it on cakes and pastries within the territorial limits set out in the deed of assignment. It is not in dispute that, within such territory, nobody else, nor even the brand name owner, had the right to use the brand name on identical or similar goods. The notifications referred to "brand name of another person" in the context of providing that the notifications shall not be applicable to goods cleared under a brand name or trade mark of another person. Similar provisions were considered by the Hon'ble Supreme Court in numerous cases including the case of Vikshara Trading & Investment Pvt. Ltd. (supra). In the said case, the deed of assignment, wherein a trade mark was assigned to the assessee by its owner, was not registered and, on that basis, the SSI benefit under Notification No. 223/87-C.E. was denied to the assessee by the Department. The Hon'ble Supreme Court held that registration of the deed of assignment was immaterial and that the goods cleared under the assigned trade mark by the assignee were not hit by the exclusion clause of the SSI Notification. In the case of Sree Ram Perfumery Works Ltd. (supra), this Tribunal considered a similar case where the SSI Notifications involved were No. 140/83-C.E. and No. 10/99-C.E. The brand name affixed by the assessee on the goods in question was one assigned to them under an agreement executed by the brand name owner. This Tribunal held that the assessee could be said to have used their own brand name and accordingly held that the benefit of the Notifications was admissible to them. The submission made by the lear Superintendent (AR) with reference to the remand order passed by the Hon'ble Supreme Court is of no significan Inasmuch as it was an open remand ordered by the Apex Court in the case of M/s. Dhanvi Trading & Investment Pv Ltd., one of the cases considered by the Apex Court in the reported case of Vikshara Trading & Investment Pvt. Lte (supra). It has been pointed out that the Tribunal's decision in Dhanvi Trading & investment Pvt. Ltd. [2005 (187) ELT. 270 (Tribunal)) was rendered in pursuance of the above remand order. We have perused this order of the Tribunal as well. The Notification considered therein was No. 175/86-C.E., para 7 of which created a bar in respect of specified goods cleared by an SS1 unit after affixing the brand name of another person. We find that the Tribunal's decision cited by the learned Superintendent (AR) is distinguishable."*

4.2. In the aforesaid circumstances, we find that merely because deed of assignment of brand name was not registered cannot be held that the appellant did not own the brand name. Consequently, benefit of small scale exemption cannot be denied.

5. The appeal is consequently allowed. The penalty imposed on Shri Sureshbhai Jivrajbhai Sakariya is also set aside and appeal is allowed.

(Pronounced in the open court on 03.10.2024 *)*

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

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