Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 10682 of 2013-DB

(Arising out of OIA-63-64/2012/RAJ/CE/AK/COMMR-A/AHD Dated- 26/02/2013 passed by Commissioner of Central Excise-RAJKOT)

Abhay Industries ....**Appellant**
Near Rajmoti Industries, Bhavnagar Road,
Rajkot, Gujarat

VERSUS

C.C.E. & S.T.-Rajkot ....**Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

With
Excise Appeal No. 10683 of 2013

(Arising out of OIA-63-64/2012/RAJ/CE/AK/COMMR-A/AHD Dated- 26/02/2013 passed by Commissioner of Central Excise-RAJKOT)

Rajesh H Punatar Partner ....**Appellant**
C/O, M/S, Abhay Industries,
Near Rajmoti Industries, Bhavnagar Road,
Rajkot, Gujarat

VERSUS

C.C.E. & S.T.-Rajkot ....**Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

APPEARANCE:
Shri. Paresh Sheth, Advocate for the Appellant
Shri. Tara Prakash, Assistant Commissioner (AR) for the Respondent

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

Final Order No. A/ 10009-10010 /2023

DATE OF HEARING: 22.12.2022
DATE OF DECISION:05.01.2023

RAMESH NAIR

The issue involved in the present case is that whether the appellant is eligible for SSI Exemption available under Notification No.8/2003-C.E. dated 01.03.2003. The case of the department is that since the appellant has used brand "Bintex" belonging to some other person, benefit of exemption under the said notification is not available.

2. Shri Paresh Sheth, learned counsel appearing on behalf of the appellant submits that the ''Bintex'' brand is registered in the name of family members of the appellant and appellant is also one of the owner of the ''Bintex'' brand as per the Trade Mark Registration therefore, it cannot be said that the appellant have used brand name of another person accordingly, the appellant is eligible for SSI exemption under notification no.8/2003-CE dated 01.03.2003. He further submits that even in case though the brand belongs to family member, all the family members are entitle to use the brand for the purpose of availing SSI exemption. As regard the penalty imposed on Shri Rajesh Harshdrai Punatar, he submits that Shri Rajesh Harshdrai Punatar is a partner of M/s. Abhay Industries, therefore, the partner cannot be penalized separately under Rule 26. He placed reliance on the following judgments:- (Page 3)

- M/s Shreeji Enterprise-2018-12-TMI-494 -CESTAT-Ahmedabad
- M/s Yash Machine Tools-2019-02-TMI-1415-CESTAT Ahmeddabad
- Braco Sales Corporation-2019-369-ELT-789-CESTAT-Mumbai
- Laxmi Industries-2013-298-ELT-435-CESTAT-Ahmedabad
- Pravin N. Shah-2014-305-ELT-480-Guj-HC
- Water & Co. -2017-356-ELT-446-Trib-Chennai
- Sunshine Overseas-2016-339-ELT-431-Trib-Ahmd
- Jay Prakash Motwani-2010-258-ELT-204-Guj-HC

3. Shri Tara Prakash, learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of records. We find that the limited issue to be decided is that whether the appellant firm is entitle to avail exemption Notification No. 8/2003-CE dated 01.03.2003 in respect of the goods cleared by the appellant bearing the brand name of "Bintex". We find that the "Bintex" brand is registered with Trade Mark Registry wherein, the appellant partner Shri Rajesh Kumar Harshdrai Punatar is also one of the owner. In this regard, we give here under the scanned copy of the Trade Mark Registration.

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सत्यमेव जयते

भारत सरकार
GOVERNMENT OF INDIA
व्यापार चिन्ह रजिस्ट्री
TRADE MARKS REGISTRY

बौद्धिक सम्पदा, भारत
Intellectual Property, India

क्रमांक
No. 50787?

व्यापार चिन्ह अधिनियम, 1999
TRADE MARKS ACT, 1999

व्यापार चिन्ह के रजिस्ट्रीकरण का प्रमाणपत्र, धारा 23 (2) नियम 62 (I)
Certificate of Registration of Trade Mark, Section 23 (2), Rule 62 (I)

व्यापार चिन्ह संख्या / Trade Mark No. **1038328** दिनांक/ Date **20-08-2001** ज.संख्या / J.No. 1,229.00

यह प्रमाणित किया जाता है कि जिस प्रकार चिन्ह की समाकृति इसके साथ संलग्न है, वह .... के बारे में दिनांक .... नाम से रजिस्ट्रीकृत हो चुका है।

Certified that the Trade Mark / a representation is annexed hereto, has been registered in the name(s) of HARSHADRAI MANILAL PUNATAR BHAVESHKUMAR HRSHADRAI PUNATAR, RAJESHKUMAR HARSHADRAI PUNATAR, TRADING AS JAY INDUSTRIES, BINTEX HOUSE, NEAR RAJMOTI INDUSTRIES, BHAVNAGAR ROAD, RAJKOT, (GUJARAT). MANUFACTURER AND MERCHANTS.

In Class 9 Under No. 1038328 as of the Date 20-Aug-2001 in respect of PVC WIRES AND CABLES AND ELECTRICAL ACCESSORIES INCLUDED IN CLASS 9.

व्यापार चिन्ह रजिस्ट्री TRADE MARKS REGISTRY MUMBAI मुंबई

Bintex
PVC WIRES & CABLES

मेरे निदेश पर आज .... के .... वे दिन को इस पर मुद्रा लगायी गई।
Sealed at my direction, this **January 10,** day of **2006**

व्यापार चिन्ह रजिस्ट्री, मुम्बई।
Trade Marks Registry, Mumbai

व्यापार चिन्ह रजिस्ट्रार
Registrar of Trade Marks

रजिस्ट्रीकरण आवेदन की तारीख से १० वर्ष के लिए है और तदुपरान्त वह १० वर्ष की कालावधि के लिए और प्रत्येक १० वर्ष की कालावधि के अवसान पर भी नवीनीकृत किया जा सकेगा।
Registration is for 10 years from the date of application and may then be renewed for a period of 10 years and also at the expiration of each period of 10 years.
यह प्रमाणपत्र विधि कार्यवाहियों में प्रयोग के लिये या विदेश में रजिस्ट्रीकरण अभिप्राप्त करने के लिये नहीं है।
This Certificate is not for use in Legal proceedings or for obtaining Registration abroad.
टिप्पणी — इस व्यापार चिन्ह के स्वामित्व में कोई परिवर्तन होने पर, या कारबार के मुख्य स्थान के पते में या भारत में तामील के लिये पते में परिवर्तन होने पर परिवर्तन के लिये आवेदन तुरंत किया जाना चाहिये।
Note: Upon any change of ownership of this Trade Mark, or change in address, of the principal place of business or address for service in India a request should AT ONCE be made to register the change.

From the above registration, it is clear that the appellant's partner Shri Rajesh Kumar Harshdrai Punatar is one of the owner of the brand name "Bintex" out of the other family members. It is also submitted by the appellant that Shri. Rajesh Kumar Harshdrai Punatar is a partner in M/s. Abhay Industries from 01.04.2001 onwards. In this fact, we are of the view that the appellant firm using the brand name of "Bintex" for which the appellant firm partner Shri Rajesh Harshdrai Punatar is one of the owner of the brand name "Bintex", the appellant firm is eligible for exemption under Notification No. 8/2003-CE dated 01.03.2003. We find that this Tribunal in various judgments cited by the appellant held that if brand is owned by any of the member or jointly by the family, any member of the family if use the said brand, it cannot be said that assessee is using the brand name of other person. The present case is on much better footing for the reason that the appellant's partner Shri Rajesh Harshdrai Punatar himself is one of the owner of the brand "Bintex" as per the Trade Mark Registration, therefore, there is no doubt that the brand name cannot be said to be belonging to any other person. Consequently, the appellant is eligible for exemption notification. Since the demand against the main appellant is not sustainable in view of the above discussion and finding, the penalty on the partner also will not sustain. Moreover, since the penalty on partnership firm was imposed, a separate penalty on the partner cannot be imposed as held by the Hon'ble Gujarat High Court in the case of PRAVIN N. SHAH & JAY PRAKASH MOTWANI (supra).

5. In view of our above observation, the impugned order is not sustainable hence the same is set aside. Appeals are allowed with consequential relief, if any, in accordance with law.

(Pronounced in the open court) On 05.01.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

PRACHI