IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/397-398/2012-EX[DB]

(Arising out of Order-in-Appeal No. 247-248-CE/APPL/KNP/2011 dated 09/11/2011 passed by Commissioner of Customs, Central Excise & Service Tax, (Appeals), Kanpur)

Commissioner of Customs & Central Excise, Kanpur **Appellant**

Vs.

M/s R. K. Engineering Enterprises (In Appeal No. E/397/2012) & Shri Bhagwan Khandelwal, Authorized Signatory (In Appeal No. E/398/2012) **Respondent**

<u>Appearance:</u>

Shri Rajeev Ranjan, Additional Commissioner (AR), for Appellant
Absent, for Respondent

<u>CORAM:</u>

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 20/06/2018

FINAL ORDER NO. **71230-71231/2018**

Per: Archana Wadhwa

Both the appeals filed by the Revenue against the same impugned orders are being disposed of by a common order as they arise out of the same set of facts and circumstances.

2. We have heard ld. Additional Commissioner – Rajeev Ranjan appearing on behalf of the Revenue and nobody appeared on behalf of the respondents.

3. As per the facts on record, M/s R. K. Engineering Enterprises was engaged in the manufacture of Diesel Engines & Alternators and were using the brand name "Super

King". As per the investigations conducted by the Revenue, it revealed that the said brand name "Super King" was registered with M/s R. K. Engineering Industries, Agra, which was a partnership firm of husband and wife. The said firm was closed in November, 2007 and a new proprietor unit with the wife being the proprietor was floated under the name of M/s R. K. Engineering Enterprises.

4. Revenue made out a case against the respondents seeking to deny the benefit of SSI Exemption under Notification No. 08/2003 dated 01/03/2003 on the ground that they were using the brand name "Super King", which did not belong to them. Accordingly, the proceedings were initiated against them resulting in confirmation of demand of duty as also imposition of penalty on both the respondents. The said order was appealed against before Commissioner (Appeals), who upheld the confirmation of demand of duty but set aside the penalties imposed upon both the respondents. Hence, the present appeal.

5. On going through the impugned orders, it is seen that the appellant had taken a categorical stand that since the earlier partnership firm stopped its manufacturing activities, the subsequent proprietory unit applied application for transfer of brand name, which application was pending and they were under *bona-fide* belief that they are entitled to use the said brand name. Ld. Commissioner (Appeals) also observed that it is a case of interpretation of the exemption

notification and no *mala-fide* can be attributed to the respondents so as to impose penalties upon them. We find no infirmity in the above view of Commissioner (Appeals). Admittedly, the brand name belonged to an earlier unit which was a partnership concern of husband and wife and in as much as that unit was closed in November, 2007 and wife floated a new unit, there could be impression on their part that in as much as wife was also holder of earlier brand name, being a partner, they were entitled to use the same in the new prorietory concern. In the absence of any evidence reflecting any *mala-fide* on the respondents, we are of the view that Commissioner (Appeals) have rightly set aside the penalties imposed upon the respondents. Accordingly, Revenue's appeals are rejected.

(Dictated in Court)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Ansari