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REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 28/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71163-71164/2017-SM[BR] dated 20/09/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/1001/2009	HI-TECH SYRINGES PVT.LTD. GIDA DISTRICT GORAKHPUR (UP)
2	E/1002/2009	HI-TECH SYRINGES PVT.LTD. GIDA DISTRICT.GORAKHPUR
		Name and Address of Respondent
3		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad -
4		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad -

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

VANASHRI DUBEY ADV
R/O 136/27/2 TAGORE TOWN,
ALLAHBAD-211002/ UTTAR
PRADESH

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise, I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos. E/1001 & 1002/2009-EX[SM]

(Arising out of Order-in-Appeal No. 11/CE/ALLD/2009 dated 22/01/2009 (in Appeal No. E/1001/2009) & Order-in-Appeal No. 27/CE/ALLD/2009 dated 06/02/2009 both passed by Commissioner of Central Excise (Appeals), Allahabad)

M/s Hi-Tech Syringes Pvt. Ltd. — **Appellant(s)**

Vs.

Commissioner of Central Excise, Allahabad — **Respondent(s)**

Appearance:

Ms. Vanashri Debey — for Appellant(s)
Shri Pawan Kumar Singh (Supdt.) AR — for Respondent(s)

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 20/09/2017
Date of Decision : 20/09/2017

FINAL ORDER NOs. 71163-71164/2017

Per: Anil Choudhary

The issue in these appeals is whether the appellant have wrongly availed the SSI exemption as specified in the Notification No. 8/2003-CX dated 01 March, 2003, which as per Revenue was not available to them in terms of Para-four of the Notification No. 8/2002-CE read with Notification 8/2003-CE.

2. The brief facts are that the appellant is engaged in manufacture of disposable syringes using 'Hi-Tech' brand which was used by another manufacturers, namely, Hi-Tech

Medical Products, Gida (Gorakhpur Industrial Development Authority), Gorakhpur and Aman Medical Products Private Limited, Daman. These two other companies were established well before the appellant company – Hi-Tech Syringes Private Ltd. During the financial year 2002 – 03 to 2005 – 06, the appellant claimed SSI exemption of Rs. 100 Lakhs on which amount Central Excise Duty involved was to the tune of Rs. 40 Lakhs and Education Cess to the tune of Rs. 27,701/-. It appeared to Revenue that appellant have availed the SSI exemption wrongly in contravention of provision of Para-four of Notification No. 8/2002-CE read with Notification 8/2003-CE, which states that the exemption contained in the Notification shall not apply to specified goods bearing a brand name or trade name whether registered or not except in the case of exemption provided therein. It is further alleged that the appellant is manufacturing disposable syringes of Hi-Tech brand. Further, the appellant unit is situated in the same locality/area in which the other manufacturer M/s Hi-Tech Medical Products Private Limited is situated. In the course of inspection it was further noticed by Revenue that the appellant is not having any plant and machinery to manufacture disposable syringes, except blistering machine (packing machine) and a facility to sterilize these packed disposable syringes. Up till March, 2001, appellant were procuring the parts of disposable syringes from M/s Aman Medical Products Pvt. Ltd., Daman, on job work basis and thereafter they started purchasing these parts from M/s Hi-Tech Medical Products Ltd, Gida, Gorakhpur. Thus it appeared to Revenue that the appellant have a special relation with the other manufacturer M/s Hi-Tech Medical Products Ltd, Gida and M/s Aman Medical Products Pvt. Ltd., Daman. Further, the appellant – M/s Hi-Tech Syringes Private Ltd. have been constituted only to evade the payment of Central Excise Duty by way of mis-utilization of SSI exemption benefits. Samples of disposable syringes of 1 ml, 3 ml, 5 ml and 10 ml manufactured by the appellant and M/s Hi-Tech Medical Products Private Limited, Gida, Gorakhpur was drawn on 19 May, 2005 and they were found identically the same.

3. The statement of Shri Rakesh Kumar Srivastava, Authorised Representative of the appellant was recorded under Section 14 of the Act on 13 February, 2004, wherein he stated that Hi-Tech brand is neither their registered brand name nor they have been authorised by any other manufacturer to manufacture their products with the name Hi-Tech brand. Further statement of the Shri Salauddin, Managing Director of the appellant was also recorded wherein he admitted the facts stated by Shri Rakesh Kumar Srivastava and also admitted that he was aware of the fact that Hi-Tech brand of disposable syringes are manufactured by another unit/company namely M/s Hi-Tech Medical Products Ltd, Gida, Gorakhpur located in the same area. He

further stated that he had knowledge of the fact that SSI exemption is not available on manufacture of branded products of another manufacturer, but claimed that in case the units located in a rural area, the benefit of exemption is available, but he failed to produce any documentary evidence stating that his unit is located in rural area. It further appeared to Revenue that the Gida, Gorakhpur is not a rural area and Government of UP have notified it as an industrial area in the Gazette dated 27 March, 2001. Moreover, as per information downloaded from the website of M/s Hi-Tech Medical Products Ltd, Gida, Gorakhpur, it was found that it is sister concern of M/s Aman Medical Products Private Limited, Daman, and they both manufacture Hi-tech brand syringes and needles.

4. Upon such allegations show cause notice dated 12 September, 2006 was issued calling upon the appellant as to why Excise Duty + Cess amounting to Rs. 40,27,701/- be not demanded and further penalty was also proposed on the company and its Managing Director.

5. The appellant contested the show cause notice and initially prayed for providing of legible copies of documents relied upon, for preparation of defence reply which was sent to him on 17 January, 2008. Another prayer of hearing was fixed on 05 February, 2008. But in absence of compliance the show cause notice was adjudicated ex parte and the proposed demands confirmed along with equal amount of penalty on

the appellant company and its Managing Director, Shri Salauddin.

6. Similarly on the same allegations subsequent show cause notice dated 19 June, 2007 was issued for the period 2006 – 07, demanding duty of Rs. 8,16,000/- for the period 2006 – 07 along with proposal to impose penalty. Vide separate Order-in-Original dated 25 March, 2008. The proposed demands were confirmed. Being aggrieved the appellant preferred appeal before learned Commissioner (Appeals). The appeal was dismissed, upholding the Order-in-Original observing that it was an accepted fact that Hi-Tech brand was not the brand of the appellant and further fact is that Hi-Tech brand was being used by the other manufacturers even much before the appellant started production of the goods.

7. Being aggrieved the appellant is before this Tribunal. The learned counsel for the appellant have urged that the courts below have erred in holding that the appellant have used the brand name of another person and are not eligible for SSI exemption. It is further urged that the appellant – manufacturer will come in the excluded category only when the Department establishes that the appellant was using brand name or trade name of another person. There is absolutely no material on record to suggest that the words and phrases appearing on the syringes were in fact the brand name or the trade name belonging to another person. It is not

the requirement of the exemption Notification that the brand name must belong to the SSI manufacturer. The only requirement of the Notification is that the brand name or the trade name should not be of any other person. In other words the brand name or the trade name should belong or should be owned by any other person. In the facts of the present case, the words and phrases and other material appearing on the goods manufactured by appellant, does not belong or is owned by anyone else. It is further urged that the present dispute relates to interpretation of SSI Notification as to whether the appellant manufactured the goods affixing the brand name belonging to another person. It is not in dispute that the appellant cleared goods under proper invoices and filed the prescribed returns/declarations from time to time. It is also not in dispute that appellant cleared the goods after proper entry in the statutory RG - 1 Register. That, there is no case of any suppression or mis-declaration on the part of the appellant. Further, the Revenue has not placed any evidence on record that the goods were mis-declared or mis-described in the statutory records with intention to evade payment of duty. Accordingly, in the facts and circumstances neither the extended period of limitation is invocable nor the provisions of Section 11 AC are attracted. So far the ruling relied upon by the Revenue of Hon'ble Supreme Court in the case of CCE v/s Emkay Investments Private Ltd 2004 (174) E.L.T (298) the learned counsel points out that the facts in the case of Emkay Investments are very different. In the case of Emkay and one M/s Plyking were engaged in manufacture of plywood. The fact that Emkay Investments was manufacturing using the brand/logo –"MERINO" alongwith the brand name "Pelican" on the plywood being manufactured by them. The logo MERINO was found to be owned by one M/s Merinoply and Chemicals Ltd, a large-scale manufacturer of plywood not entitled to the benefit of SSI exemption. It was further found that the brand name MERINO and logo was registered and owned by Merinoply and the fixation of the same on the product by Emkay would disentitle them from the benefit of SSI exemption under Notification No. 175/86-CE. Such facts being not available in this case, the said ruling is not attracted and have been wrongly relied upon by the courts below. The learned counsel further points out that the said ruling of the Apex Court in Emkay Investment Private Ltd have been distinguished by this Hon'ble Supreme Court in its subsequent judgment in the case of Nirlex Spares Private Ltd v/s CCE 2008 (222) E.L.T. (3) wherein under the fact that Nirlex Spares was engaged in manufacture of and sale of Riderless Steel Healds and Flat Steel Healds. They were manufacturing and selling under its own brand name/trade name, namely, 'Intatex' and 'Intaco' which were affixed/printed on its corrugated boxes. However, since a company registered as SSI was availing the benefit of exemption from payment of duty under the

Notification No. 175/86-CE. Further, from April, 1990 Nirlex started printing a Hexagon Artistic Design (alleged monogram) along with its brand name/trade name Intatex and Intaco on its corrugated boxes. On investigation carried out Revenue came to conclusion that Nirlex was making use of monogram of a related person, namely, L. M. S. Marketing company as a brand name for the goods manufactured and cleared by it and therefore, Nirlex was not entitled to exemption in view of paragraph 7 read with Explanation VIII of the Notification for the period from 01 April, 1988 to 30 September, 1992. It was also found in investigation that the marketing company to which the appellant – Nirelax sold its goods was a related person and therefore the correct assessable value, the price at which goods were sold by the marketing company and not the price at which goods were sold to the marketing company by Nirlex. Further fact on record was that the said hexagon of shapes/design belong to or was owned by the marketing company and thus they had permitted Nirlex to use the same on their corrugated boxes. The Hon'ble Supreme Court relied upon the clarification. In this regard, issued by the Law Ministry being Circular No. 52/52/94-CX dated 01 September, 1994 issued by Ministry of Finance, Department of Revenue, wherein it is provided that: –

"Perusal of the said explanation (Explanation IX to the Notification No. 1/93-C.E.) will show that to satisfy the requirement of brand name or trade name, it is necessary that

the trade name, it is necessary that the trade name must indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication or identity of that person. Unless connection between the trade name and the person with whom that trade name is to be identified can be established, the requirement of brand name or trade name as provided for in the said notification will not be satisfied. It is an admitted case of the department that in respect of locks, the units are making locks bearing the same name or mark even though there is no person who claims ownership to that mark or name. The names being used in the manufacture or locks by these small scale units do not belong to any particular manufacture and nay unit is free to use any name. Therefore, in our view, even without the issue of Notification of 4th/11th May, 1994 units which are using trade name or brand name, which does not belong to any person, were eligible for exemption under the said notification because of Explanation IX in the said notification. Admittedly, the notification, dated 4th/11th May, 1994 is clarificatory in nature and the purpose could have been achieved by issuing a clarification to the field formations."

From a bare reading of this opinion of the Law Ministry and in view of the discussions made hereinabove and relying on the same decisions of this court, as noted hereinabove, it is, clear that if a brand name was not owned by any particular person, the use thereof shall not deprive a unit of the benefit of the *small scale exemption scheme. Such being the position, we are of the view that the printing of the hexagonal design on the goods of the appellant, where such hexagonal design is not owned by the Marketing Company, would not disentitle the appellant from the benefit of the exemption under the notification.*

8. Accordingly, the learned counsel prays for allowing the appeal with consequential benefits.

9. The learned AR for Revenue have relied on the impugned order.

10. Having considered the rival contentions I find that the ruling relied upon by the courts below in the case of M/s Emkay Investments Private Ltd (supra) is not applicable in the facts of the present case as the facts are very different and distinguishable. Secondly, I find that there is no averment in the show cause notice and or finding that Hi-Tech brand (as used by appellant) is owned by the other manufactures, namely M/s Hi-Tech Medical Products Private Limited and M/s Aman Medical Products Private Limited. I further find that save and except making a bald allegation that the appellant company is a related person with the other two companies, no facts have been brought on record as regards common shareholding or common management etc. Further, I find that in view of the clarification issued by the Ministry of Finance, Department of Revenue dated 01 September, 1994 (supra), it has been clarified with the example of lock

manufacturers that where a brand name does not belong to any particular manufacturer, any unit is free to use any name or such name. In the facts of the present case, it is clear that the brand name 'Hi-Tech' was not owned by any particular person or company and thus, the appellant cannot be deprived the benefit of the small-scale exemption scheme under Notification No. 8/2002 read with 8/2003-CE as amended. I further find that the name of the appellant company is M/s Hi-Tech Syringes Private Ltd and thus putting their name on their product does not amount to use of brand name of another. Accordingly, these appeals are allowed with consequential benefits to the appellant. The impugned orders are set aside.

(Dictated and pronounced in Court)

-Sd/-

(ANIL CHOUDHARY)

Member(JUDICIAL)

Ankit

प्रमाणित प्रति/Certified True Copy

13\10\17

सहायक पंजीकार/Asstt. Registrar

सीमाशुल्क, उत्पादशुल्क एवं सेवा कर

अपील अधिकरण/(C.E.S.T.A.T.)

33, एम.जी.मार्ग, इलाहाबाद-211001

33, M. G. MARG, ALLAHABAD-211001