FAX : 0532-2400149

REGISTERED / AD

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

To

Dated: 13/02/2018

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70299/2018-EX[DB] dated 29/01/2018

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/2662/2005	CCE, GHAZIABAD CCE, CGO Complex-II Kamla Nehru Nagar, Ghaziabad
		Name and Address of Respondent
2		PETAL PHARMA PVT.LTD. a-4/14 Site-IV,Sahibabad Ghaziabad U.P.,,

Copy To
3Advocate(s) / Consultant(s):

**Atul Gupta, (Advocate) ALD
3/1A/3 OPP AUTO SALES,Above the Office Of Blue Dart/DHL Courier, COLVIN ROAD, LOHIA MARG ALLAHABAD-211001**

4 Bar Association, CESTAT, Allahabad

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

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

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

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

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

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

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

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

14 C.D.R. 15 Office Copy 16 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. 1

APPEAL No. E/2662/2005-EX[DB]

(Arising out of Order-in-Appeal No. 61-CE/GZB/2005 dated 16/05/2005 passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad)

Commissioner of Central Excise, Ghaziabad **Appellant**

Vs.

M/s Petal Pharma Pvt. Ltd. **Respondent**

Appearance:

Shri Mohd. Altaf (Asstt. Commr.) AR for Appellant
Shri Atul Gupta (Advocate) for Respondent

CORAM:

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

Date of Hearing : 12/10/2017
Date of Decision : 12/10/2017

FINAL ORDER NO- 70299/2018

Per: Anil G. Shakkarwar

Present appeal filed by Revenue is directed against Order-in-Appeal No. 61-CE/GZB/2005 dated 16/05/2005 passed by Commissioner (Appeals) Central Excise & Customs, Ghaziabad.

2. Brief facts of the case are that the respondents were manufacturers of P&P medicines falling under Sub-heading No.3003.10 of the Schedule to the Central Excise Tariff Act,

1985. The respondents were availing the benefit of SSI exemption under Notification No. 175/86 dated 01.03.1986 as amended. They were issued with a show cause notice dated 01.10.1993 wherein it was contended that respondent were using a symbol with capital letters BC surrounded by hexagon and it was also mentioned on the goods manufactured besides such symbol M/s Bestachem Formulations Private Limited and that such symbol was on the aluminium strips in which tablets and capsules were packed, on the printed cartons and on other packing materials. It appeared to Revenue that said symbol was brand name as per Para-7 of the said Notification and that due to the said reasons the respondents were not entitled to the benefit of said Notification No.175/86. Therefore, the respondents were called upon to show cause as to why Central Excise Duty of Rs. 28,14,870.62/- should not be recovered from them. The issue was decided through Order-in-Original dated 17.02.2005. Through the said Order-in-Original dated 17.02.2005 above stated duty was confirmed and equal penalty was imposed. Aggrieved by said Order-in-Original dated 17.02.2005 respondent preferred appeal before Learned Commissioner (Appeals). The said appeal was decided through impugned Order-in-Appeal dated 16.05.2005. The finding by the Learned Commissioner (Appeals) as recorded in Para-5 of impugned Order-in-Appeal is as follows:-

I have carefully gone through the case records and considered the submissions of both sides. The appellants counsel pleaded that the logo 'BC' is only a house mark and not a brand name since medicines are never bought by house mark. I find that the appellants are manufacturing medicines namely Bestogesic Plus Tablets, Cloxipen Capsules etc. The logo 'BC' is also printed on the strips/foils of the medicines. The identification of the medicines in question cannot be made with the mark 'BC'. The logo 'BC' does not establish any relationship to the name of the medicines as the goods are not sold by the logo/mark. The Hon'ble Supreme Court in case of Astra Pharmaceuticals (Supra) has held that brand name and house mark are two totally different things. The product mark or brand name is the one by which the product is identified and asked for. Following the said judgment of the Apex Court, the Hon'ble Tribunal in the case of Unjha Ayurvedic Pharmacy (Supra) has held that

"SSI Exemption – Board name indicates product sold and is different from house mark which indicates person manufacturing goods – Goods are sold under brand name but not purchased in name of house mark – SSI exemption cannot be denied on basis of house mark – Notification No. 1/93-C.E. read with Notification No. 8/98-C.E.- No body purchases the goods in the name of Hathi. The goods were being sold by their brand name as Somkalpa, Sundari, Sanjivani, Kafeshwari, etc. Thus, the elephant logo no doubt indicated that the goods were

manufactured by particular firm/person but did not relate to the brand name as the goods were not sold by Hathi logo. In this view also, the brand name is not Hathi logo but is different. Hence the SSI exemption has wrongly been denied (Para 7)."

Further in case of Centaur Drug Home Pvt. Ltd. (Supra), the Hon'ble Tribunal has held that

"SSI Exemption – Brand name vis-à-vis house mark. Mark 'Centaur' marked on the medicines. Individual medicines are marked under the different brand names whereas 'Centaur' is marked on all the medicines 'Centaur' to be a house mark only not establishing a relationship between the mark and the medicines 'Centaur' cannot be considered as a brand name or trade mark for the purpose of claiming SSI exemption either SSI exemption not deniable – Notification No. 1/93-C.E."

In view of the laid down proposition of the Apex Court in the case of Astra Pharmaceuticals (Supra) and also in the Tribunal's judgments rendered in the case of Unjha Ayurvedic Pharmacy (Supra) and Centaur Drug Home Pvt. Ltd. (Supra). I hold 'BC' to be a house mark only and the benefit of SSI exemption is available to the appellants.

In view of the above stated finding Learned Commissioner (Appeals) allowed the appeal and set aside the said Order-in-Original dated 17.02.2005. Aggrieved by the said order Revenue is in appeal before this Tribunal.

3. The relevant ground of appeal filed by Revenue is as follows:-

"The House mark is an identification of the manufacturer which is compulsory under the Drug Rules while Product mark or brand name is one by which the product is identified and asked for. The party nowhere submitted that the mark BC was registered under Drug Rules as the House mark."

4. Heard the Learned AR who has presented the ground of appeal.

5. Heard the learned counsel for the respondent. The learned counsel for the respondent has supported the impugned Order-in-Appeal.

6. Having considered the rival contentions and on perusal of record we find that learned Commissioner (Appeals) has distinguished between Brand Name and the House Mark and held that symbol indicating BC on the goods manufactured by respondent was the House Mark and also held that the use of House Mark did not violate the condition of said Notification. The ground filed by Revenue challenging the said finding is indicated hereinabove. The ground filed by Revenue does not in any way challenged the finding of learned Commissioner

(Appeals) that BC was the House Mark and House Mark did not violate the condition of said Notification No. 175/86. We, therefore, uphold the impugned Order-in-Appeal passed by learned Commissioner (Appeals) which is sustainable. Therefore, we do not wish to interfere with the same. In above terms we dismiss the appeal filed by Revenue.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

Ankit

प्रमाणित प्रति/Certified True Copy
21/02/18
सहायक पंजीकार/Addl. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG,ALLAHABAD-211001