CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 1375 of 2010

[Arising out of Order-in-Appeal No. 9/CE/Ldh/2010 dated 18.03.2010 passed by the Commissioner (Appeals), Chandigarh]

M/s Basant Sales Corporation ......**Appellant**
369, Basant Road, Industrial Area-B, Ludhiana

VERSUS

Commissioner of Central Excise, Ludhiana ......**Respondent**
Central Excise House, F-Block Rishi Nagar, Ludhiana 141001 (Punjab)

WITH

Excise Appeal No. 1380 of 2010

[Arising out of Order-in-Appeal No. 121-CE/Ldh/2010 dated 31.03.2010 passed by the Commissioner (Appeals), Chandigarh]

M/s Basant Machine Tools ......**Appellant**
369, Basant Road, Industrial Area-B, Ludhiana

VERSUS

Commissioner of Central Excise, Ludhiana ......**Respondent**
Central Excise House, F-Block Rishi Nagar, Ludhiana 141001 (Punjab)

<u>APPEARANCE:</u>

Present for the Appellant: Shri Jagdeep Singh, Advocate

Present for the Respondent: Shri Aneesh Dewan and Shri Raman Mittal, Authorized Representatives

<u>CORAM:</u> HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60721-60722/2023

DATE OF HEARING: 10.10.2023
DATE OF DECISION:21.12.2023

PER S. S. GARG

These two appeals have been filed by the appellants directed against the impugned order dated 18.03.2010 and 31.03.2010 vide which the Ld. Commissioner (Appeals) has set aside the Order-In-Original by allowing the appeals of the respondent/department and confirmed the duty demand of Rs. 27,77,567/- and 12,72,197/- respectively. As the issue involved in both the appeals is identical and the appellant being partnership firm having common partners in both the appeals therefore both the appeals are taken up together for discussion and disposal. For the sake of the convenience the facts of the appeal no. E/1375/2010 are taken up.

2. Briefly the facts of the present case are that the appellant is engaged in the manufacture of power press and parts thereof covered under chapter 84 of the first schedule to the Central Excise Tariff Act, 1985 and are availing benefit of SSI exemption on the said goods. That on an intelligence that units manufacturing power presses are wrongly availing SSI exemption by using brand name 'BASANT' owned by another person i.e. M/s Basant Mechanical Works, Ludhiana (BMW) search of the factory premises of appellant was conducted on 19.07.2007 and found using brand name 'BASANT-KS' on manufacturing power presses. The relevant records/documents were resumed for the investigation under panchnama dated 19.07.2007.

Simultaneous search of factory premises of the owner of the brand BASANT i.e. M/s Basant Mechanical Works Ludhiana (BMW) was conducted and it was found that the brand name 'BASANT' is registered in the name of M/s BMW in respect of power press vide trade mark registration certificate no. 265352 dated 28.08.1972. Thereafter, statements of partner Sh. Kanwarjit Singh S/o Shri Surjit Singh was recorded under Section 14 of Central Excise Act, 1944 and other documents were examined. After completion of the investigation, a show cause notice dated 02.05.2008 was issued invoking the extended period of limitation proposing to demand central excise duty denying benefit of SSI exemption on the ground that the brand name used by the appellant was registered in the name of M/s Basant Mechanical Works (BMW) Ludhiana. After following the due process, the adjudicating authority dropped the demand on the ground that the appellant is entitled to the benefit of SSI exemption by holding that 'BASANT' is the name inherited by both BMW and the appellant and therefore use of the brand name 'BASANT-KS' by suffixing the letters 'KS' (abbreviation for Kanwarjit Singh, Partner of the appellant firm) to the inherited name 'BASANT' is entirely fortuitous and is not a case of use of brand name belonging to the other person. The original authority while dropping the demand relied upon the following two decisions:

CCE, Tricy vs. Rukmani Pakkwel Traders-2004 (165) ELT 481 (SC).

Commissioner of Central Excise Vs. Bhalla Enterprises- 2004 (173) ELT 225 (SC).

3. Aggrieved by the said order, the department filed the appeal against the Order-in-Original dated 05.06.2009 and the Ld. Commissioner (Appeals) had set aside the Order-in-Original relying on the decisions of the Hon'ble Supreme Court in the case of *CCE, Chandigarh-I Vs. Mahaan Dairies as reported in 2004 (166) ELT 23 (SC)* and *circular no. 88/88* dated 30.12.1988 holding that the appellant herein is not entitled to the benefit of SSI exemption. Aggrieved by the said order of the Ld. Commissioner (Appeals), the appellants have filed these two appeals.

4. Heard both the parties and perused the material on record.

5. Ld. Counsel appearing on behalf of the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and the binding judicial precedents. He further submits that in an identical case of Basant Presses (India), this Tribunal vide final order No. 61066/2017 dated 09.06.2017 had held that the trademark BASANT was being used by BMW and the same even if used by M/s Basant Presses (India), even then they were eligible for SSI exemption.

6. Ld. Counsel further submits that in an another identical case of Basant Industries Vs. CCE & ST, Chandigarh-I, this Bench of the Hon'ble Tribunal vide Final Order no. A/62843/2018 dated 29.08.2018 had held that the Assessee M/s Basant Industries

manufacturing Power Press and clearing the same by using the brand name 'BASANT-BI' was entitled to SSI exemption. He further submits

that in these aforesaid two decisions the allegation leveled by the department were identical to that of the present cases and therefore the ratio of the same are squarely applicable and as such the impugned Order-in-Appeal is liable to be set aside. In support of his submissions, he relied upon the following decisions:

Commissioner of C.Ex., Rohtak Vs. Yatharth Yantra Udyog-2017 (357) ELT 380 (Tri.-Chan.).

Commissioner Vs. Malabar Oxygen Pvt. Ltd. – 2005 (183) ELT 223 (Tri.-Bang.).

Deeba Foundary Vs. Commissioner – 2001 (137) ELT 1180 (Tri.-Chennai).

Commissioner Vs. Pethe Breaks Motors Ltd. – 2005 (179) ELT 57 (Tri.-Mum) which has been upheld by the Hon'ble Supreme Court as reported in 2006 (198) ELT A175 (SC).

7. Ld. Counsel for the appellant has also filed an affidavit of Kanwarjit Singh S/o Sh. Surjit Singh partner of the firm namely M/s Basant Machine Tools and M/s Basant Sales Corporation and has also enclosed family chart evidencing that they are the family members of Basant Singh who originally started manufacturing power press by using the name 'BASANT'. The appellants have also enclosed the

copies of Aadhar Cards of Kanwarjit Singh and the Aadhar Card of his father Surjit Singh S/o Sh. Basant Singh to prove that they are family members of the Basant Singh who was the original manufacturer.

8. On the other hand, Ld. AR reiterated the findings of the impugned order and submitted that the appellant has admitted that they are manufacturing power presses under the brand name 'BASANT-KS' which was never got registered in their name and the brand name 'BASANT' is registered in the name of M/s BMW and they are not legal owners of the brand name 'BASANT' and have not been permitted by anyone to use this said brand name which is registered in the name of M/s Basant Mechanica Works (BMW).

9. He further submitted that appellant and M/s BMW is well aware about the use of brand name 'BASANT-KS' which is clearly similar to the brand name 'BASANT' and its use by the appellant clearly established a link in the course of trade. He further submits that the crucial fact on record is that suffix of 'KS' in the brand name 'BASANT' is completely immaterial since actually the goods were sold only under the brand name 'BASANT' and word 'KS' is nothing but merely abbreviated form of the name of the partner Kanwarjit Singh Basant as he himself admitted in his statement dated 25.03.2008.

10. He further submits that the appellant used 'BASANT-KS' only to exploit the goodwill of brand name 'BASANT' in the market by availing SSI exemption. In support of his submissions, he relied upon the following cases:

CCE, Tricy Vs. Rukmani Pakkwel Traders – 2004 (165) E..t. 481 (S.C.)

Commissioner of Central Excise, Chandigarh Vs. Mahaan Diaries – 2004 (166) E.L.T. 23 (S.C.).

CCE Bangalore Vs. Vetcare Organics P. Ltd. – 2015 (321) E.L.T. 384 (S.C.).

11. After considering the submissions of both the parties and perusal of the material on record, we find that on an identical issue regarding the brand name 'BASANT' this Tribunal in the case of Basant Pressess (India) vide Final Order No. 61066/2017 dated 09.06.2017 had held that the trademark BASANT was being used by BMW and the same even if used by M/s Basant Presses (India), they were still eligible for SSI exemption.

12. We also find that on identical facts regarding the dispute of brand name 'BASANT' this Tribunal in the case of Basant Industries vide Final Order No. A/62843/2018 dated 29.08.2018 had held in para 5 which is reproduced as under :

"Having considered the rival contention and on perusal of record, we find that the issue related to trade mark or brand name ' Basant' is already decided by this Tribunal in the above stated case of Commissioner of Central Excise & Service Tax-Ludhiana Vs. M/s Basant Presses (India) vide

Final Order No. 61066/2017 dated 09.06.2017 wherein this Tribunal has held that 'Basant' trade mark was being used by M/s Basant Mechanical Works, Ludhiana and the same even if used by M/s Basant Presses (India), they were eligible for SSI exemption. In the similar circumstances by following the same order, we hold that the appellant was eligible to avail benefit of exemption under Notification No. 8/2003 dated 01.03.2003 which is also for availing the benefit of SSI exemption. We therefore set aside the impugned order and allowed the appeal".

13. Therefore, keeping in view the aforesaid two decisions of this Tribunal on identical facts we are of the considered view that the impugned order denying the benefit of SSI exemption is not sustainable in law and by following the ratio of the aforesaid two decisions on identical facts, we set aside the impugned order by allowing both the appeals of the appellant with consequential relief, if any as per law.

(Order pronounced in the open court on 21.12.2023)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash