CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

DIVISON BENCH
Court-I
Appeal No. E/803/2010

(Arising out of OIA No.275/CE/LDH/09 dt.31.12.2009 passed by the CCE (Appeals), Chandigarh)

Date of Hearing/decision: 24.04.2018

CCE, Ludhiana **Appellant**

Vs.

M/s. Riat Sons **Respondent**

Present for the Appellant: Shri A.K.Saini, AR
Present for the Respondent: Shri N.Bindal, Advocate

Coram: Hon'ble Mr.Ashok Jindal, Member (Judicial)
Hon'ble Mr.Devender Singh, Member (Technical)

FINAL ORDER NO. 62279/2018

PER: DEVENDER SINGH

The brief facts of the case are that the appellant is engaged in the manufacture of Centreless Grinding Machines, Crankshaft Grinding machines and Cylindrical Grinding machines etc. The Revenue felt that the respondent was wrongly availing SSI exemption in respect of the products being manufactured by them in as much as, the respondent have used the brand name 'RIAT SONS', whereas the brand 'RIAT' belonged to another person i.e. M/s.RIAT Machine Tools. Hence, it was alleged that the respondent consciously adopted the similar brand name 'RIAT SONS' to exploit the Brand name/Trade name of Brand 'RIAT' in order to exploit the goodwill of the owner of the brand name while simultaneously availing SSI exemption. It was further alleged that in view of the definition of the brand name in per para 4 of the Notification NO.8/2003-CE dated 1.3.2003, the goods of the respondent bearing part brand name 'RIAT' connect their goods being sold in the market to M/s.RMT, who are the owners of the brand name. As such, it was alleged that the respondent's use of brand name 'RIAT SONS' is not fortuitous but an intentional act to indicate a connection between their goods and 'RIAT' branded goods to exploit the goodwill enjoyed by M/s.RMT. Hence, the SSI exemption under Notification No.8/2003-CE availed by the respondent during the period 1.10.2003 to 31.3.2008, has been sought to be denied and Central Excise duty has been proposed to be recovered from the respondent. Accordingly, a show cause notice was issued demanding duty of Rs.27,15,639/- along with interest and imposing penalty under section 11AC of Central Excise Act, 1944. The matter was adjudicated and the adjudicating authority dropped the show cause notice dated17.9.2008. Aggrieved from the same, the Revenue has filed an appeal before the Commissioner (Appeals). However, the first appellate authority upheld the order of the adjudicating authority and dismissed the appeal of the Department. Aggrieved from the same, the Revenue has filed this appeal.

2. Ld.AR for the Revenue submits that the first appellate authority has relied upon the Trade Mark No. 375213 dated 15.7.1994 submitted by the respondent without verification of the genuineness of their claims. He further submits that the said trademark was not registered in the name of the respondent from

27.4.1981 and the brand name was only got registered since 24.9.2005.

3. Ld.Advocate for the respondent submits that the trademark 'RIAT SONS was registered in their name in 2005 for machine and machine tools. He also submits that 'RIAT' and 'RIAT SONS' were separate brand names, which is proven from the fact that both have been registered separately. He relied on the following judgments:

(i) Bhamber Engineers vs. CCE, Ludhiana- Final Order No.60088/2018 dt.15.2.2018 in appeal No.E/997/10-DB

(ii) CCE, Ludhiana vs. M/s. Riat Grinders- Final Order No.60601/2017 dt.11.04.2017 in Appeal No.E/2502/09-DB.

4. Heard both sides and perused the record.

5. We find that the respondent is using the brand name 'RIAT SONS' while the brand name 'RIAT' was owned by M/s.RIAT Machine Tools (M/s.RMT). Admittedly, both the brand names were registered with the trade mark authority and recognized as not similar. It is documented from the brand name registration certificate dated 24.9.2005 submitted by the respondent and from para 4 of the show cause notice that the brand name used by the respondent is 'RIAT SONS' and by M/s. RMT is 'RIAT' and the two brand names were not similar and were distinct brand names. In

that circumstance, it cannot be said that the respondent is using brand name of another person.

6. We find that the matter is covered by the judgment of this Tribunal in the case of Bhamber Engineers (supra), wherein this Tribunal has observed as below:-

> *"As the brand name used by M/s. Bhamber Udyog is 'HI BHAMBER' and by the appellant is BHAMBER 2015' are not similar, in that circumstance, it cannot be said that the appellant is using the brand name of another person. In that circumstance, we hold that the appellant is entitled to the benefit of SSI exemption Notification No.8/2003 dated 01.03.2003. Accordingly, we set aside the impugned order and allow the appeal with consequential relief, if any."*

7. In view of the foregoing, we find that there is no infirmity in the impugned order of the Ld. Commissioner (Appeals) and the same is upheld.

8. In the result, the appeal filed by the Revenue is dismissed.

(operative part of order pronounced in the court)

ASHOK JINDAL
MEMBER (JUDICIAL)

DEVENDER SINGH
MEMBER (TECHNICAL)

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