

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

DIVISION BENCH
Court-I

Appeal No.E/175-177/2008

(Arising out of OIO No0.51/LDH/2007 26.10.2007 passed by the CCE, Ludhiana)

Date of hearing/:03.12.2018

Date of Decision: 07.12.2018

**Mefa Needles Pvt.Ltd
Shri Vikram Kumar, MD
Shri Yash Paul, Director**

Appellant

Vs.

CC, Ludhiana

Respondent

Appeal No.E/185/2008

CCE, Ludhiana

Appellant

Vs.

Mefa Needles Pvt.Ltd.

Respondent

Present for the Appellant:Sh. Sudhir Malhotra, Advocate & vice versa

Present for the Respondent: Shri Atul Handa, AR & vice versa

**Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr.Bijay Kumar, Member (Technical)**

FINAL ORDER NO.63550-63553/2018

PER: ASHOK JINDAL

Both sides are in appeal against the impugned order.

2. The brief facts of the case are that the assessee namely, M/s. Meфа Needles Pvt.Ltd. was engaged in the manufacture of hosiery needles and availing SSI exemption but using the brand name MEFA which was owned by M/s.Metal Fabrics India Pvt.Ltd. On the basis of investigation conducted, it was alleged that the assessee was using brand name of third party, therefore, they are not

entitled to claim SSI exemption. Consequently, they are liable to pay duty and the proceedings were initiated against them. Based on the show cause notice, the demand of Rs.55,16,494 plus Rs.4,16,659 plus Rs.2,34,704/- sought to be confirmed alongwith interest. The penalties were also proposed against the main assessee and their directors. The matter was adjudicated, Ld. Commissioner in the adjudication gave the benefit of extended period of limitation and the demand pertaining to the extended period of limitation was dropped but for the period within limitation, the demand of duty was confirmed along with interest and the penalties were also imposed against the main assessee as well as co-appellants. The assessee is in appeal against the order of confirming demand of duty and co-appellants are in appeal against imposition of penalties. The Revenue is in appeal against the order dropping of demanded for extended period of limitation.

3. Ld. Counsel appearing for the assessee and co-appellants submits that the assessee is using the brand name of MEFA since 1981 and they are filling their declaration under Rule 173B of Central Excise Rules, 1944, in that circumstance, Ld. Commissioner has rightly dropped the demand pertaining to the extended period of limitation. It is his further contention that vide deed of assignment dt.5.10.2003, the assigner has assigned its rights to use trade mark to the assessee. Therefore, the appellant is entitled to use the said brand name. In that circumstance, the assessee is entitled for SSI exemption benefit and if any amount of duty is payable by them after crossing the SSI exemption limit, the assessee is ready to pay duty thereon.

6. On going through the said declaration, we find that the assessee has declared the use of brand name 'MEFA'. Therefore, it cannot be alleged that the assessee has not declared the fact that of using the brand name of third party. In that circumstance, the Ld. Commissioner has rightly dropped the demand pertaining to the extended period of limitation. Therefore, we find no merit in the appeal of the Revenue, the same is dismissed.

7. Now come to the appeal of the assessee as well as co-appellants, we find that the assessee has placed on record assignment deed as well as lease deed in favour of use of said brand name, plant, machinery of M/s.Metal Fabrics India Pvt.Ltd. although the said lease deed/assignment deed has not been registered but in view of the decision of this Tribunal in the case of Plazma Pipe Industries vs. CCE, Delhi-II-2017 (357) ELT 791 (Tri.-Del.), we hold that the assessee is entitled to claim the benefit of SSI exemption notification as the assessee is not using the brand name of third party. In that circumstance, we hold that the assessee is entitled to avail the benefit of SSI exemption.

8. Further, we hold that if any clearance over and above the SSI exemption limit, the assessee is liable to pay duty along with interest. In that circumstance, no malafide attributable to the assessee, therefore, no penalty is imposable on the assessee as well as co-appellants.

9. In the result, the appeals filed by the assessee is disposed of and the appeals filed by the co-appellants are allowed.

(pronounced in the court 07.12.2018)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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