CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
CHANDIGARH

COURT NO. I

Excise Appeal No. 1465 of 2009

[Arising out of the Order-in-Appeal No. 62/ANS/RTK/2009 dated 27/02/2009 passed by The Commissioner of Central Excise (Appeals), Delhi – III, Gurgaon.]

M/s Devishree Mundran (P) Ltd. **Appellant**
900-MIE, Bahadurgarh (Haryana)

Versus

The Commissioner of Central Excise and Service Tax, **Respondent**
Pacific Mall, IInd Floor, Near Jat Bhavan,
Delhi Road, Rohtak,
Haryana – 124 001.

APPEARANCE

Shri Naveen Mullick, Advocate – for the appellant.

S/Shri Rajeev Gupta and Bhasha Ram, Authorized Representative (DRs) – for the Respondent.

CORAM: **HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)**
HON'BLE SHRI C.L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 61237/2019

DATE OF HEARING : 02/09/2019.
DATE OF DECISION : 02/09/2019.

C.L. MAHAR :-

The present appeal has been filed by the appellant namely, M/S Devishree Mundran Pvt. Ltd. against the impugned order passed by the Commissioner (Appeals).

2. Briefly facts of the case are that the appellant is engaged in the manufacture of Electronic Weighing Scales and Auto Fare Meters of different models falling under heading 8423.10 and 9029.10 respectively of the Central Excise Tariff Act, 1985. The appellant has been availing SSI exemption under Notification

No.8/2002-CE dated 01/03/2002 and 8/2003-CE dated 01/03/2003. During the course of audit of the records of the appellant conducted by the Audit Officers of Central Excise Commissionerate, Rohtak in November 2006, it was found that the appellant were manufacturing weighing scales and auto meters of different models under the brand name "DOLPHIN" and "PARTH" and cleared the same at nil rate of duty availing SSI exemption under the aforesaid notifications. The brand name "DOLPHIN" is registered in their name vide trademark No. 1213854 dated 14/07/2003. Enquiries were conducted and it was found that the brand name "DOLPHIN" is registered in the name of M/S Dolphin Electrical, Bombay since 09/03/1987 for the commodity-electric iron and electric insect killer etc. It was also found that the brand name "PARTH" is registered in the name of M/s Parth Technical Service, Faridabad since 12/04/2002. The respondents had cleared the above mentioned goods under the brand name "Dolphin" from 01/04/2002 to 13/07/2003 valued at Rs.1,24,25,452/- and goods valued at Rs.3,13,200/- under the brand name "PARTH" during the period 01/04/2005 to 11/08/2005. Show cause notice dated 19/07/2007 was issued to the appellant demanding Central Excise Duty (including cess) @ 16% i.e. Rs.19,88,072/- on the goods cleared under the brand name "DOLPHIN" and central excise duty (including cess) of Rs.51,114/- on the goods cleared under the brand name "PARTH" on the ground that the benefit of SSI Notification No. 8/2002 CE dated 01/03/2002 and Notification No. 8/2003 dated 01/03/2003 was not admissible to the appellant in terms of the explanation under clause 4 to the notification as they were clearing the goods under the brand name of another person. This total duty of Rs.20,39,186/- was in demand in the show cause notice.

3. The proceedings initiated vide above show cause notice dated 19/07/2007 were dropped by the Additional Commissioner vide Order-in-Original dated 10/01/2008 holding that the assessee was eligible for the SSI benefit as the department could

not show any connection between the goods manufactured and cleared by the appellant and the other brand name owners. However, on appeal, the Commissioner (Appeals) vide order-in-appeal dated 27/02/2009 set aside the order-in-original and held that the appellant were not eligible for the SSI exemption benefit. Hence the present appeal has been filed against the impugned order-in-appeal dated 27/02/2009.

4. The learned Advocate appearing on behalf of the appellant has vehemently argued that mere for the reason that brand names "DOLPHIN" and "PARTH" were registered in the names of other persons did not make them ineligible for the SSI notification as those brand names are for the different products and are not in anyway connected to the products manufactured and cleared by the appellant. That the Additional Commissioner had correctly dropped the demand by relying upon the decision of Apex Court in the case of **Commissioner of Central Excise versus Bhalla Enterprises [2004 (173) E.L.T. 225 (S.C.)**].That the appellant were connected with the brand name "Dolphin" and "Parth" in relation to the products manufactured by them. He also invited attention to the fact that while setting aside the Order-in-Original vide order-in-appeal dated 27/02/2009, the Commissioner (Appeals) had not quantified demand amount to be recovered nor there was any mention in the impugned order-in-appeal about the recoverability of duty already mentioned in the show cause notice nor there is any mention of interest on the said demand and also there is no imposition of penalty on the appellant in the order-in-appeal dated 27/02/2009. That department had sought to rectify this omission by way of appeal to the incumbent Commissioner (Appeals) who vide her order-in-appeal dated 11/02/2010 rejected the appeal of the department holding that she had no power to modify the order-in-appeal dated 27/02/2009. Accordingly, the demand in the impugned show cause notice doe not remain and prayed to hold to be set aside accordingly. He also stated that the Board vide instruction

no. 213/41/88-CX dated 30/12/1988 had clarified that a manufacturer using a particular brand on a product manufactured will be eligible for SSI exemption, even though such brand is also used by another manufacturer on a different product. Thus, there was even a bonafide belief on the part of the appellant that the SSI exemption was eligible to them and extended period was not applicable. Per contra, the learned Departmental Representative has relied upon the Apex Court judgment in the case of **Commissioner of Central Excise, Trichy versus Rukmani Pakkwal Traders [2004 (165) E.L.T. 481(S.C.)**] and argued that once it is established that a particular brand name belongs to another person, the assessee is not eligible to use that brand name and avail SSI exemption even if the goods manufactured by him are different from the brand name owner.

5. We have carefully examined the rival contentions. We find that in the case of **Commissioner of Central Excise versus Bhalla Enterprises [2004 (173) E.L.T. 225 (S.C.)**], the Apex Court after considering its findings in the case of **Commissioner of Central Excise, Trichy Vs. Rukmani Pakkwal Traders [2004 (165) E.L.T. 481(S.C.)** has held as follows :-

> "6. The apprehension of the assessees that they may be denied the exemption merely because some other traders even in a remote area of the country had used the trade mark earlier is unfounded. The notification clearly indicates that the assessee will be <u>debarred only if it uses on the goods in respect of which exemption is sought, the same/similar brand name with the intention of indicating a connection with the assessees' goods and such other person or uses the name in such a manner that it would indicate such connection. Therefore, if the assessee is able to satisfy the assessing authorities that there was no such intention or that the user of the brand name was entirely fortuitous and could not on a fair appraisal of the marks indicate any such connection, it would be entitled to the benefit of exemption</u>. An assessee would also be entitled to the benefit of the exemption if the brand name belongs to the assessee himself although someone else may be equally entitled to such name".

6. Therefore, we find that the necessary condition to avail the SSI notification is that there must be an intention of the person using brand name of another person to indicate that some connection exists between the goods manufactured and cleared

by them with the brand name held by another person. We do not find that either in the show cause notice or in the subsequent proceedings, the department has alleged that the appellant manufactured and cleared the product with an intention of claiming the benefit of SSI exemption for the product with brand name held by another person or are in anyway connected the identity of the brand name or the brand name owner. Merely e remote coincidence would not dis-entitle the goods cleared by him from SSI exemption. Accordingly, we hold that the appellants are not barred from availing the SSI exemption under the relevant notifications. Even, the demand is not sustainable on the ground of limitation as the Board Circular dated 30/12/1988 itself prescribed that the bar under the SSI notification was not applicable if the different brand name owners were clearing the different products. The position was only altered after the Supreme Court judgment in the case of Rukmani Pakkwell Traders discussed above which was decide on 17/02/2004 and most of the demand pertains to the period prior to 17/02/2004. It is not disputed that the appellant is the owner of the trademark "DOLPHIN" for the weighing scales manufactured and cleared by them which was issued to them provisionally in 2001 and finally on 14/07/2003 without objection by any other person. Hence, even the judgment in the case of Rukmani Pakkwell Traders do not disentitle them from availing SSI exemption for the clearances made under the brand name "Dolphin".

7. In view of the above findings we set aside the impugned order-in-appeal dated 27/02/2009 and allow the appeal with consequential relief, if any.

(Operative part of the order pronounced in the open court.)

(Ashok Jindal)
Member (Judicial)

(C.L. Mahar)
Member (Technical)

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