IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal Nos. E/692 & 709/2010

(Arising out of Order-in-Appeal No.46/2010 and 47/2010 (M-IV) dated 5.8.2010 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Appu Hotels Ltd.
Shri A. Sennimalai Appellants

Vs.

Commissioner of Central Excise, Chennai – I Respondent

Appearance

Shri Akhil Suresh, Advocate for the Appellants
Shri R. Subramanian, AC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **11.04.2018**

Final Order Nos. **41097-41098 / 2018**

Per Bench

Brief facts are that the appellants are also engaged in the manufacture of cakes and cookies and were availing SSI exemption benefit under Notification No. 8/2003-CE dated 1.3.2003. The department was of the view that the appellant is using the brand name of "Le Royal Meridien" which is owned by "Star Wood Hotels and Resorts Ltd." for clearance of cakes, cookies and pastries. That therefore they are not eligible for the SSI exemption benefit. Show cause notice was issued raising the demand along with interest and also for imposition of penalty. After due process of law, the original authority denied the SSI exemption benefit and confirmed the duty demand, interest and penalties. In appeal, Commissioner (Appeals) upheld the same. Hence the appellants are before this Tribunal.

2. When the matter came up for hearing, ld. counsel Shri Akhil Suresh submitted that the department has erroneously denied the SSI benefit alleging that the appellant has been using the brand name of 'Le Royal Meridien' which is owned by another. He adverted to the agreement entered into by the appellant with 'Le Royal Meridien' and 'Meridien SA' dated 12.4.2000 and argued that by such agreement the appellant has been licensed to use the brand name of 'Le Royal Meridien'. That since the appellant is therefore allowed legally to use the brand name, it cannot be said that the appellant is using the brand name of another person. The use of the brand name is by express agreement between Star Wood Hotels and Resorts Ltd. and the appellant. It is also argued by him that the cookies etc. do not bear the brand name and only on the carton the brand name was printed by the appellant. The appellants have exclusive rights to run the hotel as per

agreement and also rights to use the brand name and the trademark for operation of the hotel and therefore they are eligible for the benefit of SSI exemption. He relied upon the decision in the case of Commissioner of Central Excise, Bangalore Vs. Otto Bilz (India) Pvt. Ltd. – 2015 (324) ELT 430 (SC).

3. The ld. AR Shri R. Subramanian reiterated the findings in the impugned order. It is argued by him that the appellants have not established that they have been assigned the brand name by the foreign company who owns the brand name. Therefore, the appellants have used the brand name of another person and they are not eligible for SSI exemption benefit.

4. Heard both sides.

5. The brand name as per Notification No. 8/2003-CE dated 1.3.2003 means as under:-

> *"Brand name" or "trade name" means a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specific goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person"*

6. In the present case, the appellants have entered into an agreement with Meridien SA dated 12.4.2000 by which they have acquired the brand name "Le Royal Meridien". They have been given the exclusive right to use the brand name till the

expiry of the agreement. Therefore, it cannot be said that they are using the trademark of another person. This issue was considered by the Hon'ble Supreme Court in the case of Otto Bilz (India) Pvt. Ltd. (supra), wherein the foreign brand name owner when had assigned the trademark to the Indian company under an agreement with the right to use the trademark exclusively in India, the Hon'ble Court held that the Indian company is entitled to SSI exemption. The relevant portion of the judgment is reproduced as under:-

> *"3. As per the Revenue, the respondent is using brand name 'BILZ' of a foreign company which makes the respondent ineligible to seek exemption under the aforesaid Notification. However, it has come on record that the foreign company, viz., M/s. Otto Bilz Wekzugfabrik GMPH & Co., a German company, has assigned the trade mark 'BILZ' in favour of the assessee under Agreement dated 18-6-1996 with right to use the said trade mark in India exclusively. Because of the aforesaid assignment, the assessee is using the trade mark 'BILZ' in its own right as its own trade mark and therefore, it cannot be said that it is using the trade mark of 'another person'. We, thus, are in agreement with the view taken by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as 'CESTAT') [2015 (180) E.L.T. 61 (Tri. - Bang.)] that the assessee would be entitled to the aforesaid Exemption Notification.*
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> *4. It may also be pointed out that show cause notice dated 31-3-1999 which pertained to the period July, 1997, to March, 1998, is held to be time-barred by CESTAT and further holding that the Revenue could not avail the benefit of proviso to Section 11A of the Central Excise Act. Finding of the CESTAT on this issue is also without any blemish.*
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> *5. We, thus, do not find any merit in this appeal which is dismissed on both these grounds".*

7. Following the said decision, we are of the considered view that the denial of SSI exemption is without any basis. For the same reason, the penalty imposed on Shri A. Sennnimalai, Managing Director of M/s. Appu Hotels Ltd. is set aside.

8. In the result, the impugned orders are set aside and both the appeals are allowed with consequential relief, if any.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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