3. M/s. Vijaya Chemicals and Toilet Works (VCTW) was started as a proprietary concern by Shri. D.V. Seshiah Gupta during the year 1934 for the manufacture of cosmetics falling under Chapter 33 with the brand name "ASOKA" and further became a partnership firm during 1957. The said partnership firm was dissolved during the year 1975 and each of the partners had started clearing their manufactured goods under the slightly modified brand name "ASOKA" with an invented letter 'A' or 'C', 'T' etc. along with the common monogram in the shape of 'BUST OF A LADY WITH TWO ROSES' claiming ownership of the brand name "ASOKA" for the territories allotted to them in the dissolution deed.

3. M/s.VCTW (AP) owned by Shri. D.V. Nagandranath Gupta, used the brand name as "ASOKA — A", M/s.VCTW (Telengana) owned by Shri.D.V. Sainath Gupta, used it as "ASOKA — T" and M/s.VCTW(Circar) owned by Shri.D.V. Surendranath Gupta, used it a "ASOKA — C" and all got their brand names registered with the Registrar of Trade Marks, Bombay. Similarly, M/s.VCTW (Telengana) had permitted Smt. D.V.Vyjanthi, Proprietrix of M/s.Roopash Cosmetics to manufacture and market Sandal Wood Talcum Powder etc., bearing the brand name of "ASOKA — R" in the Districts of Hyderbad, Secundarbad and Warangal.

4. Periodical show-cause notices were issued to all the firms proposing to deny the benefit of SSI Exemption on the allegation that they were clearing the goods bearing the brand name of an other persons, who is not entitled to avail the benefit of the said notification. This was in terms of para 4 of the Notification No.8/2000-CE, dated 01.03.2000 and subsequent notifications. However, all such demands

came to be dropped by the original authorities. Against such orders of the original authorities, Revenue filed the appeal before the Commissioner (Appeals), who decided the issue for all the five firms through the impugned order. He upheld the Orders-in-Original dropping such demand.

5. Aggrieved by the impugned order, the present appeal has been filed by Revenue.

6. With the above background, we have heard Shri B. Balamurugan, AC(AR) on behalf of Revenue and Shri R. Raghavan, Advocate for the Respondents.

7. Revenue has contended that mere addition of letters 'T', 'R', 'C' or 'A' to the trade name "ASOKA" is merely an internal arrangement amongst the registered partners etc. and that does not qualify them to avail SSI exemptions. It has also been contended by the Revenue that the adjudicating authorities have erred to notice the fact that all the assessees have used the same monogram in the shape of 'BUST OF A LADY WITH TWO ROSES' for the cosmetic goods manufactured by them, hence, not eligible to claim the benefit of SSI exemption notification during the relevant periods.

8. The learned departmental representative supported the grounds of appeal. He also relied upon the decision of the Supreme Court in the case of *Commissioner of Central Excise, Chandigarh-I Vs Mahaan Dairies* reported in *2004 (166) E.L.T.23 (S.C.)* and submitted that the goods sold with the registered trade name of another company, but printed with additional words would not enable the assessee to claim the benefit of SSI exemption.

9. The learned advocate appearing for the respondent supported the impugned order. He argued that the issue of the brand name was decided by the Tribunal in the case of *Commissioner of Central Excise, Chennai Vs M/s. Vijaya Chemicals & Toilet Works* reported in *2004 (167) E.L.T.406 (Tri.-Chennai).* The above decision, which is in respect of one of the firms involved in the present impugned order for an earlier period, will be applicable in respect of M/s. Roopash Cosmetics also. He further submitted that the very same order was relied upon by learned Commissioner (Appeals) in the impugned order to hold that all the firms will be entitled to SSI benefit.

10. On going through the records of the case, we find that the department has proceeded against all the five firms for denying the SSI benefit. The original Partnership Firm in the name and style of M/s. M/s. Vijaya Chemicals & Toilet Works was dissolved on 04.08.1975. All the partners thereafter settled among themselves the right to use brand name "ASOKA" of the original Partnership Firm. The brand name was allowed to be used by the various partners in separate territories with the addition of suffixes 'A', 'C' 'T' etc. for different firms. Accordingly, M/s. Roopash Cosmetics started using the brand name "ASOKA-R" along with the common monogram. The said brand names were duly recognized by the Registrar of Trademarks. In the decision of the Tribunal (supra), it has been held as follows:-

> "We find that in the present case it is not disputed that the partnership firm to whom the brand name "ASOKA" earlier belonged was dissolved and subsequently, it was used by the members of the family firm and later (before the issue of show cause notice) the brand name was registered in favour of the present Respondent. This position is not disputed before us. Therefore, we do not find any ground to interfere with the order of Commissioner (Appeals)particularly, in the light of the Tribunal's

Customs, Excise & Service Tax Appellate Tribunal judgment in the case of *Bentex Motor Control Industries Vs CCE, New Delhi* as reported in *2002 (139) E.L.T. 679* and *we uphold the impugned order and reject the appeal".*

11. In the impugned order, the learned Commissioner (Appeals) has considered the above decision of the Tribunal in the case of *Bentex Motor Control* and has come to the conclusion that the respondent will be entitled to use the brand name "ASOKA" with the suffix 'R' to the territory allotted to them, since such a brand name is used by the respondent only after proper assignment on dissolution of the parent firm. It is to be held that the respondent has not used the brand name of another person so as to incur the mischief of para 4 of the SSI notifications. Similar views have also been taken by the Tribunal in the case of *Commissioner of Central Excise, Delhi-1 Vs Bonne Care Pvt. Ltd.* reported in *2016 (343) E.L.T.1097 (Tri.-Del.).*

12. In view of the above discussions, we find no reason to interfere with the impugned order, which is upheld and the Revenue's appeal is dismissed.

(Operative part of the order pronounced in open court on **14.06.2017**)

(V. PADMANABHAN)
TECHNICAL MEMBER

(SULEKHA BEEVI C.S)
JUDICIAL MEMBER

ksr
22-06-2017

Customs, Excise & Service Tax Appellate Tribunal

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14/8
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