CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

South Zonal Bench, Chennai

COURT-III

Date of hearing: 14.06.2017

Appeal No. E/581/2007-EX[DB]

[Arising out of the Order-in-Appeal No. 31/2007 dated 30.04.2007 and passed by the Commissioner of Central Excise, Chennai]

M/s. Vimal Perfumery Co. ... Appellant

Vs.

C.C.E. Chennai - II ... Respondent

Appearance:

Present Shri M. Kannan, Advocate for the appellant
Present Shri S. Govindarajan, DR for the respondent

Coram: **Hon'ble Ms. Sulekha Beevi C.S., Judicial Member**
Hon'ble Mr. V. Padmanabhan, Technical Member

FINAL ORDER No. 41854/2017

Per V. Padmanabhan:

The appeal is against the order-in-Appeal No. 31/2007 dated 30.04.2007.

2. The brief facts of the case are that the assessee is engaged in the manufacture of cosmetics falling under Chapter 3304 and Brilliantine Hair Care (Hair Cream) falling under chapter 3305 of Central Excise Tariff Act, 1985 respectively. During the period from 01.04.2004 to 31.03.2005 the assessee has been clearing the said goods under the common brand name 'Ashoka' with an invented letter 'A' as suffix, along with common

monogram in the shape of a bust of a lady with two roses, without payment of Central Excise duty claiming the benefit of Central Excise Notification no. 8/2003 dated 01.03.2003. It was alleged by the department that the assessee was using the brand name of another person and hence the assessee was not eligible for the exemption under Notification no. 08/2003. Hence a show cause notice was issued to the assessee proposing to demand the duty amount of Rs.48,279/- and cess of Rs.841/- along with interest. Penalty was also sought to be imposed under Rule 25 read with Rule 8 and Rule 6 of Central Excise Rules, 2002. After due process of law the Assistant Commissioner of Central Excise, Chennai I Division dropped further proceedings vide impugned order-in-original.

3. Revenue challenged the order-in-original resulting in the impugned order in which the demand was sustained. Aggrieved by the impugned order present appeal has been filed.

4. With the background, we have heard Shri M. Kannan, Advocate for the appellant and Shri S. Govindarajan, DR for the respondent.

5. The ld. Counsel agitating the grounds of appeal submitted that originally the brand name "ASOKA" was developed and owned by M/s. Vijay Chemicals & Toilet Works (AP). After the dissolution of the original partnership firm, the partners started different units and settled among themselves the use of the brand name "ASOKA" along with different suffixes in different geographical locations. Accordingly, the brand name "ASOKA-A" came to be used by the present appellant in various districts of

Andhra Pradesh and Tamil Nadu. Further, he submitted that the issue of the use of the brand name by the various units in different jurisdictions has been settled by the Tribunal in the case of ***CCE Vs. Vijaya Chemicals & Toilet Works 2004 (167) ELT 406 (Tri-Chennai).***

6. Since, the above decision has been accepted by the Revenue the benefit of the same will be available to the appellant. Relying on the above decision of the Tribunal, the original authority dropped the demand for the duty and allowed the SSI benefit.

7. The Ld. DR supported the impugned order.

8. After hearing both the sides and perusal of the records, we note that originally the brand name "ASOKA" belonged to M/s. Vijay Chemicals & Toilet Works. Upon dissolution of M/s. Vijay Chemicals & Toilet Works, several units were started by the partners in different jurisdictions and all of them were allowed to use brand name 'ASOKA" by addition of the suffix like A,B.C, etc. M/s. Vijay Chemicals & Toilet Works (AP) owned by Shri D.B. Nagandranath Gupta. The present appellant M/s. Vimal Perfumery Co. was assigned the brand name "ASOKA-A" and was allowed to use the said brand name.

9. We find that the issue of brand name "ASOKA" has been settled by the Tribunal in the decision of ***Vijaya Chemicals & Toilet Works*** wherein the Tribunal has 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 the Commissioner (Appeals) particularly in the light of the Tribunal's judgment in the case of Bentex Motor Control Industries v. CCE, New Delhi as reported in 2002 (139) E.L.T. 679 and we uphold the impugned order and reject the appeal."

10. Upon consideration of the decision of the Tribunal in the case of ***Bentex Motor Control Industries Vs. CCE 2002 (139) ELT 679***, we come to the conclusion that the appellant will be entitled to use of the brand name "ASOKA" with the suffix A within the territory allotted to the appellant since such a brand name is used by the appellant only after proper assignment. Similar view have also been expressed by the Tribunal in the case of ***CCE Vs. Bonne Care Pvt. Ltd. 2016 (343) ELT 1097 (Tri-Del).***

11. In view of the above discussion, the impugned order is set aside and appeal is allowed.

[Operative part of the order Pronounced in the open court]

Sulekha Beevi

(Sulekha Beevi C.S.)
Judicial Member

(V. Padmanabhan)
Technical Member

Bhanu

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति / Certified True Copy
सहायक पंजीकार / Asst. Registrar
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