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

E/383/2009

(Arising out of Order-in-Appeal No.70/2008 (M-IV) dated 9.4.2009 passed by the Commissioner of Central Excise (Appeals), Salem)

M/s.Maruthi Bio Tech — Appellant

Vs.

Commissioner of Central Excise, Chennai – IV — Respondent

Appearance

Shri V.S. Sreenivasan, Advocate for the Appellant
Shri K.P. Muralidharan, AC (AR) for the Respondent

CORAM

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

Date of Hearing / Decision: **21.08.2017**

Final Order No. 41751/2017

Per Bench

Brief facts are that the appellants are manufacturers of food supplements and were clearing the said products without payment of duty after affixing the brand names belonging to their customers. Thus, the department was of the view that the appellant is not eligible for the SSI exemption, since they were using the brand name belonging to another person.

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2. The second issue was that the appellant had resorted to raising parallel invoices, that is, two invoices bearing the same number but the goods covered in the said invoices are different and cleared to two different customers. Accordingly, they are also liable to pay excise duty on the parallel set of clearance valued at Rs.81,000/-. Show cause notice was issued proposing to demand Rs.2,88,521/- in respect of clearances made by affixing brand name of another person for the period 2002 – 03 to 2006 – 07 and also payment of Rs.13,219/- in respect of clearances made under parallel invoices. After due process of law, the original authority confirmed the duty demand along with interest and imposed equal penalty. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

3. On behalf of the appellant, learned counsel Shri V.S. Sreenivasan submitted that department alleges that the appellant has used the brand name of another. They have not established to whom such brand names belong. The appellant contended that the brand names were coined by the appellant and the customers. The marketing agencies were marketing the products and were not claiming ownership of the brand names. The appellant for sustaining in its business approached various marketing agencies for the sale of the goods manufactured by them and procured orders from them by

coining the brand name for such products in consultation with the said marketing agencies. Since the marketing agencies were not willing to undertake marketing of the food supplement in any existing brand, the appellant was compelled to coin the brand name for each agency separately. The appellant sold the goods bearing such names to the marketing agencies and by this itself cannot be said that the brand name are owned by the marketing agencies. Further, the appellant had produced documents / letters from the marketing agencies, showing that they do not claim ownership of the brand name. In such a case, it is for the department to prove and establish to whom the specific brand name belongs to. Therefore, he states that the demand raised on the ground that the appellant had manufactured goods using the brand name of another is not sustainable. With regard to the demand raised alleging parallel invoices, he states that the appellant would fall within the SSI limit since demand in this context is very small.

4. The learned AR Sri K.P. Muralidharan reiterated the findings in the impugned order.

5. Heard both sides.

6. It is seen that the brand names in question were coined by the appellant and its marketing agencies, since they were not willing to undertake marketing of the products without

such brand names. It is also brought out from the documents produced by the appellant that such marketing agencies / customers do not claim ownership of the brand names. Since it is not disputed that the coining of the brand name together by the appellants and the customers, it is the bounden duty of the department to establish that the appellant has been using the brand name belonging to another. The marketing agencies have produced letters stating that they do not claim any ownership of such brand name and therefore we are of the view that it cannot be held that the appellant has been clearing goods with the brand name belonging to another person.

7. The decision in the cases of Mukur Pharmaceuticals Pvt. Ltd. Vs. Commissioner of Central Excise, Chandigarh – 2001 (135) ELT 569, Commissioner of Central Excise vs. SSC Shoes Ltd. – 2003 (162) ELT 421 and Commissioner of Central Excise Vs. Satyam Enterprises – 2004 (168) ELT 379 have categorically held that the onus lies on the department to establish that the brand name belongs to another person.

8. With regard to issue of parallel invoice, the amount involved is only Rs.13,219/- therefore, the appellant would come within the SSI exemption limit.

9. From the above discussions, we find that the demand raised alleging misuse of brand name of another person is not

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

(Madhu Mohan Damodhar)
Member (Technical)

Sulekha Beevi

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

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