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

Appeal Nos. E/221, 230, 231/2006

[Arising out of Order-in-Appeal No.111 & 112/2005 (M-III) dt. 30.11.2005 passed by the Commissioner of Central Excise (Appeals), Chennai]

Commissioner of Central Excise,
Chennai-I & Chennai-III — Appellant

Versus

1. Aksol Industries
2. Aksol Chemical Industries — Respondent

Appearance:

Shri K. Veerabhadra Reddy, JC (AR)
For the Appellant

Shri .Hari Radhakrishnan, Advocate
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of hearing / decision : 13.06.2017

FINAL ORDER No. 41024-41026/2017

Per Bench

These appeals are filed by Revenue against the OIA No.111 & 112/2005 dt. 30.11.2005. Vide the impugned order, the learned Commissioner (Appeals) dropped the duty demands made against M/s.Aksol Industries (AI) and M/s.Aksol Chemical Industries (ACI). The allegations of Revenue against the two respondents are that they

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availed the benefit of SSI notification for manufacture and clearance of leather chemicals with the brand names of others. Aggrieved by the impugned order, Revenue has filed the present appeals.

2. With the background, we heard Shri K.Veerabhadra Reddy, Ld.D.R and Shri S. Hari Radhakrishnan, Ld. Advocate.

3. The Revenue's case against the respondents are summarized as below :-

3.1 The respondent's companies AI and ACI are registered manufacturers of leather chemicals falling under Chapters 32, 34, 38 and 39 of the Central Excise Tariff Act, 1975. In the year 1975, Shri A. Murugesan and Smt. Susila Murugesan started a company in the name and style of M/s.Aksol Chemicals for the manufacture of several leather chemicals. Subsequently, four more units were established by the family members of A. Murugesan. In 1994, another concern in the name and style of M/s.Aksol Chemical Products began manufacture of similar products. Several products were developed by A. Murugesan and were cleared with several trade names in the course of business. During 1998, there were a major reorganization of the business activities of the group. Two new companies were started in the name and style of (1) M/s. Aksol Industries, a Proprietary concern, the proprietor being Shri Viswanath M. Raja S/o Shri A. Murugesan and Smt. Susila Murugesan and (2) M/s.Aksol Chemical Industries, a Proprietary concern, the proprietrix being Smt. Vidya M. Raja, D/o Shri A.Murugesan and Smt. Susila Murugesan. Shri A. Murugesan and Smt. Susila Murugesan have transferred, by way of Sale Deed registered on 27.03.1998, the land and building belonging to them where in all the manufacturing units said in pre-paras were functioning and also sold the machinery, equipment and stock of raw materials etc. to and in favour of Shri Viswanath M. Raja and Smt. Vidya M. Raja son and daughter respectively. Both Shri A. Murugesan and Smt. Susila Murugesan, in their capacity as founders, proprietor, proprietrix, partners in all the group companies and absolute owners of the trade names of all their products, have assigned all the trade names as listed in Schedule-A and Schedule-B of the Deed of Assignment Dated 31.03.1998 in favour of Shri Viswanath M. Raja and Smt. Vidya M. Raja. The department proceeded to deny the benefit of SSI exemption for AI as well as ACI by taking the view that they were manufacturing the goods with the trade names which did not belong to them but were belonging to Aksol Chemicals. The original authority confirmed the demands vide his Orders-in-Original Nos.57/2004 and 58/2004 both dt. 30.12.2004. However, vide the impugned order, the demands were set aside by taking the view that the entire propriety of group companies were sold to the respondent as per sale deed dt. 27.03.1998 whereby the respondents were given absolute freedom and title to use trade names for the leather chemicals manufactured in their respective factories.

3.2 The main grounds on which the impugned order has been challenged by Revenue are :

(a) The Commissioner (Appeals) has erred in taking the view that, AI & ACI did not use the brand name of others. The investigation has established that these brand names originally belonged to Aksol Chemicals and also to various other group companies

(b) The respondents have also made use of brand name of "Emi" of M/s.Marudhar Tanchem Private Ltd. (MTPL) who functioned as consignment agent of AI. The brand names have been assigned by Shri A.Murugesan and Smt. Susila Murugesan in their individual capacity by an Assignment Deed. Such deed was neither executed in the respondent firm or signed by all partners. Further, the booklets issued in the year 1997 and 2000 by Aksol Chemicals indicates various products and brand names. Hence it is evident that Aksol Chemicals continued to exist and is engaged in trading activities.

(c) In respect of goods cleared with the prefix "Emi", such prefix identifies with M/s. MTPL. Such goods are sold only to M/s.MTPL. It is also admitted that MTPL is shown as consignment agent only for the purpose of sales tax.

In view of the above, the goods cleared by AI and ACI are not entitled to benefit of SSI exemption since they have been cleared with the brand name of others.

4. Heard both sides and perused the records. The benefit of SSI notification was sought to be denied for AI as well as ACI in terms of para-5 of the SSI Notification No.8/98 dt. 2.6.98 and para-4 of Notification No.8/99 dt. 22.8.99 and 8/2000 dt. 1.3.2000. In terms of relevant paras of the above notifications, the benefit is to be denied in respect of specified goods, if cleared bearing a brand name of another person. In the present case, the allegation is that the two respondents have cleared the goods bearing the brand name of another person i.e. the brand name originally owned and used by M/s.Aksol Chemicals and subsequently by various group companies. Further allegation is that the respondents also cleared the goods which were described with the prefix "Emi". Since all such goods were cleared to MTPL, it was alleged that the prefix "Emi" was in fact the brand name of MTPL.

5. On going through the records of the case, we find that the brand name used by AI as well as ACI were originally belonging to and used by Aksol Chemicals started by A. Murugesan along with Smt. Susila Murugesan. Subsequently, from the year 1994, various other companies started by Shri and Smt. Murugesan also used the brand name. However it is on record that as per Sale Deed dt. 27.03.1998 and Deed of Assignment, all the group companies ceased to exist and the entire properties and goodwill were legally transferred to both the respondents with the consent of all the family members who were proprietors/partners in the group companies. Thus, there is no dispute that the owners of the brand name have legally assigned all the brand name to both the respondents. Since the dispute is pertaining to the period after such assignment of brand names, we are of the view that clearances made by both the respondents bearing these brand names has to be held as clearances of goods bearing the brand name of respondents themselves. The learned Commissioner (Appeals) in the impugned order has also set aside the demand on this ground by further holding that M/s.Aksol Chemicals did not exist. In view of Deed of Assignment of brand name, we find no infirmity in the findings of the Commissioner (Appeals) in the impugned order.

6. With regard to allegation that "Emi" was a brand name belonging to MTPL, we note that Smt. K.K. Maheswari, Director of MTPL in her statement dt. 2.11.2000 has categorically stated that she was not the owner of the brand name "EMI" which was used as prefix to the description of goods cleared through MTPL. In the absence of any other proof brought on record by Revenue that the respondents were manufacturing the goods with the brand name of another person, we

are of the view that the impugned order needs to be upheld. Consequently, appeals filed by Revenue are dismissed.

(Operative part of the order pronounced
in court on 13.06.2017)

(V.Padmanabhan)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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