CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH – COURT No. III

Excise Appeal No. 40614 of 2018

(Arising out of Order-in-Appeal No. CMB-CEX-000-APP 347/2017 dated 08.12.2017 passed by Commissioner of GST and Central Excise (Appeals), No. 6/7, A.T.D. Street, Race Course Road, Coimbatore – 641 018)

M/s. Sigma Building Products **...Appellant**
S.F. 4/2, Chintamani Thoppu,
Chindamanipudur,
Coimbatore – 641 103.

Versus

Commissioner of GST and Central Excise **...Respondent**
Coimbatore Commissionerate,
No. 6/7, A.T.D. Street,
Race Course Road,
Coimbatore – 641 018.

<u>APPEARANCE:</u>

For the Appellant : Mr. S. Durairaj, Advocate
For the Respondent : Ms. G. Krupa, Authorised Representative

<u>CORAM:</u>
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

<u>FINAL ORDER No. 41297 / 2025</u>

DATE OF HEARING : 15.09.2025
DATE OF DECISION : 11.11.2025

Per Mr. VASA SESHAGIRI RAO

The present appeal is directed against the Commissioner (Appeals) Order-in-Appeal No. CMB-CEX-000-APP 347/2017 dated 08.12.2017 ['Impugned Order' for short] which denied the benefit of SSI exemption Notification No. 8/2003-CE to the M/s. Sigma Building Products

[‘Appellant’ for short] for the period April 2013 to 07.09.2013 and April 2014 to December 2014 on the ground that the appellant had used inputs bearing brand names or trademarks of third parties in the manufacture of final excisable goods and therefore was not entitled to the aforesaid SSI notification benefit.

2.1 Facts briefly stated are that the M/s. Sigma Building Products/Appellant are the manufacturers of Builders ware of Plastics (Doors, Windows and their frames of Plastics) falling under CET 39250000 and registered with the Central Excise Department. They are also availing exemption under Notification No.08/2003 CE dated 01.03.2003 as amended on the manufacture and clearance of excisable goods during the period from April, 2013 to 7 th September 2013 and from April, 2014 to December, 2014. On scrutiny of their records by Internal Audit, it was observed that the appellant had wrongly availed exemption under Notification No.8/2003 CE dated 01.03.2003 as amended and cleared doors, windows and their frames made of plastics with the brand name/Logo LG Hausys of M/s. LG Hausys India Pvt. Ltd, Gurgaon during the above period. Hence, a Show Cause Notice was issued vide SCN No 32/2016(AC) dated 26.12.2016.

2.2 After the due process of Law, the duty demand in SCN was confirmed for an amount of Rs.35,03,312/- vide Order in Original No 18/2017 dated 09.06.2017 along with interest and a penalty of Rs.35,03,312/- under Section 11AC of Central Excise Act, 1944 read with Rule 25 was imposed along with penalty of Rs.5,000/- under Rule 27 of Central Excise Rules, 2002.

2.3 Being aggrieved, the Appellant filed an Appeal before the Commissioner (Appeals), Coimbatore who upheld the order of the Adjudicating Authority rejecting their appeal.

2.4 Aggrieved once again, the Appellant is in Appeal before this Forum.

3. The Ld. Advocate Mr. S. Durairaj, appeared for the Appellant and Ms. G. Krupa, Authorized Departmental Representative appeared for the Respondents and made their submissions.

4. The Ld. Advocate Mr. S. Durairaj, have submitted that: -

4.1 They are manufacturing windows and doors as per the customers' requirements. Raw materials are UPVC Profiles and window glasses. Brand names of the raw material suppliers are affixed on the raw materials by the raw material suppliers. UPVC profiles are affixed with the brand name of "LG Hausys", supplied by M/s. LG Hausys and Alphine, supplied by M/s. Sarveswara Mills India (P) Ltd. Window glasses with the brand of "Saint Gobain" are procured from M/s. Minerva Glass House. They are not affixing these names, and the presence of brand name is either incidental or fortuitous and they have availed the small-scale exemption under Notification No. 8/2003-CE dated 01.03.2003 being eligible.

4.2 It is contended that they have not affixed any brand name of other persons. Only various brand names of various raw material suppliers are available in the final products of the appellants, which cannot be avoided because such brand names cannot be erased from the raw materials, while manufacturing the final products. At the end of the day, all the final products would bear the brand names of three suppliers such as "LG Hausys", "Alphine and "Saint Gobain". So, the public cannot assume that that the appellants' products are manufactured by LG Hausys because there would be other brands like "Alphine and "Saint Gobain". These brand names are not affixed to establish any link between the goods and the brand name owners. Therefore, the benefit of Notification No. 8/2003-CE cannot be denied and placed reliance upon the decision of the Hon'ble Supreme Court in the case of *Hisaria Electronics Vs. CCE - 2023 SCC Online SC 1811.*

4.3 The Adjudicating Authority's findings in para 7 of the Order-in-Original, which was also relied upon by the Commissioner (Appeals) based on two web sites of the Appellants', which are not part of the show cause notice. So, findings are to be set aside. It was not established that the appellants have intentionally affixed the brand name to establish a link between the goods and the brand name owners.

4.4 It was further argued that the entire demand is also hit by limitation. These brand names are already available on the raw materials. Various judgments are in favour of the appellants and on that basis, Appellants acted in a *bonafide* manner. All the raw materials were procured on payment of duty. CENVAT credit facility is available to discharge the duty liability. During the period the credit on the purchases of raw materials works out to Rs.33,37,949/-. Therefore, the allegation of intention to evade the duty does not arise relying on the decision in the case of *SM Engineering Works Vs CCE - 2014 (314) ELT 476*.

4.5 Finally, it was prayed for setting aside the impugned order and allow the appeal with consequential benefits.

5.1 *Per contra*, the Ld. Authorized Representative Ms. G. Krupa reiterated the findings made in the impugned order and contended that the Appellant has used inputs bearing brand names or trademarks of third parties in the manufacture of final excisable goods and that extended period was rightly invoked in this case on the grounds of misstatement/ suppression of facts that there is no merit in the Appeal and made a plea for rejection of the Appeal.

5.2 The Ld. Authorized Representative has referred to the findings of the Adjudicating Authority in para 7 which read as follows: -

> *7. In the instant case the symbol, monogram, label i.e., LG Hausys is used in relation to goods manufactured by the assessee so as to indicate a connection in the course of trade between goods manufactured and the assessee. The assessee's reason to have the sticker with symbol LG Hausys till their installation after sale is not convincing when they call themselves "technical partner with LG Hausys. It leads to the conclusion that the product manufactured by the assessee gets significance and also popularity by its association with the name of the market leader pasted on the goods. Hence the assessee's contention after erection the sticker is peeled off to show the clean colour and smooth structure of the window does not support their claim that the benefit would be available even if the brand name of another person is affixed on their product. Further in their two websites viz., www.sigmabuildingproducts.com&upvcsigmawindows.com to market their product they advertise as follows;" We are the manufacturers of LG Hausys UPVC windows and doors in Coimbatore" "technical partner with LG Hausys" A*

> *product is known either by symbolic representation of the manufacturer or market leader. If the brand leader LG Hausys is pasted of peelable sticker it gives impression to the public that the product is qualitative having connection with the brand leader. In the case of the assessee a market leaders' name is symbolically impressed on the profiles which gives impression to the public that LG Hausys is market leader and market under its brand name The factual position gives rise to the connection that the windows and doors manufactured by the assessee is associated with a market leader whose symbol appears on the frames. After installation whether the sticker is peeled off is immaterial. I find there is nexus between such a name or logo and the product at the time of its sale which is essential ingredient in the definition of the term "brand name". The assessee's submission and documents submitted in support of their defense are not relevant in the facts and circumstances of the case."*

6. We have heard the submissions of both the sides, carefully perused the appeal records and the citations submitted as relied upon.

7. We find that the main issue that arises for determination in the present appeal lies in a narrow compass as to: -

i. Whether the appellant is eligible or not to exemption under Notification No. 8/2003-CE when some inputs/components used in manufacture carry brand names / trademarks of other persons — i.e., whether main inputs bearing the brand names of their manufacturer when used in the manufacture of the appellant's final goods will be disentitled to the benefit of SSI exemption? and,

ii. Whether the extended period has been rightly invoked in this case and imposition of penalty is justified?

8.1 We find that it is appropriate at this juncture to advert to the relevant statutory provisions.

> *"Sl. No. 4 of Notification 8/2003 CE, which deals with brand name is as under:*
> *4. The exemption contained in this notification shall not apply to specified goods bearing a brand name or trade name, whether registered or not, of another person, except in the following cases:*
>
> *where the specified goods, being in the nature of components or parts of any machinery or equipment or appliances, are cleared for use as original equipment in the manufacture of the said machinery or equipment or appliances by following the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001:*
> *…………………..*
> *For the purpose of this Notification,*
> *(A) "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 specified 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;"*

8.2.1 The Ld. Advocate has contended that the exemption can be denied only when the specified goods, manufactured by the appellants, bear the brand name of other person to indicate to the public the link between the products with the other person. In this case, appellants have not affixed any brand name of other person. Only brand names of various raw material suppliers are available in the final products of the appellants, which cannot be avoided because such brand names cannot be erased from the raw materials, while manufacturing the final products. All the final products would bear the brand names of three suppliers such as "LG Hausys" or "Alphine" and "Saint Gobain". So, the public cannot assume that the appellants' products are manufactured by LG Hausys because there would be other brands also like Alphine and "Saint Gobain".

8.2.2 That the Adjudicating Authority had completely ignored the above aspect. Instead, he claimed that the appellants had mentioned the name of LG Hausys in their web sites. The denial of exemption can be done only when their products bear the other's brand. Nowhere in the notification, it is said that the exemption can be denied, when such names are mentioned in the websites.

8.3 The Lower Appellate Authority in Para 8 of the Order recorded that: -

> *"The Adjudicating Authority in para 7 of his findings in the impugned Order has observed that the symbol/*

monogram/ label LG Hausys is used in relation to the goods manufactured by the appellant so as to indicate a connection in the course of trade between goods manufactured and the assessee. As the appellant are calling themselves as Technical Partner with LG Hausys, it signifies that the appellant is riding on the popularity of LG Hausys by its association. On the other hand, the appellant have argued that the small-scale exemption cannot be denied to them as the public cannot assume that the appellant's products are manufactured by LG Hausys because there would be other brands such as "Alpine" and "saint Gobain". In this regard, it is observed that the arguments advanced by the appellant are not sustainable as they themselves clearly admitted that they are one of the authorized fabricators of LG Hausys who do not have manufacturing facility in India. Incidentally, the glass pane window comprises of two components, viz, UPVC profiles and glass. While the UPVC profiles are procured from LG Hausys, glass is procured from Saint Gobain. In a particular type of window or door, there would be only goods with two brands namely LG Hausys or Alphine in the case of UPVC and Saint Gobain in case of glass. Since, the appellant who uses the Saint Gobain glass in their finished product is an Authorized fabricator appointed by LG Hausys. it can be inferred that they are manufacturing and clearing the goods with the brand name, LG Hausys rendering them ineligible to avail the exemption."

8.4.1 We have gone through the above arguments and find that the burden of proving that the finished goods bear another person's brand so as to indicate a trade connection, rests on the Department. Mere allegation of use of branded inputs will not disentitle them for SSI Notification benefit and the department must demonstrate that the goods as removed from the factory carried the brand/mark/name of another and are marketed/cleared as goods of that other person.

8.4.2 The main question for determination in this appeal is whether the phrase "goods bearing brand name / trade name of another person" refers to the finished goods as cleared or to any branded inputs used in the manufacture?

8.4.3 We observe that excise invoices and delivery challans were not relied upon in the SCN nor produced during the Appeal to indicate that finished goods were billed and removed in the appellant's name or in plain/neutral packing or in the name of the input suppliers. We do not find any evidence on record of sale invoices or trade catalogues showing the goods marketed were under third-party brands.

8.4.4 We note that mere registration of the Appellant with the supplier will not prove any connection of brand usage. The department has not adduced any concrete evidence to show that the usage of brand has been permitted by the supplier by any agreement. Further, we find that in some cases, there is a possibility of usage of three inputs together and in such a situation all the three input suppliers have their brand names on their inputs which is used by the Appellant. We find in para 8 of the impugned Order that just because the Appellant is an authorised fabricator appointed by L.G.Huasys one of the input suppliers, can it be inferred that they are manufacturing and clearing the goods with their brand name L.G.Huasys rendering them to be ineligible for the Notification.

8.4.5 The Adjudicating Authority in para 7 has reasoned out that the benefit would not be available if the brand name of another person is affixed on their product referring to the Appellant’s two websites *viz*., www.sigmabuildingproducts.com & upvcsigmawindows.com to market or advertise their products as follows; "We are the manufacturers of LG Hausys UPVC windows and doors in Coimbatore" "technical partner with LG Hausys" A product is known either by symbolic representation of the manufacturer or market leader. If the brand leader ‘LG Hausys’ is pasted with a peelable sticker it gives impression to the public that the product is of quality having connection with the brand leader. In the case of the assessee a market leaders' name is symbolically impressed on the profiles which gives an impression to the public that LG Hausys is the market leader and being marketed under its brand name and so the appellant is not eligible for benefit of SSI exemption.

8.4.6 We observe that based on the material before us, there is no satisfactory evidence that the finished goods as removed from the appellant's factory carried the brand name or trade name of some other person in such a manner as to indicate that the goods belonged to or were the produce of such other person. We find that the Department had not established any intention on the part of the Appellant in affixing the brand name of other three persons In the Absence of such proof, the legal embargo in the Notification cannot be invoked to deny the SSI benefit.

8.5 We find that the Impugned Order has relied on the decisions of the Hon'ble Supreme Court rendered in the case of *CCE Vs Tubes and Structurals 2015 (318) ELT 362 (SC)* and *CCE Vs Australian Foods India (P) Ltd 2013 (287) ELT 385 (SC).*

In para 9 and 10 of the Impugned Order, it was recorded that: -

> *"9. The appellant has argued that the brand name of others are in the form of stickers and labels which are being removed after installation and hence it cannot be concluded that they manufactured and cleared the goods using the brand name of others. This argument of the appellant is not sustainable in view of the ruling of Hon'ble Supreme Court of India in the case of CCE, Chennai-II Vs. Australian Foods India(P) Ltd [2013(287) ELT 385 (SC)],*
>
> *…..*

.....

10. the principles enumerated in the above cited ruling of Hon'ble Apex Court has once again been reiterated by the Hon'ble Supreme Court in the case of CCE. Jamshedpur Vs. Tubes & Structurals [2015(318) ELT362(SC)]"

8.6 The Appellate authority held that the "The principles laid down in the above two rulings of Hon'ble Apex Court would squarely apply to the case of the Appellant as the appellant is the authorized fabricators of L.G. Hausys and is a technical partner of M/s,L.G. Hausys and it is beyond anybody's imagination that the doors/windows fabricated by the appellant using the UPVC profiles of LG Huasys are not known to the ultimate customer under a brand name other than LG Huasys. Even with the usage of the branded glass of Saint Gobain, the product gets additional boost in the market for the product of the appellant's own brand. Thus, by applying the principles of scrutiny of surrounding circumstances as held by Hon'ble Apex Court in the above cited case, the appellant is held to be ineligible to avail the SSI benefit under the Notification 8/2003 CE dated 1.3.2003. At this juncture, it is observed that the ruling of Tribunal in the case of *CCE Vs. KB Engineers(P) Ltd [1998(103) ELT 41(Tri.)]* relied upon by the appellant is not relevant to the issue on hand in the light of the rulings of Hon'ble Supreme Court discussed above.

8.6.1 We have perused the above decisions and find that the decisions relied upon by the LAA is not the case of presence of brand names of inputs.

8.6.2 We further find that the relevant Australian Foods India case law regarding brand name, specifically addresses a brand name on the final product sold to the consumer, and not on the input materials.

The case is centred on whether cookies, sold loose from a branded retail outlet without a brand name affixed to them or their plain packaging, were eligible for a Small-Scale Industry (SSI) tax exemption. The court found that despite the lack of physical labelling on the specific cookies, they were still a branded final product due to the surrounding circumstances of their sale, such as being sold from an exclusive branded outlet.

8.6.3 Similarly the case of *The Commissioner of Central Excise, Jamshedpur v. Tubes and Structurals* is about the brand name of the final product, not the input goods. The specific issue concerned a manufacturer's eligibility for an excise duty exemption that was not available to products bearing another person's brand name.

8.6.4 Therefore, the Department’s reliance on the above said case Laws is misconceived; and the ratio therein is confined to a different factual or legal context and therefore, reliance placed on such decisions is not tenable.

8.7.1 On the other hand the Appellant has relied upon the following decisions in support of their claim.

8.7.2 In the case of *Texind Corporation Pvt. Ltd. Vs C.C.E., Mumbai reported in [2001 (130) E.L.T. 622 (Tri.-Mumbai)]],* wherein while dealing with Notification No. 1/93-C.E, Tribunal has observed that mere manufacture of final product out of imported components already bearing the foreign manufacturer's brand name would not be hit by debarring clause of Notification No.1/93-C.E.

8.7.3 Similarly, in the case of *Jain Trading Co. Vs C.C.E., Ahmedabad reported in [2006 (193) E.L.T. 96 (Tri.-Mumbai)]*, the Tribunal held that brand name of other manufacturer affixed on patterns by casting manufacturer at the stage of casting itself and the conversion of such castings into manufacture of valves will not amount to use of brand name in the manufacture of valves.

8.7.4 In the case of *Keramos Vs C.C.E, Delhi reported in (2003 (154) E.LT. 280 (Tri.-Del.)]*, it was held that plain tiles, bought by the assessee for manufacture of printed tiles, do not attract prohibition of brand name under Para 4 of Notification No. 8/99-C.E. when such tiles, after printing and decoration, are sold in the market with the brand name of original manufacturers of plain tiles remained on the reverse side.

8.7.5 We also find that all the above cases have followed the decision of the Tribunal in the cases of *Trimurti Weldmesh (P) Ltd. and Vimal Printery Vs CCE -1999 (110) ELT 980*. In the case of *Trimurti Weldmesh (P) Ltd Vs CCE 1993 (64) ELT 419*, the Civil appeal filed by the department was also dismissed by the Hon'ble Supreme Court *1996 (82) ELT A168 (SC)*. The ratio of this decision was followed in the case of *Vimal Printery Vs. CCE - 1999 (110) ELT 980 (Tri)*]. The civil appeal in this case filed by the department was also dismissed by the Hon'ble Supreme Court on merits - *1999 (115) ELT A222 (SC).*

8.7.6 The Appellant also relied upon the decision rendered in the case of *SM Engineering Works Vs CCE -2014 (314) ELT 476(Tri-Del)* that it is squarely applicable to the present case. In Para 8 of the decision, it is held that: -

> *"8. We agree with the ld. Advocate on the point of limitation as discussed in the preceding paragraphs, there are plethora of decisions of the Tribunal holding that the presence of brand name of another person on the inputs/raw materials used for manufacture of final products, when no affixation of any brand name is being done by the manufacturers would not amount to use of brand name of another person. These decisions are sufficient for the appellant to entertain a bona fide belief of non-use of brand name so as to be entitled to the benefit of Small-Scale Notifications. It stands held by the Hon'ble Supreme Court in the case of Mentha Allied Products reported as (2004 (167) E.L.T. 494 (S.C.)] that when divergent views are expressed in different decisions, the extended period of limitation cannot be invoked. As such, without going into the merits of the case, we allow all the 3 appeals filed by the assessee against the impugned order of the Commissioner confirming the demands and imposing penalties upon them, on the point of limitation itself."*

8.8 We have perused the above decisions and the ratio of the above decisions cited by the Appellant has direct bearing on the issue before us. The jurisprudence cited by both the sides shows a settled legal proposition in favour of the appellant. Respectfully following the ratio laid down by the aforesaid decisions, we have no hesitation in holding that the Appellant is entitled for the benefit of the Notification 8/2003 CE as amended. Therefore, the first question is answered in favour of the Appellant.

9. As the first question is answered in affirmative in favour of the Appellant, there is no need to go into the aspect of limitation and penalty.

10. The appeal is allowed and the impugned Order-in-Appeal No. CMB-CEX-000-APP 347/2017 dated 08.12.2017 denying SSI exemption under Notification No. 8/2003-CE is set aside. We hold that the appellant is entitled to the benefit of SSI exemption. As the demand itself fails on merits, the question of interest and penalty will automatically get extinguished.

11. Thus, the Appeal is allowed with consequential benefits, if any, as per the Law.

(Order pronounced in open court on 11.11.2025)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

MK