CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Excise Appeal Nos. 41955 and 41956 of 2017

(Arising out of Order-in-Appeal Nos. 274-275 (CXA-II) dated 30.05.2017 passed by Commissioner of Central Excise (Appeals-II), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

Dr. Harry Life Sciences Pvt. Ltd. **...Appellant**
New No. 1/36, Leelaathy Nagar,
Chikkarayapuram,
Kundrathur Main Road,
Chennai – 600 069.

And

Mr. J. Somasundaram, Director **...Appellant**
M/s. Dr. Harry Life Sciences Pvt. Ltd.
New No. 1/36, Leelaathy Nagar,
Chikkarayapuram,
Kundrathur Main Road,
Chennai – 600 069.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai IV Commissionerate,
No. 692, M.H.U. Complex,
Nandanam,
Chennai – 600 035.

APPEARANCE:
For the Appellants : Mr. S. Rajagopalan, Advocate
Mr. R. Bala Chandar, Advocate
For the Respondent : Ms. G. Krupa, Authorised Representative

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

FINAL ORDER Nos. 40158-40159 / 2026

DATE OF HEARING : 27.10.2025
DATE OF DECISION : 29.01.2026

Per Mr. VASA SESHAGIRI RAO

This appeal is directed against Order-in-Appeal Nos. 274 & 275/2017 (CXA-II) dated 30.05.2017 passed by the Commissioner of Central Excise (Appeals-II), Chennai (hereinafter referred as the LAA).

2. Briefly stated, the facts of the case are that the Appellant is a manufacturer of Medicines falling under Chapter 30031000 of the Central Excise Tariff Act, 1985. Based on information that the Appellant is evading central excise duty, simultaneous searches were conducted by the officers of Directorate General of Central Excise Intelligence, Chennai Zonal Unit (hereinafter referred to as DGCEI) at the factory premises of the Appellant and at the office premises of M/s. Ozonic Health Care and M/s. Sri Aksaya Agencies in Madurai. The officers of DGCEI found that the Appellant had cleared pharmaceutical products to various customers on payment of duty and had cleared medicines to M/s. Sri Aksaya Agencies and M/s. Ozonic Health Care without payment of duty. It was also found that the packages of the goods cleared without payment of duty, the Appellant had used certain brand names like "OZOFER", "OZONIC" which were belonging to "Ozonic Health Care".

3. Upon completion of investigation, the Show Cause Notice No. 10/2015 dated 30.03.2015 was issued to the Appellant by the Additional Director, DRI, Chennai Zonal Unit with the proposals to (i) deny the SSI exemption

claimed by them on the products such as Ovit Plus Tab, Cedo tab, Cim Tab, Acemo Tab, Monzo Plus Tab, Chynor Lite Tab etc manufactured and cleared under Chapter 3004 of Central Excise Tariff to parties such as M/s Ozonic Health Care, M/s Sri Aksaya Agencies etc. as the Appellant is not the owner of the above Branded medicines; (ii) demand of Central Excise Duty of Rs. 16,33,719/- under Section 11A(4) of Central Excise Act, 1944 in respect of the goods cleared by them during the period from 10.07.2013 to 18.03.2015; (iii) impose penalty on them under Section 11AC of Central Excise Act, 1944; (iv) impose penalty on them under Rule 25 of Central Excise Rules, 2002 for contravention of various provisions of Central Excise Rules, 2002; (v) demand interest on duty in terms of Section 11A(4) of Central Excise Act, 1944; and (vi) impose penalty on Shri J. Somasundaram, Managing Director of the Appellant firm under Rule 26 of Central Excise Rules, 2002 for contravention of various provisions of Central Excise Rules, 2002.

4. *Vide* Order-in-Original No.07/2016 dated 30.03.2016, the original adjudicating authority upheld all the proposals in the show cause notice and imposed penalties of (a) Rs. 16,33,719/- on the appellant firm under 11AC of Central Excise Act, 1944; and (b) Rs. 16,00,000/- on the Managing Director of the appellant firm under Rule 26 of

Central Excise Rules, 2002. However the original adjudicating authority did not impose penalty on the Appellant firm under 26 of Central Excise Rules, 2002, considering the imposition of penalty under Sections 11AC of Central Excise Act, 1944.

5. The Appellant firm and the Managing Director of the appellant firm carried the matter in appeal and both the appeals were rejected by the Commissioner of Central Excise (Appeals-II), Chennai vide the impugned order-in-appeal dated 30.05.2017.

6. The appellant firm and the Managing Director of the appellant firm have preferred the present appeals assailing the impugned order. Both the appeals are taken up together as they arise out of the common order-in-appeal.

7.1 The Ld. Advocates Shri S. Rajagopalan and Shri R. Balachandar appeared and argued for the Appellant and submitted that SSI exemption has been denied by incorrect interpretation of the term "Brand Name", the definition of which is same in notifications No. 1/1993-CE & 8/2003-Central Excise and reads as, "Brand name" or "trade name" shall mean a brand name or 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. They argued that as the definition of Brand Name under both the above notifications is the same and also as both the notifications were issued for providing SSI exemption under Central Excise Law, the following clarifications issued by the Ministry of Finance (Department of Revenue) vide Circulars No. 52/52/94-CX dated 01.09.1994 and 71/71/94-CX dated 27.10.1994 on the interpretation of what constitutes "usage of Brand Name of another person" and consequential eligibility to SSI exemption under Notification No. 1/1993-CE are also applicable to interpretation of similar aspect under Notification No. 8/2003 - Central Excise.

> "***Circular No. 52/52/94-CX dated 01.09.1994***
>
> *4. ….it is clear that if a brand name is not owned by any particular person, the use thereof will not deprive a unit of the benefit of the small scale exemption scheme. This applies not only to locks but to all other goods specified in Notification No. 1/93-C.E."*
>
> "***Circular No. 71/71/94-CX dated 27.10.1994***
> *5. As explained in paragraph 3 of the letter, to attract the mischief of the provisions relating to brand name, two conditions have to be satisfied.*
> *(1) Such brand name must indicate a connection between the branded goods and some person using such brand name.*
> *(2) Such connection should be in the course of trade.*
>
> *6. Consequently, if there is not "trade" of such goods, the brand name provision would not apply."*

They also referred to paras 6 and 7 of the Tribunal in the case of *Leo Engineering Vs. Commissioner of C.Ex., Ahmedabad [2009 (241) E.L.T. 533 (Tri. – Ahmd.)* which read as under: -

> *"6. We agree with the ld. Advocate that condition No. 4 of the Notification No. 8/2000-CE dt. 1-3-2000 provides that the benefit of exemption is not available on specified goods bearing a brand name or trade name, whether registered or not, of another person. As such, the brand name being used by the assessee has to be "of another person". The Revenue's case is that the said brand name belongs to M/s. Leo Road Equipments Pvt. Ltd., but such claim of the Revenue is not substantiated by any evidence. Neither M/s. Leo Road Equipments Pvt. Ltd. have claimed that the said name belongs to them nor is there any evidence to that effect. It is not understood as to why the Revenue has chosen to raise the demand against the present appellant on the ground that "Leo" belongs to M/s. Leo Road Equipments Pvt. Ltd. and as to why the demand has not been raised against M/s. Leo Road Equipments Pvt. Ltd. on the ground that "Leo" belongs to the present appeal. As per the appellant, "Leo" is a common initial word in the names of the manufacturing units and is being used by both the companies only to indicate the name of the company who has manufactured the goods.*
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> *7. In the case of CCE, Raigad v. Digambar Murlidhar Gadre & Ors. [2009 (235) E.L.T. 714 (T) = 2008 (89) RLT 605 (CESTAT-Mum.)], Tribunal observed that the failure of the Revenue to establish that such common symbol belonged to or owned by another person and the alleged owner disowned the same, benefit of Notification has to be held as admissible. Similarly in the case of M/s. Garnier Solutions & Anr. v. CCE, Bangalore [2008 (232) E.L.T. 311 (Tri.-Bang.) = 2008 (88) RLT 614 (CESTAT-Bang.)], it was held that as Revenue has not established that brand name belongs to another person, benefit of notification cannot be denied. It is seen that in that case the other person had filed an application for registration of brand name and the Tribunal observed that mere filing of such a application does not make him the owner of the brand name. In the present case, there is virtually no evidence on record to show that the brand name belonged to the other company. To the same effect was another decision of the Tribunal in the case of M/s. A.J. Bantex (P) Ltd. v. CCE, Bangalore [2008 (229) E.L.T. 582 (Tri.-Bang.) = 2008 (87) RLT 135 (CESTAT-Bang.)], it was held that "A.J. Bantex" being appellants own name, they have a right to use it and as the Revenue has not produced any evidence that brand name belongs to another person, benefit of notification*

> *cannot be denied to the assessee. It was also held that burden of proof that the brand name used by the assessee belongs to another person is on the Revenue."*

The Ld. Advocates contended that the existence of a Brand Name owned by / belonging to another person has not been established by the investigation and therefore, seen in the light of above clarifications issued vide Circulars No. 52/52/94-CX dated 01.09.1994 and 71/71/94-CX dated 27.10.1994 and in the light of above findings in paras 6 and 7 of the Tribunal in the case of Leo Engineering Vs. Commissioner of C.Ex., Ahmedabad [2009 (241) E.L.T. 533 (Tri. – Ahmd.), the Appellant had not used any Brand Name owned by another person and is eligible for SSI exemption.

7.2 Further, the Ld. Advocates submitted that in terms of the Explanation (A) given under Sl.No.5 of SSI Notification 08/2003 CE dated 01.03.2003, as amended, read with the clarification vide para 5 of Circular No. 71/71/94-CX, dated 27.10.1994 referred above, in order to establish the connection between the brand name and the owner of such brand names it is necessary that the said brand name must 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 or identity of that person whereas in the present case there is no such connection as per the facts and also no such connection has been established by the investigation. They contended that the Revenue totally failed to establish such nexus between the brand names allegedly used by Appellant and the alleged owners of such brands. It was further contended that the onus to prove the ownership of brands with other person rests with the department, and in the appellant's case, the so called owners themselves had given letters totally denying any such ownership of such brands and the Revenue had not adduced any independent corroborative evidence to prove their allegation and failed to substantiate that the brand is only owned by M/s. Ozonic Health Care. In the absence of such evidence the Appellant could not be held guilty of using the brand name of another person and SSI exemption could not be denied to them as held in *NIRLEX SPARES PVT. LTD. Vs CCE – 2008 (222) E.L.T. (S.C.), C.C.E. Cochin Vs. GEO Engineering Works – 2004 (165) E.L.T. – 463, M/s. DCI Pharmaceuticals Pvt. Ltd Vs Supdt. of C.E. (Div.), Panaji – 2000 (115) E.L.T. 45 (Bom.)* and *Ample Industries Vs. C.C.E., Rajkot – 2007 (218) E.L.T. 456, Mukur Pharmaceuticals Co P Ltd Vs CCE Chandigarh [2001 (135) ELT 569 (Tri.-Del.), CCE Chandigarh Vs Champion Industries [2013 (298) ELT 245 (Tri.-Del.)* and *CCE Delhi Vs The Heels-2014 (331) ELT 113 (Tri. Del.).*

7.3 The Ld. Advocates further contended that since the alleged brand owners had given letters in writing that they were not the owners of such brands, the Revenue's allegation that the brand name is owned by such persons is wrong and therefore, as the Revenue totally failed to establish such nexus between the brand names said to be used by the appellant and the alleged owners of such brands as held in *CCE Hyderabad-IV vs Stangen Immuno Diagnostics [2015 (318) ELT 585 (SC)],* SSI exemption benefit cannot be denied to the Appellant.

7.4 They argued that assuming that the brand used by the Appellant belonged to M/s Ozonic Health Care whose proprietor Shri Somasundaram is also the MD of the Appellant Company, the use of certain brand names (which were predominantly marketed by Shri Somasundaram through his proprietory concern M/s Ozonic Health Care) in the products of the Appellant company is not an infringement of SSI condition, as Shri Somasundaram has every right to use his knowledge, property etc. for use by the Appellant company. The Learned Advocates placed reliance on the cases of *Famcom Rubber Products (I) Pvt Ltd Vs CCE Delhi-III [2016 (343) ELT 689 (Tri.-Del.)]* and *Elex Knitting Machinery Co Vs CCE Chandigarh-I [2003 (159) ELT 499 (Tri.-Del.)]* to submit that since the so called brands were owned by proprietors who were directors of appellant's company, it cannot be said that appellant had used brand name of another person.

7.5 The Ld. Advocates submitted that the Appellant claimed the SSI exemption in terms of Para 4(c) of Notification No. 8/2003- Central Excise dated 01.03.2003 as their manufacturing unit was located in the rural area and they produced certificate from Panchayat President of Chikkarayapuram Village, Village Administrative Officer of Sikkarayapuram Village & Revenue Inspector certifying that the said factory was located in the rural area but the LAA denied the Appellant's eligibility to SSI exemption as the Appellant has not produced any valid certificate as mentioned in the judgment passed by the CESTAT, Chennai in the case of CCE Vs Triogene Labs Pvt Ltd., whereas the LAA never called for or demanded such certificate from the Appellant. Further, they submitted that after the impugned order was passed, the Appellant obtained the certificate from Jurisdictional Tahsildar vide RC No.5106 dated 20.11.2018 certifying that the Appellant company was running at Kanchipuram District, Pallavaram Taluk, Chikkarayapuram Village, Chennai – 69, Mangadu, Kundrathur Main Road, Leelavathi Nagar, Old No. 27, New No. 1/34 and the site is located in rural area under the jurisdictions of

Chikkaraypuram Village and it was also certified that the certificate is based on the report of Revenue Inspector and Village Administrative Officer for the purpose of availing exemption of paying Excise duty to the Central Excise Department. The Learned Advocated placed reliance on the cases of *Commissioner of C.Ex., Nagpur Vs. Excel Controlinkage Pvt. Ltd. [2016 (332) E.L.T. 185 (Tri.-Bom)] dated 06.10.2015* and *Commnr. of C.Ex. & S.T., Panchkula Vs. Prestige Bakelte Moulders, 2018 (364) E.L.T. 1042 (Tri.-Chan) dated 15.03.2018* to submit that the certificate issued by the jurisdictional Tahsildar is a valid document to substantiate the claim to avail SSI exemption under Notification No. 8/2003-Central Excise dated 01.03.2003.

7.6 They submitted that whereas the entire case is based on the question of "whether the Appellant is eligible for SSI exemption or not?" on the goods cleared with brand name of another person and without the same and "whether the manufacturer was located in the rural area during the impugned period or not?", the department has not investigated into the location of the unit though the officers of DGCEI, Central Zonal Unit visited the manufacturing premises and instead, put the responsibility on the Appellant to prove through documents that the unit was located in rural area. It was further submitted that since the Appellant are affected by the absence of proper investigation, they are producing the certificate issued by the Tahsildar having jurisdiction over the Chikkarayapuram village where the manufacturing unit of the Appellant was located.

7.7 The Ld. Advocates averred that the entire issue is interpretational as to the eligibility to exemption under notification No. 8/2003 – Central Excise dated 01.03.2003 and therefore, there is no intention/suppression and penalty under Section 11AC of Central Excise Act, 1944 is not imposable as there is no mens rea. In this regard, they placed reliance on the judgment of the Hon'ble Supreme Court of India in *Commissioner of C.Ex., Chandigarh Vs Pepsi Foods Ltd [2010 (260) E.L.T. 481 (S.C.)]* where it was held as under:

> *"20. It is well settled that when the statutes create an offence and an ingredient of the offence is a deliberate attempt to evade duty either by fraud or misrepresentation, the statute requires 'mens rea' as a necessary constituent of such an offence. But when factually no fraud or suppression or misstatement is alleged by the revenue against the respondent in the show cause notice the imposition of penalty under Section 11AC is wholly impermissible."*

7.8 Regarding penalty under rule 26 of the Central Excise Rules, 2002, the Learned Advocates submitted that the basic ingredients for invoking Rule 26 ibid never existed in this case as there was no proposal in the show cause notice and no finding in the impugned order that the goods were liable for confiscation. In this regard, they placed reliance on the case of *Gouri Shankar Poddar vs. Commissioner of C.E & S.T. [Excise Appeal No. 11481 of 2017 – DB] dated 11.09.2024* where it was held by the Tribunal, Ahmedabad that: -

> *"4.3 From the plain reading of the above rule 26, we find that the penalty under the said rule can be imposed either under sub- rule (1) or sub - rule (2). Sub -rule (1) deal with the act of the person such as transporting, removing, depositing, keeping , concealing, selling and purchasing, or in any other manner deals with , any excisable goods which he knows and has reason to believe are liable to confiscation under the Act or these rules. As per sub -rule 2 (i) any person who issues an excise duty invoice without delivery of the goods specified therein or abets in making such invoice or any other documents or abets in making such documents on the basis of which user of such invoice or document is likely to take or has taken any ineligible benefit under act or the rules made thereunder like claiming of Cenvat credit under Cenvat Credit Rules, 2004. In the present case as per the operating order reproduced above, it can be seen that no goods have been confiscated, therefore, in absence of proposal/confirmation of confiscation of goods, penalty under Rule 26 (1) cannot be imposed.*
> *…*
> *…*
> *4.6 As per the discussion made here in above, the department could notmake out any case to impose penalty under Rule 26 on the appellant Shri Gouri Shankar Poddar, Director of M/s. Raj Rayon Ltd.*
>
> *5. Accordingly, the penalty is set aside. Appeal is allowed with consequential relief."*

7.9 The Ld. Advocates submitted that the value of the goods on which duty was demanded from the Appellant included the value of goods cleared which did not bear the Brand Names of Ozonic Health Care and Sri Aksaya Agencies and such value works out to Rs. 23.54 Lakhs and Rs. 43.33 Lakhs for years 2013-14 & 2014- respectively and duty on the same which works out to Rs. 1,45,493/- and Rs. 2,67,782/- should be deducted from the demand as the department has taken the stand that duty is payable on goods cleared under the brand name owned by Ozonic Health Care and Sri Aksaya Agencies.

8. The Ld. Authorized Representative Ms. G. Krupa, for the Department reiterated and supported the findings of LAA and submitted that in the proceedings before original adjudicating authority and lower appellate authority, the Appellant failed to produce any valid certificate as mentioned in the judgment passed by the CESTAT, Chennai in the case of CCE Vs. Triogene Labs Pvt Ltd., and thereby the Appellant failed to prove to the lower authorities that their manufacturing unit is located in rural area. She submitted further that the Appellant has cleared goods under the brand name owned by Ozonic Health Care and Sri Aksaya Agencies and intentionally evaded payment of Central Excise duty on the same.

9. Heard both sides and perused the appeal records including the various case laws cited.

10. The issues for consideration in this appeal are: -

i. Whether the Appellant is located in rural area or not and consequently, whether the appellant is eligible for SSI exemption or not.
ii. Whether the Appellant has used the brand name belonging to other person or not and consequently, whether the appellant is eligible for SSI exemption or not.
iii. Whether demand of Central Excise duty, together with interest thereon, from the Appellant is correct or not.
iv. Whether imposition of penalties on the Appellant and its Managing Director Shri J. Somasundaram is correct or not.

11. The issue of whether the Appellant is located in rural area or not is a matter of fact. The Appellant contended that the department has not investigated into the location of the unit and put the responsibility on the Appellant to prove through documents that the unit was located in rural area. It is observed that the Appellant has produced letters from the VAO and Revenue Inspector before the lower authorities to claim that they are located in rural area but the same have been rejected by LAA by holding as follows: -

> *"The appellant also claimed that their factory was located in the rural area and the same was recommended by jurisdictional VAO and hence SSI exemption is available to them. But, on perusal of the certificate enclosed with the appeal booklet, it could be noticed that there is no letter*

> *head, official emblem or seal of the office issued the certificate. Someone has signed as VAO and the date was mentioned as 10.12.2024. There is no name of the person who has signed the letter. There is no mention that whether the village was notified as "Rural Area" by the Govt. of Tamilnadu and whether any tax exemption is available to that area. Above all, it is clearly mentioned in the letter that this certificate was issued to the appellant on their own request for availing exemption of paying excise duty."*

It is observed that LAA has not found that the document submitted is forged or fake. Absence of letter head of the issuing authority or name stamp of the signatory etc. are reasons which are sufficient to suspect the genuineness of the document but are not sufficient to hold that the document is not authentic or genuine. The impugned order passed by LAA not only fails to mention whether the document submitted by the Appellant before the LAA is sufficient if the same is found to be genuine but also fails to specify the documents that are needed to establish that the manufacturing unit of Appellant is located in rural area. The Appellant has now submitted copy of the certificate issued by jurisdictional Tahsildar *vide* RC No. 5106 dated 20.11.2018. In the final order No. 1137/2011 dated 12.10.2011 in case of *CCE Vs Triogene Labs Pvt Ltd. reported in 2012-TIOL-246-CESTAT-MAD* which was relied by the LAA, it is held as under: -

> *"We find that the lower appellate authority has relied upon (a) Tamil Nadu Govt. website classifying Okkium Thoraipakkam to be a rural village falling under St. Thomas Mount Block in Kancheepuram District (b) Certificate issued by Director of Industries & Commerce*

> *and (c) certificate issued by the Ministry of Rural Development to hold that Thoraipakkam village is in a rural area and, therefore, the SSI benefit is admissible even though goods manufactured by the assessees were cleared under some other persons brand name. The assessees have now produced certificate dt. 19.9.2011 from the jurisdictional Tahsildar certifying that Okkiyam Thuraipakkam is a village as per the land revenue records coming under the Okkiyam Thuraipakkam Village Panchayat and situated in Sholinganallur Taluk, Kancheepuram District. In the case of CCE Chennai Vs Blue Bay Mineral Water Co. [2011 (264) ELT 249], the Tribunal has relied upon the clarification of the jurisdictional Tahsildar of Pooneri Taluk to accept the claim of the assessees that the village in question where the assessees factory was located viz. Athur village is situated in rural area. In the light of the Tahsildars certificate and Tribunals order cited supra, we see no reason to interfere with the impugned order and accordingly uphold the same and reject the appeal."*

To the same effect are the judgments in the cases of *Commissioner of C.Ex., Nagpur Vs. Excel Controlinkage Pvt. Ltd. [2016 (332) E.L.T. 185 (Tri.-Bom)] dated 06.10.2015 and Commnr. of C.Ex. & S.T., Panchkula Vs. Prestige Bakelte Moulders, 2018 (364) E.L.T. 1042 (Tri.-Chan) dated 15.03.2018,* where it is held that the certificate issued by the jurisdictional Tahsildar is a valid document to substantiate the claim to avail SSI exemption under Notification No. 8/2003-Central Excise dated 01.03.2003.

Considering the above facts and case laws, it is found that the Appellant unit is located in rural area and consequently, the Appellant is eligible for exemption under notification No. 8/2003-Central Excise dated 01.03.2003 applicable to SSI units.

12. The second issue of whether the Appellant has used the brand name belonging to other person or not, is a matter of interpretation. Therefore, it is appropriate to refer to the relevant case laws. It is observed that in the case of *Famcom Rubber Products (I) Pvt Ltd Vs CCE Delhi-III [2016 (343) ELT 689 (Tri.-Del.)],* it is held as under:

> *"**5**. After hearing both the sides and on perusal of the records, we find that the appellants used the brand name "FAMCOM" which is owned by other unit M/s. Farm Manufacturing Co. Delhi, a proprietorship firm. One of the Directors of the appellant company is the proprietor of the said unit. It is also contended by the appellant that after clubbing the value of the clearances of both the units are within the prescribed limit of exemption during the relevant period. The Tribunal in the case of M/s. Elex Knitting Machinery Co. (supra) held as under :-*
>
> > *"6. Apart from this, even otherwise legally it cannot be concluded that the appellants were using the brand name of another person. The brand name "ELEX", according to the Department belonged to M/s. Elex Engineering Works. But Shri Pritam Singh who is the proprietor of the appellant's firm, is one of the partners in that firm. Being co-owner of the brand name in the above said firm, he could not be said to had used the brand name of another person, in the manufacture and clearance of the goods in his individual capacity. He cannot be legally said to be running another firm of M/s. Elex Knitting Machinery, as single person cannot constitute any firm under the law. Therefore, being already co-owner of the brand name, he was competent to use the same."*
>
> ***6**. Ld. Authorized Representative for the Revenue submitted that in that case, the appellants were a partnership firm. In our considered view, in the present case, one of the Directors is the proprietor of other unit and therefore, the case of M/s. Elex Knitting Machinery Co. (supra) would squarely apply in the present case.*
>
> ***7**. In view of the above discussion, following the decision of the Tribunal in the case of M/s. Elex Knitting Machinery Co. as upheld by Hon'ble Punjab & Haryana High Court, we allow both the appeals filed by the appellants with consequential relief."*

In the instant case, it is alleged that the goods manufactured by the Appellant bear brand names which are owned by Ozonic Health Care and Aksaya Agencies. It is an undisputed fact that the proprietor of Ozonic Health Care, viz. Shri J. Somasundaram, is the Managing Director of the Appellant firm and the proprietrix of Aksaya Agencies, viz. Mrs. Somasundaram, is a Director of the Appellant firm as evident from the following observation made by the original adjudicating authority in para 34 of the order-in-original dated 30.03.2016 (page 18 of the Order-in-Original):

> *"While in the manufacturing company M/s DHLS, Sh. J. Somasundaram and Mrs. Somasundaram are the Managing Director and Directors, the same Sh. J. Somasundaram is the proprietor of M/s Ozonic and Mrs. Somasundaram is the proprietrix of M/s Aksaya."*

Therefore, it is found that the case of Famcom Rubber Products (I) Pvt Ltd (*supra*) is squarely applicable to the present case. This view is further strengthened by a harmonious reading of the case of Famcom Rubber Products (I) Pvt Ltd (*supra*) with the cases of *Bhalla Enterprises [(2005) 8 SCC 308 = 2004 (173) E.L.T. 225 (S.C.)]* and *CCE Hyderabad-IV vs Stangen Immuno Diagnostics [2015 (318) ELT 585 (SC)],* the relevant portions of which are reproduced below: -

i. *Bhalla Enterprises (2005) 8 SCC 308 = 2004 (173) E.L.T. 225 (S.C.)*

"6. The apprehension of the assessees that they may be denied the exemption merely because some other traders even in a remote area of the country had used the trade mark earlier is unfounded. The notification clearly indicates that the assessee will be debarred only if it uses on the goods in respect of which exemption is sought, the same/similar brand name with the intention of indicating a connection with the assessees' goods and such other person or uses the name in such a manner that it would indicate such connection. Therefore, if the assessee is able to satisfy the assessing authorities that there was no such intention or that the user of the brand name was entirely fortuitous and could not on a fair appraisal of the marks indicate any such connection, it would be entitled to the benefit of exemption. An assessee would also be entitled to the benefit of the exemption if the brand name belongs to the assessee himself although someone else may be equally entitled to such name."

ii. *CCE Hyderabad-IV vs Stangen Immuno Diagnostics*

[2015 (318) ELT 585 (SC)]

"15. We would also like to reproduce the following observation from Commissioner of Central Excise, Chandigarh-II v. Bhalla Enterprises, (2005) 8 SCC 308 = 2004 (173) E.L.T. 225 (S.C.) :-

> *"The apprehension of the assessees that they may be denied the exemption merely because some other traders even in a remote area of the country had used the trade mark earlier is unfounded.*
> *The notification clearly indicates that the assessee will be debarred only if it is uses on the goods in respect of which exemption is sought, the same/similar brand name with the intention of indicating a connection with the assessees goods and such other person or uses the name in such a manner that it would indicate such connection. Therefore, if the assessee is able to satisfy the assessing authorities that there was no such intention or that the user of the brand name was entirely fortuitous and could not on a fair appraisal of the marks indicate any such connection, it would be entitled to the benefit of exemption. An assessee would also be entitled to the benefit of the exemption if the brand name belongs to the assessee himself although someone else may be equally entitled to such name."*

These observations bring out two significant aspects namely:-

(1) As per the Notification, the assessee would be debarred only if it uses on the goods in respect of which exemption is sought, the same/similar brand name with the intention of

> *indicating a connection with the assessees goods and such other person or uses the name in such a manner that it would indicate such connection. If there is no such intention or that the user of the brand name was entirely fortuitous and could not on a fair appraisal of the marks indicate any such connection, it would be entitled to the benefit of exemption.*
> *(2) The assessee would also be entitled to the benefit of exemption if the brand name belongs to the assessee himself although someone else may be equally entitled to such name."*

13. In view of the foregoing discussions, both the substantive issues for consideration in this appeal are decided in favour of the Appellant and against Revenue. Therefore, the demand of Central Excise duty along with interest thereon is set aside and consequently, the penalties on the Appellant and the co-appellant Mr. J. Somasundaram, MD of the Appellant are also set aside. Since demand is set aside on merits, there is no need to go into the Appellant's contentions regarding error in quantification of demand and accordingly, the same are not taken up for discussion.

14. Thus, the appeals are allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 29.01.2026)

Sd/-	Sd/-
(VASA SESHAGIRI RAO)	**(P. DINESHA)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

MK