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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/5388/2004,6231/2004 - EX[DB] Date 24/12/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S NITCO MARBLES &GRANITES PVT.LTD.
C-37,PHASE-II,NOIDA U.P

M/S NITCO MARBLES &GRANITES PVT.LTD. Appellant
Vs
C.C.E.NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No**.949-950/2008- **EX[DB]** dated 22-12-08 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

**Copy to :**
1. Respondent
C.C.E.NOIDA
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2. Adv. / Consult
MR.V. LAXMIKUMARAN
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3 S.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagarava Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

~~M/S NITCO MARBLE & GRANITES PVT.LTD.~~
~~C-37,PHASE-II,NOIDA U.P~~

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.5388 & 6231/2004 –Ex(Br)

(Arising out of order in appeal No.292/CE/Appl/Noida/04 dated 27.9.2004 passed by the Commissioner of Central Excise (Appeals), Noida)

M/s Nitco Marbles & Granites (P) Ltd — Appellant
(Rep. by Shri Ravi Raghavan, Advocate)

Vs

CCE, Noida — Respondent
(Rep. by Shri S.Shah, DR)

Coram: Hon'ble Mr.D.N. Panda, Member(Judicial)
Hon'ble Mr. Rakesh Kumar, Member(Technical)

Date of Hearing:11.11.08

FINAL Order No. 949-950 /2008-Ex(Br)

Per D.N. Panda:

The short question involved in this appeal is whether the tiles manufactured by the Appellant being sold under the brand name of another person and whether the same are eligible for the benefit of SSI exemption. The learned Counsel argued that the learned Commissioner (Appeals) in para 9 of his order brought out that the name 'Nitco' embossed on the tiles is not in conformity with the trade mark of North India Tiles Corporation. Therefore, mere use of same digital expression on the documents shall not disentitle the appellant to the relief sought. He submits that page 104 of the paper book reflects that the brand name of the goods manufactured by the Appellant is different from the brand name of North India Tiles Corporation. He further submits that although the appellant brought to the notice of the authority that they are not using the brand name of any other person and the allegation in show cause notice was baseless, that was not looked into by that Authority.

2. Learned DR on behalf of Revenue submitted that the appellants used the brand name of another person M/s North India Tiles Corporation for which they were rightly

dealt by Authorities below and their liability determined reasonably. Hence no interference is called for.

3. Heard both the sides and perused the record.

4. The observation in the appellate order that goods of the appellant do not carry brand name of any other person and that the use of other person's trade mark – NITCO in their on bills, challans and letter heads of the Appellant will disentitle them for SSI exemption, requires scrutiny. We have noticed that the show cause notice had made an allegation that the appellant was using brand name of another person. In the course of hearing, the Bench enquired about the judgment of Apex Court on the subject of use of Trade mark in totality or partially. Revenue brought out the judgment in the case of CCE Trichy Vs Rukmani Pakkwell Traders reported in 2004 (165) ELT 481 (SC) and that being relevant, received our attention.

5. We have gone through the judgment of the apex Court stated above. In para 7 of the judgment, the ratio laid down is that using of part of brand name of another person is sufficient to deny SSI exemption We are, therefore, of the view that entire essential facts of the appeal should be tested in the light of the judgement of Apex court. We are also of the view that decision of the Tribunal in the case of Forest Industries Pvt Ltd Vs CCE Belgaum reported in 1996 (83) ELT 570 (Tri) cited by the learned Counsel equally deserves consideration. Even of a part of the brand name/trade mark used by another person is used on the goods manufactured by the appellant, he will not be eligible for the SSI exemption. Therefore, it is open to the learned adjudicating authority to look into the matter afresh on the basis of two decisions referred to above.

6. Learned Advocate for the appellants submits that when the Tribunal proposes to send the matter back to the learned adjudicating authority, all issues arising out of litigation may be kept open for fresh look on the basis of law. He also proposed that tiles if any other concern became subject matter of adjudication, such fact should also be independently decided. We agree with the submission that in the course of readjudication, the appellant deserves to be heard on legal issues and a reasonable opportunity should be given.

7. It would be proper for the appellants to make an application to the learned adjudicating authority with a copy of this order passed today, within 2 (Two) months from the date of receipt of order and pray for fixing the date of hearing. Once an application is made, the learned adjudicating authority shall fix the date of hearing and within 3 months from the last date of hearing, learned authority shall pass the order.

8. With our observations aforesaid, we remand the matter back and set aside the impugned order.

9. Revenue's appeal being for enhancement of penalty, it would be proper on the part of the learned Adjudicating Authority to have a fresh look on the basis of law and on the facts and circumstances, he may pass appropriate order during of remand proceedings.

10. Both the appeals are remanded and disposed of in the light of our observations above.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

MPS*