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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/540 /2005 - EX[DB] Date 10/11/2009

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

To :
M/S HIMACHAL WIRELESS LIMITED
C/O SHRI SUNIL VACHANI, B-14, PHASE II, NOIDA
201305

M/S HIMACHAL WIRELESS LIMITED Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 875/ 2009 EX[DB] dated 07-10-09 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. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
MR.V.LAKSHMI KUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
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18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-I

Date of hearing: 07.10.2009
Date of decision: 07.10.2009

Excise Appeal No. 540 of 2005
[Arising out of order in Appeal No. 706-CE/CHD/04 dated 29.10.2004 passed by the Commissioner (Appeals) Customs & Central Excise, Chandigarh]

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Himachal Wireless Limited — Appellant

Vs.

CCE, Chandigarh — Respondent

AND

Appearance:

Appeared for the Appellant – Shri B.L. Narshimhan with Shri Abhishek Anand, Advocates
Appeared for the Respondent –Shri R.K. Verma, JDR

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Oral Order No. 875/09

Per Shri Justice R.M.S. Khandeparkar:

Heard.

2. This appeal arises from order dated 29.10.2004 passed by the Commissioner (Appeals), Chandigarh whereby the appeal filed by the appellants was dismissed.

3. Few facts relevant for the decision are that the appellants are engaged in manufacture of telephones both ordinary and cordless. The appellants are duly registered as the small scale industrial unit and are availing tax benefits under various exemption notifications as are applicable to a SSI unit. The appellants have filed classification lists from time to time. They manufacture the cordless phone as well as basic phone under the brand name of "WESTON". Since the brand name of WESTON was being used by [illegible] in respect of goods like Television sets, Video Cassette Recorders, Room Coolers etc. and not in respect of cordless phone, the appellants declared in their classification list that they were not using the brand name of any other person and being eligible to exemption under Notification No. 175/86-CE dated 01.03.1986. Simultaneously, the appellants applied for registration of the brand name WESTON in respect of apparatus and instruments for communications, telecommunication, telephony etc. on 01.05.1992 and the said application was granted by the competent authority on 15.02.2000 in favour of the appellants in respect of cordless phone and basic phone.

4. A show cause notice dated 19.11.1993 came to be issued to the appellants alleging that the appellants had wrongly availed the benefit under Notification Nos. 175/86-CE dated 01.03.1986 and 1/93-CE dated 28.02.1993 as the brand name WESTON affixed by the appellants on the cordless phones belongs to another person who was not eligible for exemption notification. The appellants contested the proceedings and the Assistant Commissioner, Shimla by order dated 30.11.1999 approved the classification list effective from 1992 and 1993 by denying the benefit of small scale exemption notifications to the appellants. Aggrieved by the said order, appellants preferred appeal before the Commissioner (Appeals), Chandigarh which came to be dismissed by the impugned order. Hence, the present appeal.

5. While assailing the impugned order, learned Advocate appearing for the appellants submitted that the benefit under exemption has been sought to be denied to the appellants solely on the ground that the registration under Trade Marks Act, 1958 was granted on 15.02.2000 and, therefore, benefit thereunder could not be availed prior thereto, thereby ignoring the provisions of law comprised under section 23 of The Trade Marks Act, 1999. He submitted that Section 23 clearly provides that registration granted under the said act will take effect from the date of the application and in the case in hand the registration is effective from 01.05.1992 and that is apparent from the registration certificate itself.

6. On the other hand, learned DR submitted that the findings having been arrived at on the basis of record, there is no case for interference.

7. The fact that the benefit under Notification Nos. 175/86-CE dated 01.03.1986 and 1/93-CE dated 28.02.1993 would be available to the appellants in case the appellants are able to satisfy that the registration under The Trade Marks Act was obtained by 01.03.1992 onwards is not in dispute. Equally the record discloses that the authority below have denied the benefit solely on the ground that the registration under the Act was granted on 15.02.2000 and therefore the benefit thereof cannot be claimed prior to that date.

8. Section 23(1) of The Trade Marks Act, 1999 reads thus:-

> "(1) Subject to the provisions of section 19, when an application for registration of a trade mark has been accepted and either-
>
> (a) the application has not been opposed and the time for notice of opposition has expired; or
>
> (b) the application has been opposed and the opposition has been decided in favour of the applicant,
>
> The Registrar shall, unless the Central Government otherwise directs, register the said trade mark and the trade mark when registered shall be registered as of the date of the making of the said application and that date shall, subject to the provisions of section 154, be deemed to be the date of registration".

9. A plain reading of the above provision of law would disclose that once the registration of the trade mark under the said Act is granted, it takes effect from the date of making of the application for the registration. The certificate of registration issued to the appellants clearly discloses that the application was filed on 01.05.1992. In fact, the certificate itself reads that the appellants have been registered under the Act in relation to the trade mark for telephone (basic and cordless) as of the date of 01.05.1992. Obviously, therefore, the authorities below erred in denying the benefit under the said notification w.e.f. 01.05.1992 to the appellants and order in that regard cannot be sustained.

10. For the reasons stated above, the appeal partly succeeds. The appellants are entitled for benefit under the Notification Nos. 175/86-CE dated 01.03.1986 and 1/93-CE dated 28.02.1993 w.e.f. 01.05.1992 onwards. Appeal accordingly allowed with consequential relief.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

/Pant/