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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/5231/2004 - EX[DB] & E/5232/2004-EX

Date 19/02/2010

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

To :
M/S MINIMAX INDUSTRIES ← 19. SHRI MOHD. YUSUF,
93,PATPARGANJ INDUSTRIAL AREA DELHI
110092

M/S MINIMAX INDUSTRIES — Appellant

Vs

C.C.E.DELHI-II — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 75-76/ **2010 EX[DB]** dated 12-1-2010 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.DELHI-II
   C.R.BUILDING,I.P.ESTATE NEW DELHI
2. Adv. / Consult
   MR.BIPIN GARG, ADV., WITH SH. ATUL GUPTA, CS.,
   B-1/1289,A-VASANT KUNJ, NEW DELHI

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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

Excise Appeal No.5231-32/04

[Arising out of Order-in-Appeal No.182-83/CE/D-II/2004 dt.13.7.04 passed by the Commissioner(Appeals),Delhi-II)

For approval and signature:

Hon'ble Mr. Justice R.M.S.Khandeparkar, President
Hon'ble Mr. 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 would 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 : Seen
copy of the order?

4. Whether order is to be circulated to the : Yes
Department Authorities:

M/s. Minimax Industries Appellants

Versus

CCE, Delhi-II Respondent

Appearance

Sh. Bipin Garg, Adv. with Sh. Atul Gupta, Co. Secy. for Appellants

Sh. P.K.Singh, Authorised Departmental Representative(DR) For Respondent

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

Date of decision: 12.1.2010
Final Oral Order No. 75-76/2010-EX

Per Justice RMS Khandeparkar:

Since common questions of law and facts arise in both these appeals, they were heard together and are being disposed of by this common order.

2. The appeals arise from order dated 13.7.04 passed by the Commissioner(Appeals), New Delhi whereby the appeals filed by the appellants were dismissed. The adjudicating authority Additional Commissioner, Delhi by his order dated 11.7.2002 had confirmed demand of 17,28,654.72 being the duty payable on the branded goods alongwith the interest thereon and had also imposed penalty of an equal amount besides penalty of Rs.2,00,000/- against the appellant Sh. Mohd. Yusuf, partner of the firm.

3. The appellants are engaged in the manufacture of machines for wire and cable manufacturing falling under Chapter 84 of the Central Excise Tariff Act.1985. Pursuant to visit of the Departmental Officers to the manufacturing unit of the appellants on 19.1.2000, it was revealed that the unit was engaged in the manufacture of machines in the brand name or trade name of other unit namely M/s. Minimax Engineering Industries, situated at 12, Krishna Kunj Market, Laxmi Nagar, Delhi. The unit of the appellants is situated at 93, Patparganj Industrial Area, Delhi. On completion of investigation, a show cause notice came to be issued to the appellants on 5.7.2001 requiring the appellants to show cause as to why the benefit of SSI notification availed by the appellants should not be denied for having used the brand

name of other unit for the product manufactured by the appellants' unit and on that account why duty should not be demanded. The proceedings having been contested, the orders as above came to be issued.

4. Though the impugned order is sought to be challenged on various grounds, it is not necessary to deal with all these grounds and suffice to refer to only one ground, namely absence of material on record to establish that the logo which was being used by the appellants for their product was the brand name or trade name of M/s. Minimax Engineering Industries for the relevant period. The relevant period is 1996-1997 to 1999-2000.

5. According to the learned Advocate, the Notification No.1/93-CE dated 28.2.93 and Notification No.8/99-CE dated 28.2.99 deal with the entitlement of the manufacturer to avail the benefit of SSI unit. Such units are not supposed to use brand name or trade name, whether registered or not, of another person and the term "band name" or "trade name" was clearly defined to mean that the same was in relation to the specified goods used for the purpose of indicating, or so as to indicate a connection in the course of trade, between such specified goods and the person using the name. In other words, according to the learned Advocate, the close relationship between a logo and the particular product as understood by the consumer which will result in acquisition of the goodwill in relation to such logo to the manufactures of the product has to be established in order to classify the logo to have acquired of brand name or trade name

within the meaning of such expression under the said notifications. According to the appellants neither there is any evidence on the record to establish this aspect nor any finding has been arrived at on this point either by the adjudicating authority or by the Commissioner(Appeals) and without such finding, the appellants could not have been seddled with duty liability on allegation that they had not complied with the condition of the said notifications.

6. On the other hand, learned DR drawing our attention to the order passed by the original authority submitted that the adjudicating authority on detailed analysis of the materials which were placed before him has clearly held that the appellants themselves had taken plea that M/s. Minimax Industries were affixing the logo 'Minimax' which was being used and was belonging to M/s. Minimax Engineering Industries and this fact has been admitted by the partner of the appellants and confirmed by the proprietor of M/s. Minimax Engineering Industries. The user of the said logo by M/s. Minimax Engineering Industries for the period even prior to the formation of the appellants' partnership as the same being clearly established, the same sufficiently disclosed violation of condition 4 of the said notification by the appellants. In that connection, attention was drawn to the decision of the Apex Court in the case of **CCE, Trichy vs Rukmani Pakkwell Traders** reported in 2004(165)ELT.481(SC) and in the case of **CCE, Chandigarh-II vs Bhalla Enterprises** reported in 2004(173)ELT.225(SC) as

well as of the Tribunal's order in the case of **Anubhav Enterprises vs CCE, Delhi-II** reported in 2009(237)ELT.701(Tri.-Del.).

7. The condition No.4 of the Notification No.1/93-CE as well as Notification No.8/99-CE, which is sought to have been violated by the appellants, and being the basis for confirming the demand of duty against the appellants reads thus –

> "4. The exemption contained in this notification shall not apply to the specified goods, bearing a brand name or trade name (registered or not) of another person..."

Explanation IX defines the term "brand name" or "trade name" as under:

> "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".

8. Plain reading of the definition of the terms "brand name" and "trade name" in the notification discloses that in order to classify a logo to have acquired the brand name or trade name within the meaning of the said expression under the said notification, it must be established that the same has been used by a person manufacturing a product for the purpose of indicating or so as to indicate a connection in the course of trade between such product and the manufacturer using such name or mark. In the absence of any material in that regard and finding of the

authority based on analysis of the materials to the effect that the name or mark in question as having acquired the status of being a brand name or trade name within the meaning of the said expression under the said notification, question of violation of condition No.4 cannot arise. Merely because a manufacturer is using a particular logo or name of others, same will not be sufficient to arrive at a finding that the same is a brand name or trade name of such other manufacturer. This is further clear from explanation X to the said notification which reads thus –

> "For the purpose of this notification, where the specified goods manufactured by a manufacturer, bear a brand name or trade name (registered or not) of another manufacturer or trader, such specified goods shall not, merely by reason of that fact, be deemed to have been manufactured by such other manufacturer or trader".

9. In other words, the acquisition of the good will by the manufacturer in relation to the name or logo used by him in relation to the particular product manufactured by him to be established before accusing another manufacturer of having used such name or logo for his product.

10. Perusal of the orders passed by the authorities below undoubtedly discloses analysis of the materials on record and findings arrived at on the basis of such analysis. However, none of those findings reveal that the department was able to establish that a logo 'Minimax' had acquired the trade name or brand name of M/s. Minimax Engineering Industries in relation to the machines manufactured by them. It is true that records disclose that a logo 'Minimax' was used by M/s. Minimax Engineering

Industries even prior to the establishment of the appellants partnership firm in the year 1996. It is also not in dispute that while the logo "Minimax" was being used by the partnership firm during the period from 1996 till 2000, it was also being used in relation to the similar product manufactured by M/s. Minimax Engineering Industries. It is also a matter of record that M/s. Minimax Engineering Industries is a proprietory concern of Mohd. Yamin who was also partner of M/s. Minimax Industries during the period from 1996 till 31.5.99. There is nothing on record to disclose that the proprietor of M/s. Minimax Engineering Industries who was also the partner of M/s. Minimax Industries had any time objected for use of logo 'Minimax' by M/s. Minimax Industries on the ground that it was a trade name or brand name of M/s. Minimax Engineering Industries. Obviously neither there was any objection for use of the logo by M/s. Minimax Industries nor there was any agreement of use of such logo by M/s. Minimax Industries. However, records nowhere disclose any investigation in this regard. Records being totally silent in this regard, it is difficult to accept the contention of the Department that there was violation by the appellants in relation to Condition No.4 relating to the use of brand name or trade name of others. Mere user of the name or logo used by others which has not acquired the status of brand name or trade name within the meaning of the said expression under the said notifications, in our considered opinion cannot amount to violation of condition No.4 of the said notification.

11. In the circular issued by the Board bearing No.52/52/94-CX dt.1.9.94 after taking note of the opinion of the Law Ministry in relation to the subject on which the said circular was issued, it was clearly observed thus -

> "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".

The opinion of the Law Ministry which has been extracted in the said circular, relevant portion whereof clearly reads thus –

> "Perusal of the said explanation (Explanation IX to the Notification No.1/93-CE) will show that to satisfy the requirements of brand name or trade name, it is necessary that the trade name must indicate a connection in the course of the trade between such specified goods and some person using such name or mark with or without any indication or identity of that person"

Referring to the products like locks, the Law Ministry had opined that :-

> "The names being used in the manufacture of locks by these small scale units do not belong to any particular manufacturer and any unit is free to use any name. Therefore, in our view, even without the issue of Notification of $4^{th}/11^{th}$ May,1994 units which are using trade name or brand name, which does not belong to any person, were eligible for exemption under the said notification because of explanation IX in the said notification".

The circular clearly indicates that only on acquisition of the goodwill in relation to the particular logo or mark, it would acquire the status of being a brand name or trade name within the meaning of said expression used in the said notifications and not otherwise.

12. In the facts and circumstances of the case, therefore the authorities below clearly erred in holding that the appellants had

violated condition No.4 of the said notification and on that ground to deny the SSI benefit and to demand the duty.

13. The Appeals therefore, succeed on the above ground. The impugned order is accordingly hereby set aside and demand is quashed with the consequential relief.

(Justice R.M.S.Khandeparkar)
President

(Rakesh Kumar)
Member(Technical)

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