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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

Date 07/07/2011

Appeal No. E/1801/2005,2749/2005-2750/2005 - EX[DB]

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

To :
C.C.E JALANDHAR
JALANDHAR (HQ AT CHANDIGARH), PLOT NO 19,
SECTOR 17-C, CHANDIGARH

C.C.E JALANDHAR Appellant

Vs

M/S VIGIL REMEDIES (P) LTD JALANDHAR Respondent

I am directed to transmit herewith a certified copy of **Final order No.510-512/ 2011 EX[DB]** dated 09-6-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S VIGIL REMEDIES (P) LTD
SHOP NO. 1, NEAR RAILWAY STATION,
OLD BUS STAND, JALANDHAR

2. Adv. / Consult SH. S. YADAVA, ADV.,
A-103, DEFENCE COLONY,
N. DELHI-24

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House.1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. HON'BLE PRESIDENT.
15. M/S PENGUIN ORGANICS (P) LTD
17, BHATIA COMPLEX,
SEHDEV MARKET, JALANDHAR
16. M/S RAVIERA PHARMACEUTICALS PVT LTD
11-B, INDUSTRIAL DEVELOPMENT COLONY,
JALANDHAR

Assistant Registra
(Excise Appeal Bran

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 09/06/2011.
DATE OF DECISION : 09/06/2011.

Excise Appeal No. 1801 of 2005

CCE, Jalandhar — Appellants

Versus

M/s Vigil Remedies (P) Ltd. — Respondent

Excise Appeal No. 2749 of 2005

CCE, Jalandhar — Appellants

Versus

M/s Penguin Organics (P) Ltd. — Respondent

Excise Appeal No. 2750 of 2005

CCE, Jalandhar — Appellants

Versus

M/s Raviera Pharmaceuticals Pvt. Ltd. — Respondent

[Arising out of the Order-in-Appeal No. 15-17/CE/Appl/JAL/2005 dated 27/01/2005 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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : No
3. Whether their Lordships wish to see the fair copy of the order? : Seen
4. Whether order is to be circulated to the : Yes

Appearance

Shri I. Beg, Authorized Representative (DR) – for the Appellants.

Shri S. Yadav, Advocate – for the Respondent.

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

FINAL Order No. 510-512/2011-EX Dated : ____________

Per. Shri Justice R.M.S. Khandeparkar :-

Heard the DR for the appellants and learned advocate for the respondents. Since common questions of law and facts arise in all these appeals they arise out of common order passed by the Commissioner (Appeals), Jalandhar, they were heard together and are being disposed of by this common order. The respondent M/s Raviera Pharmaceuticals Pvt. Ltd. are the manufacturers of different medicines classifiable under sub-heading 3003.10 of the first schedule to the Central Excise Tariff Act, 1985 and the product manufactured by said respondents were being cleared in blister packing bearing logo namely Amedac, Vigil and Penguin which belong to other persons namely M/s Amedac Laboratories, Jalandhar, M/s Penguin Organics (P) Ltd., Jalandhar and M/s Vigil Remedies (P) Ltd., Jalandhar respectively, while availing the benefit of SSI exemption Notification No. 8/1998-CE dated 2nd June 1998, 8/1999-CE dated 1st March 1999, 8/2000-CE dated 1st March 2000, 8/2001-CE dated 1st March 2001 and 8/2002-CE dated 1st March 2002 for the period from June 1998 to February 2003. The said fact was revealed pursuant to the inspection of the factory premises of the respondents on receipt of the intelligence report by the preventive staff of the excise department. The inspection was carried out on 22nd February 2003 which was followed by the investigation and consequently a show cause notice came to be issued on 20th June 2003 requiring the respondents show cause against denial of the exemption benefit and imposition of duty and the penalty. Though the respondents contested the proceedings by filing their replies to the show cause notice, the Adjudicating Authority confirmed the demand of excise duty to the tune of Rs. 2,23,304/- against the respondents M/s Raviera Pharmaceuticals Pvt. Ltd. in addition to Rs. 59/- for removal of medicines clandestinely, alongwith the interest besides ordering confiscation of medicines valued at Rs. 1,990/- while granting liberty of redemption on payment of redemption fine of Rs. 500/- and imposed equal amount of penalty. Penalty of Rs. 10,000/- was also imposed against M/s Amedac Laboratories as well as against the two other respondents and the appeal carried against the same, the Commissioner (Appeals), Jalandhar by impugned order dated 27th January 2005 allowed the same and set aside the order passed by the Adjudicating Authority, hence the present appeal.

2. The Adjudicating Authority while confirming the demand had held that the fact that the respondents M/s Raviera Pharmaceuticals Pvt. Ltd. had used the brand name of other

persons namely M/s Amedac Laboratories, M/s Vigil Remedies (P) Ltd. and M/s Penguin Organics (P) Ltd. was clearly established and, therefore, following the law laid down by the Hon'ble Supreme Court in the matter of **CCE, Chandigarh – I vs. Mahaan Dairies – 2004 (166) E.L.T. 23 (S.C.)** and **CCE, Trichy vs. Rukmani Pakkwell Traders – 2004 (165) E.L.T. 481 (S.C.)**, the respondents were not entitled for availing the benefit of SSI exemption under the said notification and other respondents having marketed the said product in connivance with the M/s Raviera Pharmaceuticals Pvt. Ltd. confirmed the demand and imposed the penalty. As against this, the Commissioner (Appeals) held that printing of logo of marketing firms did not amount to use of brand name of other persons within the meaning of use of brand name of other person under the said SSI exemption notifications and, therefore, the respondents were entitled to avail the benefit under the said notification and, therefore, set aside the demand.

3. While assailing the impugned order, DR submitted that the law on the point of non-entitlement of use of brand name of another person by those availing the SSI exemptions being well settled by the decision of the Apex Court and the Adjudicating Authority having decided the matter on the basis of those decisions, there was no justification for the Commissioner (Appeals) to set aside the order passed by the Adjudicating Authority. Our attention has also been drawn to the order passed by the Hon'ble Bombay High Court in the matter of **CCE, Thane**

- II vs. Amit Engg. Works reported in **2008 (223) E.L.T. 166 (Bom.)**.

4. On the other hand, the learned advocate for the respondents submit that considering the decision of the Apex Court in **Astra Pharmaceuticals (P) Ltd. vs. Collector - 1995 (75) E.L.T. 214**, no fault can be found with the impugned order. Mere use of the brand name for an ornamental purposes cannot be said to have use the brand name in the course of trade as rightly held by the Commissioner (Appeals). He further submitted that the demand related to the period from 1st July 1998 to 2nd February 2003, whereas the notice was issued on 20th June 2003 and there was no justification for invocation of extended period of limitation. On this ground, according to the learned advocate, there is no substance in the claim of the department. He, further submitted that the respondents had also challenged the order of the Adjudicating Authority on the ground that the price charged by the respondents from the buyers was cum-duty price and the duty demanded was required to be abated from the amount of demand, bearing in mind, the decision of the Hon'ble Supreme Court in the matter of **CCE vs. Maruti Udyog Ltd. - 2002 (141) E.L.T. 3 (S.C.)** as well as the decision of the Tribunal in the matter of **Srichakra Tyres Ltd. vs. CCE - 1999 (108) E.L.T. 361**, which was confirmed by the Hon'ble Supreme Court and the same is reported in **2002 (142) E.L.T. A-279**. He further submitted that without prejudice to his argument that there is no case for interference in the impugned order, in case

the Tribunal allows the appeal, the issue relating to the limitation and cum-duty price are required to be decided. He also submitted that the party had in fact forwarded cross-objection in the year 2007 in this appeal.

5. As regards the contention regarding cross-objection, the records placed before us nowhere disclose that the respondents had ever filed any cross-objection. It was submitted by the learned advocate that the party had forwarded the same by speed post. He also produced for our perusal a speed post receipt in that regard. However, the said receipt is affixed to a copy of the application for adjournment. There is no proof placed before us which could convince us that the respondents had in fact filed cross-objection. Mere sending of the cross-objection by post is not sufficient. In that regard, a party desires to file such cross-objection has to comply with the rules in that regard.

6. It cannot be disputed that the law as regards the scope of the expression brand name of other person has been settled by the catena decisions of the Apex Court including the decision in the matter of **CCE, Trichy vs. Rukmani Pakkwell Traders** (supra) and **CCE, Chandigarh – I vs. Mahaan Dairies** (supra). It has been clearly ruled in **Rukmani Pakkwell Traders** case that it makes no difference whether the goods on which the trade mark is used are the same in respect of which the trade mark is registered and even if the goods are different so long as the trade name and brand name of another company is used, the benefit of ... t be availed. Besides, once a trade name

or brand name of another use is used, then mere use of additional words would not enable the party to claim the benefit of notification. Further in **Mahaan Dairies**, the Apex Court has ruled that in order to claim the benefit of such notification, party has to strictly comply with the terms and conditions of notification.

7. The Hon'ble Bombay High Court in **Amit Engg. Works**, the benefit of such notification was denied taking into consideration the fact that the assessee had used the logo of marketing firm apart from the logo of the assessee himself.

8. Taking into consideration the provisions under the notifications in question and above quoted rules, the department is justified in contending that the respondents were not entitled to avail the benefit of the said notification. The finding of the Commissioner (Appeals) that use of logo of marketing firm does not amount to use of brand name of another person is directly in contravention of the provisions of law under the said notification and the same has been further clarified by the Hon'ble Bombay High Court. The impugned order in that regard cannot be sustained.

9. As regards point of limitation is concerned, there is absolutely no substance in that regard as admittedly while availing the SSI exemption, the respondents were not filing any declarations or other documents which could reveal the relevant ... besides the fact that it was only

pursuant to the raid conducted on 22nd February 2003, that department came to know about the relevant facts that the respondents were clearing the goods with the use of logo of another person and yet had been availing the benefit of SSI exemption. The relevant facts being suppressed that the department was entitled to invoke extended period of limitation, the notice issued of 20th June 2003 did not relate to the period more than five years. Being so, there is no substance in the point sought to be raised relating to bar of limitation.

10. As regards the issue relating to cum-duty price undoubtedly though no cross objections appear to have been filed, the fact remains that said ground was specifically raised by the respondent before the Commissioner (Appeals). However, since the order of the Adjudicating Authority was set aside on main ground, the Commissioner (Appeals) had no occasion to deal with the said issue. Bearing the same in mind, though we do not find cross-objection having been filed on record, but it is sought to be contended that they were forwarded under speed post, taking into consideration of these aspects, in our considered opinion, it would be appropriate to remand the matter in appeal No. **E/2750/05** to deal with the said issue in accordance with provisions of law.

11. As regards the decision of the Apex Court in **Astra Pharmaceuticals (P) Ltd.** case is concerned, it is to be noted that it is not in relation to the entitlement of benefit of SSI

exemption notification nor in relation to the scope of the expression brand name of another person as is found under the said notification. The decision being clearly distinguishable on facts, it has no application to the matter in hand.

12. For the reasons stated above, therefore, there was no case for interference in the adjudication order as far as rejection of the benefit of SSI exemption is concerned and confirmation of demand of duty in that regard. There is also no case for interference as regards demand of interest and imposition of penalty is concerned. However, only regarding the issue of cum-duty price sought to be raised by the respondent M/s Raviera Pharmaceuticals Pvt. Ltd. while setting aside the impugned order the appeal Nos. E/2749/05 and 1801/05 are allowed in toto and while setting aside the impugned order in the appeal No. 2750/05, the matter in that appeal is remanded to the Commissioner (Appeals) to decide the point of cum-duty price in accordance with the provisions of law, while it is made clear that the scope of inquiry in the said appeal before the Commissioner (Appeals) shall be strictly restricted to the said issue only. Appeals accordingly stand disposed of.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

DK