

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

Appeal No. E/2298/2005 - EX[DB]

Date 25/05/2011

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

To :
M/S KARAM INDUSTRIES
KAHNUWAN ROAD BATALA PUNJAB
M/S KARAM INDUSTRIES

Appellant
Vs
Respondent

C.C.E. JALLANDHAR(HQ. AT CHANDIGARH)

I am directed to transmit herewith a certified copy of Final order No.442-445/ 2011 EX[DB] dated 12-5-11
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

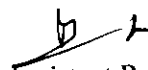

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH)
C.R.BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH.

2. Adv. / Consult *SH. G. K. SARKAR, ADV, CCO*
MR. LAJJA RAM, ADV,
40/159, C.R. PARK, N.DELHI- 110019.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publications 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 (Harvana)
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,


Assistant Registrar
(Excise Appeal Branch)

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

Date of hearing/decision 12.05.2011

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, 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.	<i>Yes</i>
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	<i>Yes</i>
3	Whether Their Lordships wish to see the fair copy of the Order?	<i>Yes</i>
4	Whether Order is to be circulated to the Departmental authorities?	<i>Yes</i>

Excise Appeal No. 2298 of 2005

[Arising out of order in appeal No. 125/CE/JAL/2005 dated 31.3.2005 passed by the Commissioner of Central Excise (Appeals) Ludhiana].

M/s Karam Industries

Appellants
Rep. by Sh. G.K. Sarkar, Advocate.

Vs.

CCE, Chandigarh

Respondent
Rep. by Ms. Monika Batra, SDR

AND

Excise Appeal No. 2266 of 2005

[Arising out of order in appeal No. 125/CE/JAL/2005 dated 31.3.2005 passed by the Commissioner of Central Excise (Appeals) Jalandhar].

CCE, Jalandhar

Appellant
Rep. by Ms. Monika Batra, SDR

Vs.

M/s Karam Industries

Respondent
Rep. by Sh. G.K. Sarkar, Advocate

AND

Excise Appeal No. 1304 of 2005

[Arising out of order in appeal No. 702/CE/aPPEAL/Ldh/2004 dated 31.12.2004 passed by the Commissioner of Central Excise (Appeals) Ludhiana].

M/s Karam Machine Tools

Appellants
Rep. by Sh. G.K. Sarkar, Advocate.

Vs.

CCE, Jalandhar, Chandigarh

Respondent
Rep. by Ms. Monika Batra, SDR

AND

Excise Appeal No. 1143 of 2005

[Arising out of order in appeal No. 702/CE/aPPEAL/Ldh/2004 dated 31.12.2004 passed by the Commissioner of Central Excise (Appeals) Ludhiana].

CCE, Jalandhar

Appellant
Rep. by Ms. Monika Batra, SDR

Vs.

M/s Karam Machine Tools

Respondent
Rep. by Sh. G.K. Sarkar, Advocate

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President
Hon'ble Sh. M. Veeraiyan, Member (Technical)

FINAL Oral Order No. 442-445 / 2011-EX

Per: Shri M. Veeraiyan:

1.1 Appeal No. E/2298/2005 is by M/s Karam Industries against order of the Commissioner (Appeals) No. 125/CE/JAL/2005 dated 31.3.2005 which has arisen out of order of the original authority No. 27 & 28/CE/ADC/2003 dated 29.10.2003. Appeal No. E/2266/2005 is by the department against the same impugned order seeking enhancement of penalty equal to duty involved.

1.2 Appeal No. E/1304/2005 is by M/s Karam Machine Tools against the order of the Commissioner (Appeals) No. 702/CE/APPEAL/Ldh/2004 dated 31.12.2004 arising out of same order-in-original No. 27 & 28/CE/ADC/2003 dated 29.10.2003. Appeal No. E/1143/2005 is by the department against the same impugned order seeking enhancement of penalty equal to duty involved.

1.3 As all these four appeals, two by the parties and two by the department arise out of common order-in-original and involve common facts, they are being disposed of by this common order.

2. The relevant facts, in brief, are that the brand name '**KARAM**' belong to M/s Guru Nanak Engineering Works. During the relevant period this brand name was not registered. The brand name was being used by the said M/s Guru Nanak Engineering Works for manufacture of machine tools from 1957. During the relevant period they were within the exemption limit applicable to small scale units. There was a dissolution deed executed on 04.04.98 to take effect from 01.04.1998 by which the family members who opted out of Partnership firm of M/s Guru Nanak Engineering Works were

prohibited from using the brand name '**KARAM**'. On investigation, the department found that M/s Karam Machine Tools, Batala was using the brand name



and were availing the exemption in respect of machine tools cleared by them. Similarly, M/s Karam Industries were using the brand name



Show cause notice alleged that these two parties were using the brand name '**KARAM**' belonging to M/s Guru Nanak Engineering Works and, therefore, they were not eligible for the small scale exemption. Accordingly, show cause notice dated 27.3.2002 was issued proposing demand of duty of Rs. 17,75,977/- from M/s Karam Machine Tools and proposing imposition of penalties. The demand of duty related to the period from March 1997 to 07.12.2001. Similarly, by show cause notice dated 01.08.2002, duty demand of Rs. 7,17,163/- from M/s Karam Industries and imposition of penalties were also proposed. The original authority vide order dated 29.10.2003 dropped the proceedings holding that the brand names used by these two parties are different from the brand name '**KARAM**'. On appeal, filed by the department, Commissioner (Appeals) set aside the order of the original authority and confirmed the demand of duties as proposed in the show cause notices and imposed penalty of Rs. 5 lakhs on M/s Karam Machine Tools and a penalty of Rs. 1 lakh on M/s Karam Industries following the decision

of the Hon'ble Supreme Court in the case of **CCE, Chandigarh vs. M/s Mahan Dairies** reported in 2004 (166) ELT 23. The parties are in appeal challenging the very demands of the duty and imposition of penalties. The department is in appeals seeking enhancement of penalties to amounts equal to the duty demanded.

3.1 Learned Advocate submits that the brand names used by the appellant parties are different from the brand name '**KARAM**' used by M/s Guru Nanak Engineering Works. He submits that the brand name used by M/s Karam Machine Tools was sought to be registered by an application dated 16.02.2001, and the brand name used by M/s Karam Industries was sought to be registered by an application dated 21.01.2002 and they have accordingly got the registration certificate from the Trade Mark authorities. He also submits that M/s Guru Nanak Engineering Works has also subsequently sought for registration of the brand name '**KARAM**' and he is not aware whether they have got the registration or not.

3.2 He submits that M/s Karam Machine Tools, applied for cancellation of registration during March 1999 and prior to that, they have been filing necessary declarations and followed excise formalities. After applying for cancellation of registration, they were not required to file any declaration. In view of the above, the allegation of suppression of relevant information is incorrect and even if demand of invocation of extended period of limitation is not justified and penalties should not be imposed. He relies on the decision of the Tribunal in the case of **Bentex Motor Control Industries vs. CCE, New Delhi** reported in 2002 (139) ELT 679 and submits that the

decision has not been interfered by the Hon'ble Supreme Court as the appeal filed by the department stands dismissed as time barred.

3.3 Learned Advocate also submits that M/s Karam Machine Tools claimed before the lower authorities that clearances amounting to Rs.2,45,193/- related to spares parts which did not bear any brand name. The original authority did not consider this issue as he has dropped the proceedings on other grounds. He also submits that Commissioner (Appeals) has decided the matter ex-parte in as much they have not received notice of hearing. He also submits that in both the cases they have claimed that the show cause notices proposed duty on the invoice values which should be treated as cum-duty price in the event of demand being upheld and the said benefit has not been extended to them.

3.4 Learned Advocate relied on the decision in the case of **CCE, Ahmedabad vs. Premier Polymers** reported in 2011 (266) ELT 365. The facts of the case are different from facts of the present case.

4.1 Learned SDR reiterating the findings and reasoning of the Commissioner (Appeals) submits that the brand names used by the parties are basically '**KARAM**', which belong to M/s Guru Nanak Engineering Works. The parties know that the brand name belonged to third party as they have entered into partnership dissolution deed. They have failed to bring this relevant information to the knowledge of the Central Excise authorities and availed the benefit of exemption meant for small scale units which was not available when the brand name of third party was used. Their applying for cancellation of registration in the case of M/s Karam Machine

Tools in March 1999 was also incorrect and malafide as they were using the brand name of third parties and, therefore, they were not eligible for exemption. She also took us through the enquiries conducted with the purchaser of tools manufactured by M/s Karam Industries wherein they have clearly stated that they have purchased these machines with a clear understanding that they were of the brand name '**KARAM**' which is a popular brand name. She also submits that the exemption is not available when third party brand name is used even if the said brand name was not registered. She submits that as the relevant information about use of the brand name of third party which was of the erstwhile family concern was not revealed, extended period of limitation has been rightly invoked. She also submits that Commissioner (Appeals) erred in not imposing penalties equal to duty involved in terms of Section 11AC of the Act.

4.2 Ld. SDR relied on the decision of Hon'ble Supreme Court in **CCE, Trichy vs. Rukmani Pakkwell Traders** reported in 2004 (165) ELT 481 (SC) and decision in the case of **CCE, Chandigarh-II vs. Bhalla Enterprises** reported in 2004 (173) ELT 225 (SC) and the decision in the case of **CCE, Chandigarh-I vs. Mahaan Dairies** reported in 2004 (166) ELT 23 (SC) in support of her claim that the appellant parties are not eligible to avail the benefit of small scale exemption having used the brand name of third parties. She relied on the decision of the Hon'ble Supreme Court in the case of **Union of India vs. Rajasthan Spinning & Weaving Mills** reported in 2009 (238) ELT 3 (SC) to submit that mandatory penalty under Section 11AC is warranted in the present case.

5.1 We have carefully considered the submissions from both sides and perused the records. The original authority has come to a conclusion that the brand name '**KARAM**' and the brand name used by the appellant parties are different. He appears to have taken what was recorded in the invoice was **NEW KARAM** and **SUPER KARAM** all in bold letters as in the case of **KARAM**. The show cause notices have clearly shown the deceptive nature of brand names used by the appellant parties. The words namely "new" in the case of M/s Karam Machine Tools and "super" in the case of M/s Karam Industries have been given in the left hand corner in very small letters and in an insignificant way compared to the word "**KARAM**". The investigation conducted by the department with the buyers of tools manufactured by M/s Karam Industries has clearly brought out that the trade understood these brand names used by the appellant parties as only **KARAM**. Further, the appellant parties were clearly having knowledge that the brand name belonged to M/s Guru Nanak Engineering Works manufacturing identical products as the said firm was also a family concern and the Partners of appellant firms have entered into a partnership dissolution deed. Under these circumstances, the appellant firms were duty bound to reveal the use of the brand name. In the case of Premier Polymers relied by the appellant, the Tribunal appreciated the fact that the learned Commissioner did not rely on any evidence to show as to who was the actual owner of the brand. In such a situation, the Tribunal did not find the allegation that the party therein used the brand name of another party as substantiated. We have not been shown any evidence that the appellants have filed necessary declarations and brought these relevant facts before the

excise authorities before claiming and availing the exemption and before opting out of registration as a Central Excise assessee. Therefore, on merits, we hold that the appellant parties have used the brand name **KARAM** which belonged to a third party and, therefore, the decision of the Commissioner (Appeals) holding that the appellant parties are not eligible for exemption does not called for any interference.

5.2 As the appellant parties have clearly failed to disclose the vital information relating to use of the brand name which was within the knowledge to the Central Excise authorities and which condition was necessary for availing the benefit of exemption, we also hold that invocation of extended period of limitation is justified.

5.3 In the given facts and circumstances of the case and in the light of decisions of the Hon'ble Supreme Court in Union of India vs. Rajasthan Spinning cited supra, penalty under Section 11AC is also warranted.

6. However, we agree with the submissions of the learned Advocate that in the case of demand relating to M/s Karam Machine Tools, the value of spares amounting to Rs. 245193/- which did not bear any trade mark should be excluded while confirming the demand of duty.

7. We also find that the submission of the appellant parties before the original authority for cum-duty benefit has not been considered by the original authority as well as by the Commissioner (Appeals). Therefore, the matter requires to be sent to the original authority for fresh calculation.

8. While upholding penalty under Section 11AC, we hold that the same depends upon the actual duty to be demanded which can be confirmed only after the fresh calculation as directed above. Therefore, we also direct the quantification of penalty under Section 11AC after re-quantification of duty as mentioned above.

9. Regarding the submission that the order of the Commissioner (Appeals) was ex-parte, we find that Commissioner (Appeals) has clearly held that personal hearings were granted on two occasions and the appellant M/s Karam Machine Tools have not appeared before them. No evidence contradicting the said finding has been produced. However, we have given adequate hearing on the merits of the case and taken note of all submissions on various issues raised ~~or~~ by the appellant party and therefore, on merits of the case, we hold that it is not necessary to remand the matter to consider the cases on merits.

10. The appeals are disposed of in the above terms.

[Justice R.M.S. Khandeparkar]
President

[M. Veeraiyan]
Member [Technical]

/Pant/