

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI.

Date of Hearing:18.06.2012
Date of Decision:02.07.2012

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

Excise Appeals Nos.E/2700 -2705 of 2005

(Arising out of Order-in-Appeal No.125-130(MPM)/CE/JPR-I/2005 dated 21.04.2005 passed by the Commissioner (Appeals), Jaipur-I).

CCE, Jaipur-I

...Appellant

Vs.

M/s. Dugar Tetenal India Ltd.
Shri Vinod Kumar Dugar
Shri Ashok Kumar Sharma
Shri R.K. Mishra
Shri S.K. Majumdar
Shri S. Talukdar

...Respondents

Coram : Hon'ble Justice Shri Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

Appearance: Shri S. Vyas, Advocate for the appellants.
Shri Nagesh Pathak, AR for the respondent.

FINAL Order No. A./753-758/2012-Ex(CB)

Per Rakesh Kumar:

The facts leading to these appeals filed by Revenue are, in brief, as under:-

1.1 The respondents are engaged in the manufacture of photographic chemicals chargeable to central excise duty under Chapter Heading No.370700 of the Central Excise Tariff. They were availing of SSI exemption under Notification No.1/93-CE. Shri Vinod Kumar Dugar is Director of the respondent company, Shri Ashok Kumar Sharma, Shri R.K. Mishra and Shri S. Talukdar are authorized signatory of the respondent company and Shri S. Majumdar is the production Supervisor. The respondent company during the period of dispute i.e. during the period from April, 1996 to November, 2000 was availing SSI exemption under Notification No.1/93-CE. During this period, the respondent company was selling its goods under brand name "Dugar Tetenal". "Tetenal" is the brand name belonging to M/s. Tetenal Vertriebs GmbH, Germany, with whom they had an agreement for technical collaboration. In terms of the Clause 4 of the notification no.1/93-CE dated 28.02.93, the exemption contained in this notification would not be applicable to specified goods where the manufacturer affixes the specified goods with the brand name or trade name, whether registered or not, of any other person. The department was of the view that since the appellant company was selling the

goods under brand name belonging to another person, they are not eligible for SSI exemption. On this basis, it has been alleged that the appellant company during April, 1996 to November, 2000 period has short paid duty amounting to Rs.17,92,095/-.

1.2 In course of a visit by the jurisdictional central excise officers to the respondent-company's factory on 9.11.2000, when stock taking of the cenvat credit availed inputs and finished products was conducted, cenvat credit availed raw materials involving credit of Rs.14,404/- were found short vis-a-vis the balance in the RG-23 A Part-II register and besides this, there was also shortage of finished goods involving central excise duty of Rs.4,129/- vis-à-vis balance in the RG-I register. Since the respondents could not give any satisfactory explanation for the shortage of the cenvat credit availed inputs and finished goods, it appeared that the cenvat credit inputs and finished inputs had been clandestinely removed without payment of duty.

1.3 In view of the above a show cause notice dated 3.7.2001 was issued to the respondent for –

- (a) Recovery from the respondent company of central excise duty amounting to Rs.17,92,095/- short paid by them by way of wrong availment of SSI exemption on the goods cleared during April, 1996 to November, 2000

along with interest on this duty under Section 11 A of the Central Excise Act, 1944;

- (b) Recovery from the respondent company of central excise duty of Rs.14,404/- in respect of shortage of cenvated inputs which are alleged to have been removed without payment of duty along with interest on this duty;
- (c) Recovery from respondent company of duty of Rs.4,129/- along with interest, on the finished goods allegedly removed clandestinely without payment of duty;
- (d) Imposition of penalty on the respondent company under Section 11 AC of the Central Excise Act, 1944 and also under Rule 173Q of Central Excise Rules; and
- (e) Imposition of penalty under Rule 209 A of the Central Excise Rules, 1944 on Shri Vinod Kumar Dugar, Director of the respondent company, Shri S. Talukdar, Authorised Signatory, Shri R.K. Mishra, Authorised Signatory, Shri S.K. Majumdar, Production Supervisor and Shri Ashok Kumar Sharma, Authorised Signatory.

1.4 The above show cause notice was adjudicated by the Addl. Commissioner vide order-in-original dated 11.1.2002 by which –

- (a) total duty demand of Rs.18,10,628/- was confirmed against the respondent company along with interest on it under Section 11 AB,

(b) penalty of Rs.18,10,628/- was imposed on the respondent company under Section 11 AC of the Central Excise Act, 1944; and

(c) penalty of Rs.3,000/- each was imposed on Shri Vinod Kumar Dugar, Director, Shri S. Talukdar, Authorised Signatory, Shri R.K. Mishra, Authorised Signatory, Shri S.K. Majumdar, Production Supervisor, and Shri Ashok Kumar Sharma, Authorised Signatory under Rule 209 A of the Central Excise Rules, 1944.

1.5 All the respondents filed appeals before the Commissioner (Appeals) against the Addl. Commissioner's Order, who vide order-in-appeal dated 21.04.2005 while upholding the duty demand of Rs.14,404/- and Rs.4,129/- in respect of inputs/finished goods found short, set aside the duty demand of Rs.17,92,095/- holding that the respondent company was using the brand name "Dugar Tetenal" on their goods, which is different from the brand name "Tetenal" of M/s. Tetenel Vertribs GmbH and, therefore, the respondent company cannot be said to be using the brand name of another person and hence, would be eligible for the SSI exemption.

1.6 Against this order of the Commissioner (Appeals), these six appeals have been filed by the Revenue. The prayer in the Revenue's appeals is for setting aside of the order of the Commissioner (Appeals) and restoration of the order-in-original passed by the Addl. Commissioner.

2. Heard both the sides.

3. Shri Nagesh Pathak, Ld. Sr. Departmental Representative assailed the impugned order by reiterating the grounds of appeal and pleaded that the respondent company had technical collaboration with M/s. Tetenal Vertribs GmbH, Germany and under that agreement, they were also paying the royalty to them for using their brand name, that during the period of dispute the respondent company was using the brand name "Dugar Tetenal" on the goods being cleared by them, that since the brand name "Tetenal" belongs to M/s. Tetenal Vertribs GmbH, Germany and as such, the composite brand name "Dugar Tetenal" is not registered in the name of the respondent, the brand name used by the respondent company has to be treated as the brand name of another person and hence, the respondent would not be eligible for SSI exemption, that just by adding the word "Dugar" before the word "Tetenal", the brand name does not become the brand name of another person and use of this brand name would disentitled the respondent for the benefit of the SSI exemption, that in this regard, he relies on the judgement of the Apex Court in the case of **CCE, Trichy Vs. Rukmani Pakkwell Traders reported in 2004 (165) ELT 481 (SC)**, wherein the Apex Court held that using of the part of the brand name of another person indicating a connection in the course of trade would be sufficient to disentitle the claim for exemption under notification no.1/93-CE, that same view has been expressed by the Apex Court in its judgment in the case of **CCE, Chandigarh –I Vs. Mahaan Dairies reported**

in 2004 (166) ELT 23 (SC), that the Apex Court in a recent judgement in the case of **CCE, Delhi Vs. Ace Auto Company Ltd. reported in 2011 (263) ELT 3 (SC)** taking the same view has held that when the brand name "Tata" does not belong to M/s. Ace Auto, the use of the brand name "Tata Ace" by M/s. Ace Auto on their goods would disentitle them for the benefit of SSI exemption under notification no.1/93-CE, and that in view of this, the order of the Commissioner (Appeals) that for the purpose of SSI exemption, the brand name "Dugar Tetenal" is different from the brand name "Tetenal" of M/s. Tetenal Vertriebs GmbH, Germany is incorrect.

4. Shri Shekhar Vyas, Id. Counsel for the respondent reiterating the findings of the Commissioner (Appeals) in the impugned order pleaded that the brand name "Dugar Tetenal" being used on the goods manufactured by the respondent is different from the brand name "Tetenal" and hence, the use of this brand name on the goods would not disentitle the respondent from the benefit of SSI exemption, that in this regard, he relies upon the judgements of the Tribunal in the cases of **Meet Electronics Vs. CCE, Meerut reported in 2001 (133) ELT 485 (Tribunal-Delhi)**, wherein it was held that use of the brand name "Meet National" by M/s. Meet Electronics would not disentitle them for the benefit of SSI exemption, **M/s. A.J. Bantex (P) Ltd. Vs. CCE, Bangalore reported in 2008 (229) ELT 582 (Tribunal-Bang.)** wherein the Tribunal after discussing the judgement of the Apex Court in the case of **CCE,**

Trichy Vs. Rukmani Pakkwell Traders (supra) held that just because the brand name "Bantex" is of a foreign company, use of the brand name "A.J. Bantex" by M/s. A.J. Bantex on their products would not disentitle them for the benefit of SSI exemption under Notification no.175/86-CE and 1/93-CE, that in terms of the Board's Circular No.52/52/94-CX dated 1.9.1994, if a brand name is not owned by any particular person, the use thereof will not deprive of the unit of the SSI exemption, that since the brand name "Dugar Tetenal" does not belong to anybody, the use of this brand name would not deprive the appellant of the benefit of the SSI exemption and that in view of this, there is no infirmity in the impugned order.

5. We have considered the submissions from both the sides and perused the records.

6. The duty demand under dispute is of Rs.17,92,095/- on account of denial of SSI exemption. There is no dispute that the respondent company had technical collaboration with M/s. Tetenal Vertribs GmbH, Germany and till 1992, they were also paying royalty to that company for use of its brand name "Tetenal" on their goods. There is also no dispute about the fact that the brand name "Tetenal" belongs to M/s. Tetenal Vertribs GmbH, Germany. During the period of dispute, the respondent company was using the brand name "Dugar Tetenal" on their goods. The point of dispute is as to whether just by adding the word "Dugar" before the word "Tetenal" and using the brand name "Dugar

Tetenal” on the goods would disentitle the respondent company for the benefit of SSI exemption. The Commissioner (Appeals) has held that the brand name “Dugar Tetenal”, though not registered in the name of the respondent, is different from the brand name “Tetenal” belonging to M/s. Tetenal Vertriebs GmbH, Germany and hence, the use of this brand name on the goods would not disentitle the respondent from the benefit of SSI exemption. The Commissioner (Appeals) in arriving at this conclusion has relied upon the judgement of the Tribunal in the cases of –

(a) Meet Electronics Vs. CCE, Meerut reported in 2001(133)

ELT 485 (T-Delhi) and

(b) CCE, Chandigarh Vs. Mahaan Dairies -

2000(40) RLT 727(CEGAT-Delhi), and

(c) M/s. Vikram International Vs. CCE, Meerut –

2000 (40) RLT 35 (CEGAT),

7.1 In case of **Meet Electronics Vs. CCE, Meerut** (supra), the Tribunal held that the brand name, “Meet National” is different from the brand name, ‘National’ and use of this brand name would not disentitle M/s. Meet Electronics for the SSI exemption. In case of **CCE, Chandgarh Vs. Mahaan Dairies**, the Tribunal held that use of the brand name “Mahaan Tastemaker” on the pickles manufactured by M/s. Mahaan Dairies would not deprive them of the benefit of SSI exemption even though the brand

name "Mahaan" belonged to M/s. Mahaan Foods Ltd., a different company.

In case of **Vikram International (supra)**, the Tribunal has held that the use of the brand name "Vikram National" and "Vikram Sony" are different from the brand name "National" and "Sony" respectively and use of these composite brand names would not disentitle M/s. Vikram International for SSI exemption.

7.2 However, we find that the Tribunal's judgement in the case of **CCE, Chandigarh M/s. Mahaan Dairires** which has been relied upon by the Commissioner (Appeals), has been reversed by the Apex Court vide judgement reported in **2004 (166) ELT 23 (SC)**, wherein the Apex Court held that mere use of the additional words with the brand name of another person would not entitle the manufacturer to claim the benefit of SSI exemption. Accordingly, the Apex Court has held that use of the brand name "Mahaan Tastemaker" by M/s. Mahaan Dairires on its product would disentitle them for the benefit of SSI exemption, as the brand name "Mahaan" belongs to M/s. Mahaan Foods Ltd. We find that the same view has been expressed by the Apex Court in the case of **CCE, Delhi Vs. ACE Auto Comp. Ltd. reported in 2011 (263) ELT 3 (SC) (supra)** wherein the Apex Court has held that when the brand name "Tata" does not belong to the assessee, the use of the brand name "Tata Ace" on the goods manufactured by the assessee would disentitle them for the benefit of SSI

exemption. The Apex Court in the case of **CCE, Trichy Vs. Rukmani Pakkwell Traders reported in 2004 (165) ELT 481 (SC)** has held in clear terms that use of part of brand name or trade name of another person, so long as it indicates a connection in the course of trade, would be sufficient to disentitle the person for the SSI exemption.

8. In this case, it is not disputed that the word "Tetenal" used along with the "Dugar" on the goods manufactured by the respondent company is the brand name of M/s. Tetenal Vertribs GmbH, Germany, with whom the respondent had technical collaboration and as such, the word "Tetenal" indicates a connection in the course of trade with M/s. Tetenal Vertribs GmbH, Germany. We, therefore, hold that the impugned order extending the benefit of SSI exemption under Notification No.1/93-CE to the respondent company in respect of the goods cleared with the brand name "Dugar Tetenal" is not sustainable and is liable to be set aside.

9. In view of the above discussion, the impugned order setting aside the duty demand of Rs.17,92,095/- along with interest and penalties on the Appellants on this count, is set aside and in this regard the order passed by the Original Adjudicating Authority is restored. The Revenue's appeals are allowed.

[Order pronounced on 21/7/14]

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Ckp.