IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Appeal No. E/8/2011-EX[DB]
[Arising out of Order-in-Appeal No. 154/BPL/2010 dated 21.10.2010, passed by the Commissioner of Customs & Central Excise, Bhopal]

For approval and signature:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

M/s Shivai Fabricators Pvt. Ltd. ....Appellant

Vs.

CCE, Bhopal ....Respondent

Appearance:
Shri Z.U. Alvi, Advocate for the Appellants
Shri Yogesh Aggarwal, DR for the Respondent

CORAM:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 20.12.2016
Date of Pronouncement:06.01.2017

FINAL ORDER NO. 50136 /2017 –EX[DB]

Per V. Padmanabhan

The appeal is directed against the Order-In-Appeal dated 21.10.2010 by Commissioner (Appeals), Bhopal. The dispute relates to the claim for the benefit of SSI exemption under Notification No. 8/2003 dated 1.3.2003 as amended from time to time in relation to the clearances made during the financial year 2008-09. It is the case of the Department that the appellants had crossed the limit of Rs. 4 crores in the preceding financial year i.e. 2007-08. But it is the contention of the appellants that while ascertaining the aggregate value of clearances affected in relation to the motor vehicle parts for vehicle factory at Jabalpur (unit by the Government) is to be excluded. In that connection, reliance is placed in clause 3A(b) read with clause 2(vii) of the said Notification No. 8/2003-CE dated 1.3.2003, read with the definition of the terms 'brand name' or 'trade name' as is found under explanation clause to the said notification. On the other hand, the Department has drawn attention to the Notifications No. 59/94-CE dated 1.3.2004 and 87/94-CE dated 15.4.94 while contending that the exclusion of the expression "code number, design number, Drawing number" from the definition clause of the terms, 'brand name' or 'trade name' in the said Notification No. 8/2003 clearly discloses the intention of the law makers that mere use of code number or drawing number would not amount to use of brand name so as to get exclusion of such product for determining the aggregate value of the clearances of the goods.

2. Clause 2(vii) of the Notification No. 8/03 provides that exemption contained under the said Notification shall be subject to the condition that the aggregate value of clearances of all excisable goods for home consumption by a manufacturer from one or more factories, or from a factory by one or more manufacturers, does not

exceed Rs 400 lakhs in the preceding financial year. Clause 3A(b) of the said Notification provides that for the purpose of determining the aggregate value of clearances of all the excisable goods for home consumption mentioned in clause (vii) at paragraph 2 of the said notification, the clearances bearing the brand name or trade name of another person, which are ineligible for grant of exemption in terms of Para 4 shall not be taken into account.

3. To justify the claim for exclusion of the product for the purpose of determining the aggregate value of clearances, the learned Advocate for the appellants has drawn our attention to the definition clause of the brand name or trade name as is found under explanation to the said notification. The explanation (A) provides that the brand name or trade name whether registered or not, means 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. In other words, the definition essentially discloses that use of brand name or trade name is with the intention to indicate the connection in the course of trade between the specified goods and the person using such name or mark. Any symbol or mark or number used on the product merely to identify the product to be meant for supply to a particular

supplier cannot be said to form a brand name or trade name within the meaning of the said definition under explanation clause of the said notification. In the case in hand, undisputedly, the markings which are used in the product are merely to identify the product meant for supply to the vehicle factory of the Government. It is not to indicate the connection in the course of trade between the specified goods and some other person using such marking.

4. With the above background, we have heard Shri Z.V. Alvi, learned Advocate for the appellant and Shri Yogesh Agarwal, Ld. Departmental Representative for the respondent.

5. The dispute is with reference to the availment of SSI benefit under Notification No. 8/2003-CE dated 1.3.2003. The benefit has been disallowed by Revenue authority during the period 2008-09. The claim of the Revenue is that during the financial year 2007-08, the appellant's aggregate value clearance has exceeded Rs 4 crores, and hence they are not eligible for the SSI benefit for the subsequent financial year 2008-09, in terms of clause 4 of the Notification No. 8/2003. The appellant is disputing this view taken by Revenue. Their submission essentially is that while computing the aggregate value of clearances for the financial year 2007-08, the value of clearances made in terms of Notification No. 64/95-CE dated 16.3.1995 is required to be excluded in terms of clause 4(a) of the Notification ibid. The Notification 64/95 exempts various parts of motor vehicles if cleared to the Central Government

Ordnance factory for the manufacturer of vehicles falling under chapter 87, provided the same are cleared from the factory of production as per Central Excise (Removal of Goods at Concessional Rate of duty for manufacturer of excisable goods) Rules, 2001. From the records, we find that the appellants have manufactured and supplied motor vehicle parts to the Government Ordnance factory at Jabalpur and the procedure spelt out in above Rules has been followed. However, Revenue has not given the relief to the extent of the value of clearances made to the Ordnance factory, on the ground that such goods were cleared bearing the appellant's own brand name "Shivai".

6. Appellant has objected to such a view taken by the Revenue. Their submission is that below the word "Shivai" a number is embossed, which only indicates that it is manufactured for supply to Ordnance factory. It is not in dispute that such motor vehicle parts are cleared for use as original equipment in the manufacturer of military vehicles by the ordnance factory. Accordingly, they have submitted that the aggregate value of clearances after excluding this made in terms of the Notification No. 64/95 dated 16.03.1995, is within the limit of 4 crores specified in the Notification No. 8/2003. They have further relied upon case law **Ashwin Steel Industries Vs. Commissioner of C. Ex., Ahmedabad** reported as **2007(216) E.L.T. 459(Tri.- Ahmd.)** in which the benefit has been extended by the Tribunal on similar facts.

7. It is not disputed that the clearances made to the ordnance factory have been made under the provision of 64/95 CE dated 16.03.1995. The aggregate value of such clearances are clearly not to be included in computing the total aggregate value of clearances of excisable goods under clause z(vi). If we deduct the value of such clearances, the aggregate value during the financial year 2007-08 is below the limit of Rs 4 crores specified in the notification. Consequently, the benefit of the SSI Notification No. 08/2003-CE dated 1.3.2003 will be allowable to the appellant during the financial year 2008-09.

8. In view of the above, the impugned order set aside and appeal allowed.

[Pronounced in the Open Court on 06.01.2017]

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

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