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

Appeal No. E/1719/2011-EX[DB]

[Arising out of the common Order-In-Appeal No. 130-132 (DKV) CE/JPR-I/2011Dated 31.03.2011 passed by Joint Commissioner, Central Excise, Jaipur-I.]

Palsons Automotive (P) Ltd. **…Appellant**

Vs.

C.C.E. Jaipur I **…Respondent**

Appearance:
Sh. T.R. Rustogi, Ld. Advocate for the appellant
Sh. R.K. Majhi, Ld. AR for the respondent

CORAM:
Hon'ble Justice Mr. Dr. Satish Chandra, President
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Date of Hearing. 31.01.2017
Date of decision. 08.02.2017

Final Order No. 50748 /2017

Per Ashok K. Arya:

1. M/s Palsons Automotive (P) Ltd. are in appeal against the Order-in-Appeal 130/132/2011 dated 31.03.2011 passed by Commissioner (Appeals), Central Excise & Customs, Jaipur-I.

1.1 The impugned Order-in-Appeal dated 31.03.2011 upholds the confiscation of seized goods alongwith the imposition of redemption fine of Rs. 1 lakh (Rs. One Lakh only) as ordered in the order-in-original 13.08.2009 passed by the Joint Commissioner of Central Excise, Jaipur.

1.2 The impugned order in appeal *inter alia* upholds the order in original dated 31.08.2009 to the extent of confirming the demand amounting to Rs. 39,30,757/- alongwith interest for the period of March 2005 to 26.06.2008 under Proviso to Section 11A(1) and 11AB of Central Excise Act, 1944. An equivalent penalty of Rs. 39,30,757/- has also been imposed on the appellant under Section 11AC of Central Excise Act, 1944.

2 The appellant has been represented by the Ld. Advocate, Shri T.R. Rustogi and the Revenue has been represented by the Ld. AR, Shri R.K. Majhi.

3 The matter mainly pertains to admissibility of benefit of exemption of duty under Notification No. 8/2003-CE dated 01.03.2003 to the goods manufactured by the appellant. The appellant is fixing the brand name “Autopal” on the said goods, though the said brand name is registered in the name of another entity of their group companies, which is known as “Autolite India Ltd.”

4 The ld. Advocate for the appellant based on the appeal memorandum and the written submissions *inter alia* mainly submits as under:

> **i.** As one of the group companies the appellants were using common brand name of “Autopal”, though the brand name is registered in the name of “Autolite India Ltd.”, which is one of the group companies.

ii. Though brand was registered in the name of "Autolite India Ltd." it is used by all other group companies and it was permitted as their family business was being conducted through this brand name.

iii. Each company of the family and brothers was using the said brand name as a matter of right. It was done as a 'Family Settlement'.

iv. The brand 'Autopal' is the property of all the brothers, who owned different companies dealing in parts of motor vehicles.

v. The demand is time barred as there is no suppression and clandestine removal of goods.

vi. The appellant had bonofied belief that they were not liable to pay duty; therefore, extended period of limitation is not applicable.

5 The ld. AR for the Revenue reiterates the findings given in the impugned order.

6 After careful consideration of the facts and the submissions of both the sides, it appears that the appellant is under wrong belief that they can use the brand name "Autopal", and they can still claim SSI benefit under the Notification No. 8/2003-CE dated 01.03.2003 even when this brand name is owned by some other company of their group companies, namely Autolite India Ltd.

6.1 Hon'ble Apex Court in the case of *Commissioner of C. Ex., Chandigarh-II Vs. Bhalla Enterprises* 2004 (173) ELT 225 (S.C.) holds that if a brand name of another person has been used, benefit of SSI exemption is not available as objective of the Notification is to give benefit to those industries, which otherwise do not have advantage of brand name. In this regard, the Commissioner holds that it is a fact that the established brand name "Autopal" is registered in the name of M/s Autolite India Ltd., and it has been used by the appellant only to avail the advantage of an established brand name in connection with sale of the goods manufactured by the appellant and, therefore, the appellant is not entitled to the benefit of exemption provided under notification No. 8/2003-CE dated 1.3.03 in terms of para 4 thereof.

6.2 Hon'ble Apex Court in the case of *Bhalla Enterprises* (supra) *inter alia* observes as under:

> 3. Paragraph 4 and Explanation IX of Notification have been construed by this Court in *Commissioner of Central Excise v. Rukhmani Pakkwell Traders*, 2004 (165) E.L.T. 481; as also in *Commissioner of Central Excise, Chandigarh v. Mahaan Dairies*, 2004 (166) E.L.T. 23. In both these decisions this Court held that Paragraph 4 read with Explanation IX of the notification could not be construed in the manner as contended by the assessees, namely, to make it necessary for the owner of the trade mark/trade name to use the goods in respect of the specified goods manufactured by the assessee. We see no reason to differ with the reasoning of this Court in the aforesaid decisions. Clause 4 of the Notification read with Explanation IX clearly debars those persons from the benefit of the exemption who use someone else's name in connection with their goods either with the intention of indicating or in a manner so as to indicate a connection between the assessees goods and such other person. There is no requirement for the owner of the trade mark using the name or mark with reference to any particular goods. The object of the exemption notification was neither to protect the owners of the trade mark/trade name nor the consumers from being misled. These are considerations which are relevant in cases relating to disputes arising out of infringement/passing off actions under the Trade Marks Act. The object of the Notification is clearly to grant benefits only to those industries which otherwise do not have the advantage of a brand name.

6.3 The appellant has also given the argument that they were under the bonafide belief that they can claim SSI benefit under the Notification No. 8/2003 (surpa), even when they were using the brand name "Autopal" and they have not clandestinely removed the goods and there is no suppression of the facts involved, therefore, the demand mostly is time barred. This argument of the appellant does not have any force in the face of the facts on record. When the appellant has not informed the department/revenue that they were using the brand name of other group company, this is clearly a suppression of the fact. The Revenue does not have automatic knowledge of the fact that the brand 'Autopal' does not belong to the appellant but belongs to another company. It makes no difference that M/s Autolite India Ltd. is a group company. In law it is differen entity. Further, even after coming to know that the law does not permit them to take benefit of Notification No. 08/2003 (supra), the appellant has not paid the duty of Central Excise confirmed against them. Therefore, their bonafides cannot be pronounced as beyond doubt. Consequently, it cannot be concluded that the appellant had bonafide belief that they can freely use the brand name of another group company and can still take the benefit of SSI exemption notification No. 8/03-CE (supra). Further the ignorance of law cannot be an excuse as per ratio laid down in the case of CESC Ltd Vs. Dy.CIT, 270 ITR 383 Cal.

7. In the light of above discussions and the Hon'ble Apex Court's decision in the case of *Bhalla Enterprises* (supra), the impugned order sustains and the appeal is rejected as without merits.

[Pronounced in open Court on 08.02.2017]

(Justice (Dr.) Satish Chandra)
President

(Ashok K. Arya)
Member (Technical)

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