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. III

DATE OF HEARING : 10/02/2017.
DATE OF DECISION : 10/02/2017.

Excise Appeal No. 57911 of 2013 with C.O. No. 50569 of 2015

Excise Appeal No. 58271 of 2013 with C.O. No. 50571 of 2015

Excise Appeal No. 58272 of 2013 with C.O. No. 50573 of 2015

[Arising out of the Order-in-Appeal No. 71-73/BPL/2013 dated 27/02/2013 passed by The Commissioner (Appeals), Central Excise, Bhopal.]

CCE & ST, Bhopal — Appellant

Versus

M/s Mandideep Rubber Products]
Shri S.L. Bhajanka] Respondents
Shri Naresh Goel]

Excise Appeals No. 57913, 58273-58274 of 2013

[Arising out of the Order-in-Appeal No. 59-61/BPL/2012-13 dated 25/02/2013 passed by The Commissioner (Appeals), Central Excise, Bhopal.]

CCE & ST, Bhopal — Appellant

Versus

M/s Sakshi Battery Industries]
Shri Manish Singhal] Respondents
Shri Naresh Goel]

Appearance

Shri G.R. Singh, Authorized Representative (DR) – for the appellant.

Shri Z.U. Alvi, Advocate – for the Respondents.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 50844-50849/2017 Dated : 10/02/2017

Per. B. Ravichandran :-

These bunch of appeals are by Revenue against two impugned orders passed by Commissioner (Appeals) dated 25/02/2013 and 27/02/2013. As the issue involved in these matters are common, all these appeals are taken up together for decision. The brief facts of the case are that M/s Sakshi Battery Industries and M/s Mandideep Rubber Products are engaged in the manufacture of electrical storage batteries liable to Central Excise duty. The present dispute relates to their liability to Central Excise duty in respect of these batteries on the ground that they have manufactured batteries with the brand name of others. Such usage of brand name will exclude them from the benefit of Notification 8/2003-CE dated 01/03/2003 as amended. The notification stipulates that the exemption of small scale industry shall not apply to specified goods which bear a brand name or trade name, whether registered or not, of another person. The case of the Revenue is that these two respondents have manufactured batteries using different brand names of others. Accordingly, proceedings were initiated against these respondents alongwith others which concluded in the confirmation of Central Excise duty of Rs. 31,42,252/- and Rs.

28,05,445/- alongwith imposition of penalties on the respondents as well as various other persons under various provisions of Central Excise Act, 1944. On appeal filed by the respondents, the Commissioner (Appeals) vide the impugned orders dropped the demands. Aggrieved by these orders, the Revenue is in appeal.

2. The learned AR elaborated the grounds of appeal. The main contention of the Revenue can be summarized as below :-

(a) the brand names "SEGA", "KALINGA", TURBOTEK", "MAGIC", "SUPER", "EMRALD", "NIKE" belongs to different persons. The impugned order held that there is assignment of registered brand names. The assignment is not evidenced by proper registration and as such the same cannot be accepted ;

(b) regarding brand name TURBOTEK it is the case of the Revenue that the same belongs to M/s TURBOTEK sales, Bhopal. Impugned order wrongly relied on the subsequent registration of brand name by one of the respondents. The same is not correct ;

(c) regarding brand names MAGIC, SUPER and EMRALD it is submitted that these brand names belongs to various dealers of batteries and based on evidences covered it is clear that the dealers have asked the respondents to manufacture and supply batteries with specific names and, hence, SSI exemption cannot be extended to such batteries.

3. The learned Counsel for the respondent submitted that the registered brand names were duly assigned by mutual agreement and same has been taken note of by the Commissioner

(Appeals). There is no need for registering such assignments with the Trade Mark Authorities as the same is not relevant to Central Excise purpose. He relied on the decision of Hon'ble Supreme Court in this regard. The same is referred to later in this order. Regarding TURBOTEK he submitted that it is not a brand name belonging to any person. It is a generic name and it was only later registered by M/s Mandideep Rubber Products. Similar to TURBOTEK the other names namely SUPER, EMRALD, MAGIC are all free flouting names not attributable to any particular person who can claim any link with the name and their specific product. Various small dealers of batteries requested for supply of batteries with these names. There is no evidence that these are brand names of these dealers and as such the bar in the notification will not apply to the facts of the present case.

4. We have heard both the sides and perused the appeal records. On the first issue of registered brand names having been assigned to the respondents, we find the impugned order records that the persons to whom the said brand names belong have stated that they have assigned the brands in favour of respondent for the manufacture and supply of batteries to them. It is also recorded that even in the absence of written agreement the submission of the owner of the brand name is acceptable as there is no need for written agreement in all cases. In this connection, we refer to the decision of Hon'ble Supreme Court in **CCE, Ahmedabad vs. Vikshara Trading & Investment P. Ltd.** reported in **2003 (157) E.L.T. 4 (S.C.)**, where it was held

that the mere facts that assignments was not registered will not alter the situation for claiming the small scale exemption. Similarly, the Hon'ble Madhya Pradesh High Court in **Jepika Paints vs. Union of India** reported in **2008 (232) E.L.T. 424 (M.P.)** held that non-registration of assignment will not alter the situation as to deny the exemption. We also note that registration of assignment cannot be put as a condition to establish the fact of assignment. Apparently, no registration of such assignment is contemplated or possible in respect of unregistered brand names. The notification bars availability of SSI exemption even to the manufacturer who uses unregistered brand name of another person. Keeping these facts in view, we find that the finding of the Commissioner (Appeals) is sustainable.

5. Regarding the other brand names which are unregistered, alleged to have belonging to other persons, we note that the evidences submitted did not categorically establish the ownership of such brands with any other specific person. The impugned order examined in detail the scope of these names and also as to fact whether these can be called as brand names. It is recorded that TURBOTEK is the name representing to a trading firm and not identified as brand name of any product and in fact the name was registered later with one of the respondent and the same was not objected to by any other person. Similarly, the impugned order recorded that names SUPER, MAGIC and EMRALD were also affixed on the goods when cleared to specific dealers as per the request of those dealers. There is no evidence to show that these

names were brand names belonging to these dealers. The impugned order further records that the names are affixed for facilitating tracking of these goods for rectification of defect etc. and they cannot be considered as brand name belonging to somebody.

6. Having examined the findings as recorded in the impugned orders and the grounds of appeal by the Revenue, we find no justifiable reason to interfere with the findings in the impugned orders. Accordingly, all the appeals are dismissed. The Cross Objections are also disposed of.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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