CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 3284 of 2010

(Arising out of order-in-appeal No. 76-CE/MRT-I/2009-10 dated 25.06.2010 passed by the Commissioner (Appeals) Customs and Central Excise, Meerut-I)

DATE OF HEARING : 20.06.2017
DATE OF DECISION : 27.06.2017

M/s Indo German Brakers Pvt. Ltd. …. Appellants
(Rep by Shri Rakesh Gupta, Adv.)

VERSUS

CCE, Meerut-I …. Respondent
(Rep. by Sh. M.R. Sharma, DR)

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 54340/2017

PER B. RAVICHANDRAN :

The present appeal is filed by the assessee-Appellants against the order-in-appeal No. 76-CE/MRT-I/2009-10 dated 25.06.2010 passed by the Commissioner (Appeals) Customs and Central Excise, Meerut-I.

2. The assessee-Appellants are a private limited company established in technical-cum-financial collaboration with M/s Tigril,

Germany. They are engaged in the manufacture of Disc Brake Pads, Brake Block Linings etc. They used the brand name and logo of M/s Tigril, Germany, along with inscription "In technical collaboration with Tigril, Germany". Proceedings were initiated against the assessee-Appellants to deny the SSI exemption under Notification No. 8/2000-CE dated 01.03.2000 for the period 01.04.2000 to 31.12.2000. The original authority confirmed the Central Excise Duty liability for the impugned period and imposed penalties on the assessee-Appellants. On appeal, vide impugned order dated 31.05.2010, the Commissioner (Appeals) held that the assessee-Appellants are not liable to duty for the period 01.04.2001 to 30.09.2003. However, the demand for the period 01.04.2000 to 31.03.2001 amounting to Rs. 4,54,660/- was upheld.

3. We have heard both sides and perused the record.

4. The learned counsel for the assessee-Appellants states that the brand name, as registered by the assessee-Appellants, was approved by the competent authorities from the date of application i.e. 19.06.2000. As such, he submitted that whatever clearances were affected by them from that date should be considered as clearance of goods with their own brand name. Further, he also submitted that the brand name is prominently bears the logo of "IGB" in collaboration with M/s Tigril, Germany. About the logo "IGB", the German Company's logo is affixed. The learned counsel alternatively pleaded for extending the benefit of cum-duty value to calculate the duty liability for the period 01.04.2000 to 31.03.2001.

5. We note that the registration of brand name in the assessee-Appellants' own name with retrospective effect substantially covering the impugned period will not provide them with the relief. In this connection, we refer to the decision of the Hon'ble Supreme Court in the case of **Meghraj Biscuits Industries Ltd. vs CCE, UP,** 2007 (210) ELT 161 (SC), wherein it was held that the object of the Notification is to grant SSI benefit only to those industries which otherwise do not have the advantage of a brand name. The Apex Court applied the ratio of the decision in the case of **Pahwa Chemicals Pvt. Ltd. vs Commissioner,** 2005 (189)ELT 257 (SC). The Apex Court also held that retrospective registration of Trade Mark has no application in extending the benefit under SSI exemption Notification during the relevant period. It was further held that principle of deemed equivalence embodied in Section 28 of the Trade Marks Act, 1999 is based on the deemed fiction and confined only to the provisions of the said Act.

6. We note that the learned counsel during the course of submissions also asserted that the German parent company had assigned the Trade Mark to the assessee-Appellants' Company in terms of the agreement dated 01.12.2997. We have perused the said agreement. Clause 6 of this agreement deals with Trade Mark and Logo. It states that J.V. Company will be entitled to use the Trade Mark and Logo of the Germany Company. We do not find any provision of assignment of the said Trade Mark to the assessee-Appellants. As such, we find no merit in the submissions made by the assessee-Appellants regarding their eligibility for SSI exemption during the impugned order. However, considering the submissions of the learned counsel to the effect that they have neither mentioned

any Central Excise Duty in their sale documents nor they have separately collected any duty, their claim for re-calculation of duty liability considering the gross amount received as inclusive of such duty can be allowed. Except for this modification, we do not find any merit in the appeal and accordingly the same is dismissed.

7. The appeal stands disposed of in the above terms.

(Pronounced in the open court on 27.06.2017)

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

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