

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal Nos. 50751 & 50752 of 2017

(Arising out of order-in-original No. JAI-EXCUS-000-COM-27-28-16-17 dated 09.02.2017
passed by the Commissioner of Central Excise, Jaipur)

DATE OF HEARING : 17.01.2018

DATE OF DECISION : 23.01.2018

M/s Rastogi Furnishers & Decorators P. Ltd. Appellants
Shri Mahesh Rastogi (Rep by Sh. Manish Agarwal, Adv.)

VERSUS

CCE, Jaipur Respondent
(Rep. by Sh. R.K. Mishra, DR)

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

FINAL ORDER NO.

PER JUSTICE (Dr) SATISH CHANDRA:

Both the present appeals have been filed against the order-in-original No. JAI-EXCUS-000-COM-27-28-16-17 dated 09.02.2017 passed by the Commissioner of Central Excise, Jaipur. The period in dispute is 01.10.2009 to 09.10.2013.

2. The brief facts of the case are that, during the period under consideration, the assessee-Appellants were engaged in the manufacture of steel and wooden furniture which is being sold without bearing any

brand name. On 09.10.2013, search was conducted at the business premises of the assessee-Appellants and the furniture was seized which was valued at Rs. 9,01,150/-. By the show cause notice dated 04.04.2014, the Department has demanded the duty on this amount. But, by the second show cause notice dated 19.01.2015, Central Excise duty demand was enhanced. Finally, by the impugned order the excise duty of Rs. 59,17,272/- was demanded and penalties were imposed. Being aggrieved, the assessee-Appellants have filed the present appeals.

3. With this background, we have heard Shri Manish Aggarwal, learned counsel for the assessee-Appellants and Shri R.K. Mishra, learned DR for the Department.

4. The learned counsel for the assessee-Appellants submits that there are four firms of the family members who are using the name 'Rastogi', which is the family name. The case of the Department is that, the assessee-Appellants manufacture furniture and sold the same under the brand name 'Rastogi'. He submits that 'Rastogi' brand name is not registered with anyone, except that it is used by the family members. He also submits that the statement of the assessee-Appellant, Shri Mahesh Rastogi, was recorded on 09.10.2013 under pressure and the same was retracted on 14.10.2013. The learned counsel further submits that the sale of the assessee-Appellants is within the prescribed limit of the SSI Exemption, so the benefit under Notification No. 08/2003-CE may kindly be extended to them. He also submits that all the family members are engaged in the business of steel/wooden furniture, so a common brochure was published. M/s Rastogi Steel Furnitures is continuously using 'Rastogi' brand name since long. He submits that the furniture was supplied to

various institutions without any brand name. The Department has obtained the statement of Shri Gaurav Bagaria, Director of Vivekanand Institute of Technology (VIT) and Smt. Rachna Meel, Registrar of Swami Keshvanand Institute of Technology (SKIT), by alleging that these Institutes were purchasing 'Rastogi' brand furniture. Shri Gaurav Bagaria in his letter dated 07.12.2013 has subsequently retracted and submitted that "the said furniture item do not bear any brand/logo/sticker/trading name of your establishment". Similarly, Smt. Rachna Meel, Registrar of SKIT, in her cross-examination on 27.01.2017 (Q.No. 7) has averred that "the furniture supplied by M/s Rastogi Furnishers & Decorator does not bear any sticker/Trust Seat etc.". Lastly, he submits that the Department has taken the photographs of the furniture in the premises of SKIT and on the basis of these photographs duty demand has been raised which is not sustainable in the eyes of law.

5. On the other hand, the learned DR for the Revenue has justified the impugned order. He has fairly accepted that the statement of Shri Gaurav Bagaria; and Smt. Rachna Meel were retracted at the later stage. He submits that for the period October, 2009 to 18.11.2014, M/s Rastogi Furniture, have cleared the furniture bearing brand name of another person, therefore, the exemption under Notification No. 08.2003-CE dated 01.03.2003 is not available to the assessee-Appellants. It is also the submission by the learned DR that M/s Rastogi Furniture has suppressed the fact of manufacture and clearance of the furniture bearing the brand name of another person from the Department.

6. After hearing both sides and on perusal of the material available on record, it appears that 'Rastogi' is a family name which is used

by the family members in their business established. The brochure is common as they are producing almost common products. The whole case of the Department is based on the photographs taken from the premises of the buyer (SKIT) and the statement recorded by the Department of the Director and Registrar of the Institutes, which were retracted later. So, except this, there is no material available with the Department to allege that the assessee-Appellants were using the brand name of another person. In fact, 'Rastogi' is not a brand name of any other person and is being used by the family members. 'Rastogi' is a surname/family name for which every family member is entitled to use.

7. At the time of search on 09.10.2013, no furniture or sticker was found with the name of 'Rastogi'. The buyers have denied that the furniture was bearing any logo or brand name, as mentioned above.

8. In the case of **Essma Woollen Mills (P) Ltd. vs CCE, Chandigarh-II**, 2002 (141) ELT 550 (T-Del.), the Tribunal observed that, unless and until the product is bearing the brand name which may be a name or mark, there cannot be a connection of the goods with some person in the course of trade. Similarly, in the case of **CCE, Indore vs Kuber Industries**, 2010 (249) ELT 78 (T-Del), the Tribunal observed that, affixing the family name or brand name in the letter head does not amount to the use of brand name of third parties. In the instant case, there is no third party who owns the brand name of 'Rastogi'. The Department has neither issued any notice nor examined the firms of family members who are also engaged in the similar line of business. Only the assessee-Appellants have been made target which is not desirable. Thus, the Department has made out a poor case.

9. In view of the above, we are of the view that the assessee-Appellants have not used any registered brand name of the third party, hence, we do not find any merit in the impugned order and the same is hereby set aside. Accordingly, the assessee-Appellants are entitled for the SSI exemption, as per law.

10. In the result, the appeals filed by the assessee-Appellants are allowed.

(Pronounced in the open court on 23.01.2018)

**(JUSTICE DR. SATISH CHANDRA)
PRESIDENT**

**(V. PADMANABHAN)
MEMBER (TECHNICAL)**