

**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. I

DATE OF HEARING : 31/01/2018.
DATE OF DECISION : 31/01/2018.

**Excise Appeals No. 50211-50212, 50225-50226 of 2016
with ROA Applications No. 51020-51021, 51018-51019 of
2017**

[Arising out of the Order-in-Original No. 44/D-I/2015 dated
30/11/2015 passed by The Commissioner of Central Excise, Delhi
– I.]

Shri Bhushan Bansal, Proprietor	]	
Shri Vikas Bansal, Proprietor	]	
M/s Delhi Plastics	]	
Shri Sanjay Bansal, Proprietor	]	Appellants

Versus

CCE, Delhi – I	Respondent
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Appearance

Ms. Seema Jain, Advocate – for the appellants.

Shri M.R. Sharma, Authorized Representative (DR) – for the
Respondent.

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

Final Order No. 50482-50485/2018 Dated : 31/01/2018

Per. V. Padmanabhan :-

After hearing both the parties, Ms. Seema Jain, learned
Counsel for the appellants and Shri M.R. Sharma, learned DR for

the Revenue, we recall our earlier order dated 03/11/2017 (final order No. 57710-57713 of 2017), where the appeals were dismissed for non-prosecution for the reasons mentioned in the ROA. These ROAs are allowed and appeals are restored to its original numbers. With the consent of both the parties, we hear the appeals on merit.

2. The present appeals are filed by the appellant against Order-in-Original No. 44/D-I/2015 dated 30/11/2015.

3. The brief facts of the case are that the appellants are engaged in the manufacturing of the footwear in its 4 factories. A search was conducted on 02/09/2011 at all the factory premises. On the basis of the seized materials and on the basis of the statements, the Department has made out a case against the appellant that he is not entitled for exemption of Notification No. 5/2006 (Sl. No. 5) dated 01/03/2006 where the footwear below the MRP of Rs. 250/- per pair are exempted. The benefit of the notification was subject to the condition that it is applicable only for such footwear on which the retail sale price is indelibly marked/embedded on the footwear itself. During the course of investigation, the Department came to the conclusion that the appellant had manufactured and cleared footwear without embossing the MRP on such footwear. Accordingly, Department was of the view that such footwear manufactured and cleared by the appellant will not be eligible for the benefit of the notification, for having failed to satisfy the condition specify therein.

4. The Department also carried out market enquiry about the price at which the such footwear manufactured by the appellant were being sold. It was concluded that the footwear were, in fact sold, at prices not above Rs. 250/- per pair. However, the Adjudicating Authority took the view that for failure to observe the conditions specified in the notification, the appellant cannot be extended the benefit of duty free clearance. Accordingly, duty was demanded by denying the benefit of the notification and the cash and also various goods seized during the course of the search was confiscated and allowed for redemption by payment of redemption fine.

5. With the above background, we heard Ms. Seema Jain, learned Advocate representing all the appellants as well as Shri M.R. Sharma, learned DR for Revenue.

6. It is the submission of the learned Counsel for the appellants that the Revenue's case is only that the condition of the notification regarding indelibly embossing the MRP on the footwear has not been satisfied. She submitted that it is a fact which has emerged on verification that the footwear manufactured by the appellant were in fact sold at MRP not exceeding Rs. 250/- per pair. Accordingly, she submitted that the substantial condition specified in the notification regarding the MRP of the footwear has been satisfied in respect of goods manufactured by the appellant. Accordingly, it is her prayer that the benefit of the notification cannot be denied to the appellant.

In this connection, she relied on several case laws including the following :-

- (i) **Bombay Chemical Pvt. Ltd. vs. CCE, Bombay – 1995 (77) E.L.T. 3 (S.C.) ;**
- (ii) **Union of India vs. Suksha International & Nutan Gems & Anr. – 1989 (39) E.L.T. 503 (S.C.).**

7. The learned DR for the Revenue justified the impugned order. He argued that the benefit of the notification will not be allowable for the appellant in as much as the substantial condition specified in the notification to the effect that the footwear needs to be indelibly marked or embedded to the MRP has not been satisfied. He also relied in the case of **Bata India Ltd. vs. Commissioner – 2009 (233) E.L.T. 381 (Tri. – Chennai)** in which the imported goods on which only MRP sticker has been pasted on the footwear was even denied the benefit of notification.

8. After hearing both the sides and on perusal of record, we note that the substantial issue for consideration is whether the appellants are eligible for the benefit of the Notification No. 5/2006 (Sl. No. 5). The condition specified for the exemption to footwear of MRP less than Rs. 250/- per pair is that the footwear needs to be sold with the MRP embossed. During investigation, it stands established that the goods manufactured and cleared were never embedded with the MRP. In fact no embossing machine was found in the factory during the course of search.

But the argument raised by the appellant is that this condition cannot be viewed as a substantial condition for the benefit of the notification. She has argued that the substantial condition is that the exemption is applicable only to footwear which are of MRP less than Rs. 250/- per pair. The market enquiry conducted by Revenue has, in fact confirmed, that the MRP of the footwear manufactured and sold by the appellant is never more than Rs. 250/- per pair. Accordingly, we are of the view that the substantial condition of the notification is satisfied by the appellant and hence the benefit should be extended to them.

9. In the case of **Bombay Chemical Pvt. Ltd.** (supra) the Apex court has observed as under :-

"9. Item No. 18 which was added in 1978 grants exemption to the categories of goods which can be classified as insecticides, pesticides, weedicides or fungicides. They have to be understood in broad sense. The reasoning of the Tribunal that if an expression is capable of a broader and a narrower meaning, then it is the latter which could be preferred, does not appear to be correct. Where entries are descriptive of category of goods they have certain characteristics. Therefore, when a question arises whether a particular goods is covered in any category or not, it has to be examined if it satisfies the characteristic which go to make it a goods of that category. And whether in trade circle it is understood as such and if it is a [good] of technical nature, then whether technically it falls in the one or the other category. Once it is found that a particular [good] satisfies the test, then issue which arises for consideration is whether it should be construed broadly or narrowly. One of the settled principles of

construction of an exemption notification is that it should be construed strictly, but once a [good] is found to satisfy the test by which it falls in the exemption notification then it cannot be excluded from it by resorting to applying or construing such notification narrowly. Item 18 is an exemption notification. As stated earlier, it mentions broad categories of goods which are entitled to exemption. Once a [good] is found to fall even narrowly in any of these categories, there appears no justification to exclude it. The test of strict construction of exemption notification applies at the entry, that is, whether a particular goods is capable of falling in one or the other category but once it falls then the exemption notification has to be construed broadly and widely. Each of the words insecticides, pesticides, fungicides or weedicides are understood both in the technical and common parlance as having broad meaning. Therefore, if any goods or items satisfy the test of being covered in either of the expression, then it is entitled to exemption. The broad and basic characteristic for exemption under the notification is that the goods must have the property of killing germs and bacteria insects or pest and it should be understood in the common parlance as well as being covered in one of the broad categories mentioned in the notification. Since the goods produced by the appellant are capable of killing bacteria and fungi which too, is covered in the expressions 'pesticide' and 'fungicide' there appears no reason to exclude the goods from the aforesaid notification".

10. After going through the observations of the Hon'ble Supreme Court and applying the same to the facts of the present case, we are of the view that the exemption in the present case is required to be extended to the appellant, in as much as the

substantial condition of MRP of the footwear has been satisfied even though the condition regarding the indelibly embossing the MRP has not been satisfied.

11. We have also perused the decision of the Tribunal in the case of **Bata India Ltd.** (supra) which has been cited by the learned DR for the Revenue. We note that in that case, the facts are pertaining to the imported footwear on which sticker of MRP was pasted on the footwear itself. In as much as the facts are different, we are of the view that we are required to follow the decision of the Apex court in the case of **Bombay Chemical Pvt. Ltd.** (supra).

12. On perusal of record, we also note that the appellant has one factory where the shoe uppers have been manufactured which are captively consumed in the other factory in the manufacture of the footwear. We note that once the benefit of exemption is granted to the footwear, the benefit of captive consumption for shoe uppers cannot be extended. Consequently, the duty demand on the shoe uppers raised by the Adjudicating Authority needs to be upheld. Accordingly, Rs. 28,78,149/- is upheld alongwith interest and penalty of an equivalent amount.

13. In view of the above, the confiscation of currency as well as the goods seized during the course of search is also set aside alongwith the redemption fine.

14. In the facts and circumstances of the case, the personal penalties imposed on various appellants are also set aside.

15. In the result, the impugned order is modified and appeals are partly allowed.

(Order dictated and pronounced in the open court.)

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

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