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

Excise Appeal No. 53486 -53487 of 2014

[Arising out of Order-in- Appeal No. Jai-Excus-001-Com-139-13 dated 28.03.2014 passed by the Commissioner of Central Excise, Jaipur (Raj)]

M/s. Decotech Paints Ltd Ltd. **Appellant**
Shri Amit Gautam

Vs.

Commissioner of Central Excise **Respondent**
& ST, Jaipur

Appearance:

Shri R Krishnan, Advocate for the Appellants
Shri S K Bansal, AR for the Respondent

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing/ Decision: 20.2.2018

FINAL ORDER NO. 50848 - 50849 /2018

Per: V. Padmanabhan:

The present appeals have been filed by the appellant against Order-in-Original No. Jai-Excus-001-Com-139-13 dated 28.03.2014.

2. Brief facts of the case are that the appellants are engaged in the manufacturing of wall puttiy, cement paints primers etc. under the brand name of 'Diamond Gold' and 'Decotech'..\ Shri Narender Kumar Gautam, (father) started M/s. Diamond Waterproof Compound P Ltd. who registered the items under trade mark 'Diamond Gold' and 'Decotech'. Later, both his sons have started through other companies namely, M/s. Diamond Retail Mart (P) Ltd. and M/s. Decotech Ltd. Finally, in due course, M/s.Diamond Waterproof Compound P Ltd. run by father has stopped functioning, so the trade marks were transferred to M/s. Diamond Retail Mart (P) Ltd. , who later on assigned the same to M/s. Decotech Ltd. as per the deed. M/s. Decotech Ltd. has used the 'Diamond Gold' and 'Decotech' trade marks for their products. The Commissioner has rejected the arrangement of assignment of trade marks and opined that appellants were using 'Diamond Gold' and 'Decotech' trade marks which was registered in the name of another company, so SSI exemption was denied. The department has also made out a case of valuation of goods on the basis of MRP and clandestine removal. Being aggrieved, the appellants have filed the present appeals.

3. With this background, we heard Shri R Krishnan and Shri S K Bansal, learned counsels for the parties and gone through the material available on record.

4. Shri R Krishnan, learned advocate appeared on behalf of the appellants. His submissions are summarized below:-

1. He argued that the appellant will be entitled to use both the brands 'Diamond Gold' and 'Decotech'. Same stand assigned to them by the original owner of the brand names, viz. M/s. Diamond Waterproof Compound P Ltd. The adjudicating authority has declined to recognize the assignment deed by M/s. Diamond Retail Mart (P) Ltd.. for the reason that the original assignment of M/s. Diamond Waterproof Compound (P) Ltd. to M/s. Diamond Retail Mart (P) Ltd. was only for a limited geographical area where as this brand name was later assigned on all India basis. In this connection, he submitted that the assignment deeds were subsequently amended and the appellant was lawfully entitled to use these brand names on All India basis. But the amendment of the assignment deed could not be submitted before the adjudicating authority in time before this impugned order has been passed.

2. The second issue which is against the appellant is in respect of quantification of the goods cleared by the appellant during the disputed period. Since the goods manufactured by the appellants were to be assessed on MRP basis under section 4A of the Central Excise Act, the department asked for the price

list at which such goods were sold by the appellants. But the price list supplied by the appellant to the department was not a full price list - but an abridged one so the MRP was not correctly taken by the department resulting in inflated demand.

3. The third charge which has been made in the impugned order is clandestine clearance based on loose slips which were recovered during the course of search. He submitted that such demand cannot be upheld, because other than the slips recovered, only other evidence produced by the department was the statement recorded by the authorised person. Finally, he submitted that the impugned order may be set aside.

5. We also heard Shri Bansal, learned DR on behalf of the department. Shri Bansal argued on behalf of the department as follows:

1. The appellants premises were searched by the department on 24.7.12. In the first statement recorded immediately after the search on 30.7.2012, Shri Amit Gautam, Director of the appellant had admitted that they have cleared the goods without issue of invoice in respect of goods covered by 42 loose sheets recovered in search. In the subsequent statement recorded on 8.12.2012 Shri Amit Gautam had admitted his inability to furnish any other document regarding the claim of assignment

of the brand name. Further, he agreed to furnish the same within 10 days, by 10.1.2013. In the third statement recorded on 16.1.2013, of Shri Mohit Kumar Jain, authorised signatory, a copy of assignment deeds were submitted.

Learned DR argued that even after opportunities were given to the appellant, assignment deed could not be furnished till conclusion of the investigation. He submitted that demand pertaining to clandestine clearance may be upheld since the same stand admitted by Shri Gautam during the course of statements. He also argued that the submission of assignment deed after the conclusion of investigation was nothing but an after thought and the Commissioner has rightly ignored the same.

6. After hearing both the sides and on perusal of the record, we note that crux of the dispute is clearance of goods by the appellant bearing brand name of ‘Diamond Gold’ and ‘Decotech’. The department’s case is that these brand names did not belong to the appellant and hence any goods bearing such brand name will not be entitled to benefit of SSI exemption. The claim of the appellant on the other hand, is that both the brand names were legally assigned to them by the owner of such brand name and hence the goods cleared by the appellant under such brand names may be given the benefit of SSI exemption. The department is also disputing the assignment by

the original brand name owner M/s. Diamond Waterproof Compound (P) Ltd. to the appellant via Diamond Retail Mart (P) Ltd. But the appellant has submitted that the assignment deed made is proper and was given for use of the brand name on all India basis. This is claimed to have been done by an amendment to the original assignment deed. We also note that this amendment in the original assignment deed was not available to the department for verification during the course of investigation.

7. Learned Counsel for the appellant has cited decisions of the Hon'ble Supreme Court in the case of ***CCE vs. Volsjara Tradings & Invest Pvt Ltd. [2003(157) ELT 4 (SC)]*** where the Hon'ble Apex Court has observed that once the brand names are assigned, the assignee will be entitled to the benefit of SSI exemption even if such assignment deed is not registered. The deed of assignment itself is the disputed aspect in the present case. If the deed of assignment is taken into account, it appears that the appellant will be entitled to the benefit. But before such a conclusion can be arrived at, it is necessary to verify the amendment to the original deed which has not been done by the original adjudicating authority. In this connection, we are of the view that the matter needs to go back to the original authority to verify these deeds and then to arrive at revised conclusion.

8. The quantification of other two demands is also disputed. Goods covered by the impugned order are to be assessed on MRP basis under Section 4A. For this purpose, the price lists were called for but it has not been submitted in full and entire price list was not available with department. Learned Counsel has submitted that full detailed price list can be resubmitted to the department if opportunity is given. Since we are remanding the matter to the original authority, we direct the adjudicating authority to give a reasonable opportunity to the appellant for submissions of documents including the price list as well as the amended assignment deed and after verification of the same adjudicating authority will pass denovo orders.

9, Demand which has been made on the basis of 42 loose slips which were recovered during the course of investigation of the goods. Since we remand the matter, this aspect may be re-examined by the original authority and revised orders passed after extending the opportunity of hearing to the appellant.

10. In the result, the impugned order is set aside and matter remanded. Both the appeals are allowed by way of remand.

(Dictated and pronounced in the open Court)

(Justice (Dr.) Satish Chandra) **(V. Padmanabhan)**
President **Member (Technical)**

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