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

Excise Appeal No. 52481 of 2016

[Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-76-16-17 dated 12.5.2016 passed by the Commissioner (Appeals) Customs, Central Excise & Service Tax, Bhopal (MP)]

M/s. I.R. S. Industries Pvt. Ltd. **Appellant**

Vs.

Commissioner of Customs **Respondent**
Central Excise & ST, Indore

Appearance:
Shri Abhas Mishra, Advocate for the Appellants
Shri U Sangraj, DR for the Respondent

CORAM:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B Ravichandran, Member (Technical)

Date of Hearing /Decision: 28.2.2018

FINAL ORDER NO. 50918 /2018

Per: B Ravichandaran:

The dispute in the present case is regarding the eligibility of the appellant for small scale exemption under notification No. 8/2003-CE dated 1.3.2003. The appellant were earlier manufacturing Aluminium ingots using brand name 'Magnum' belonging to another person. They were discharging excise duty as branded goods are not eligible for SSI exemption. The said unit was sold to another person and the appellants have surrendered the Central Excise Registration and moved to another premise where they have started manufacturing refractory and fire bricks and claimed the SSI notification exemption. The Revenue denied the SSI exemption on the ground that their turn - over was exceeding exemption limit for excisable goods. In the present case, the same was reckoned by including alloy steel ingots manufactured and cleared earlier by the appellant in another unit. On this basis, the lower authorities held against the appellant and differential Central Excise duty was confirmed along with penalties.

2. Learned Counsel appearing for the appellant submitted that since the steel alloy ingots have suffered Central Excise duty and were outside the scope of SSI exemption, clearance value of such items are not to be included in the turn-over details of the appellants to determine the SSI exemption. He drew our attention to the provisions of notification No. 8/2003 -CE, more specifically to para 2 (vii) read with para 3A (b). He also relied on the decision of Hon'ble Supreme Court in the case of ***CCE, Chennai vs. Nebulae Health Care Ltd. [2015 (325) ELT 431 (SC)]*** to submit that the value of duty paid branded goods cannot be considered for reckoning of SSI exemption to the appellant.

3. Learned AR supported the finding of the lower authorities and submitted that the turn-over of manufacturer claiming exemption

under SSI notification should be reckoned based on provisions of said notification. The turn over shall include all the clearances exempted from duty payment in the past year.

4. We have heard Shri Abhas Mishra, learned advocate for the appellants and Shri U Sangraj, learned DR for the Revenue and perused the appeal record.

5. We note that the only dispute in the present case is regarding turn-over to ascertain the base exemption level of the appellant. The appellant did manufacture and clear branded alloy steel products from their earlier unit. The said turn-over was around Rs.10.94 crores during the financial year 2006-2007. Revenue added this turn over to reckon the SSI eligibility of the appellant. We note that the provisions of para 2(vii) read with para 3(A)(b) of Notification No. 8/2003 is clear that clearance bearing brand name of another person are not to be included with the turn-over of the appellant. The Hon'ble Supreme Court in the case of ***Nebulae Health Care Ltd***. (supra) observed that the branded goods manufactured by SSI unit meant for third party are reckoned by normal provision of law and will have no bearing or relevance in the appellant's availing the benefit of this exemption notification in respect of its own products manufactured by the SSI unit concerned.

6. In view of the clear legal position as explained above and following the ratio of Hon'ble Supreme Court, we hold that inclusion of said turn-over of branded goods in turn-over of appellant for SSI limit is not legally sustained. Accordingly, the impugned order is set aside and appeal is allowed.

(Dictated and pronounced in the open Court)

(Justice (Dr.) Satish Chandra)	**(B Ravichandaran)**
President	**Member(Technical)**

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