

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

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 53205 of 2015

(Arising out of order in appeal No. DDN/EXCUS/000/APPEAL-I/197/2014-15 dated 20.03.2015 passed by the Commissioner (Appeals-I) Customs & Central Excise, Meerut).

**Commissioner (Appeals-I), Customs &
Central Excise,** Mangal Pandey Nagar
Opposite C.C.S. University, Meerut.

Appellant

VERSUS

M/s SBL Industries (P) Limited
(Now M/s SBL Pvt. Limited)
Unit-II, Plot No. 42, Sector-11,
IIE SIDCUL, Haridwar.

Respondent

APPEARANCE:

Sh. H. C. Saini, Authorised Representative for the appellant
Sh. Rupender Sinhmar, Advocate for the respondent

**CORAM: HON'BLE MS. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)**

FINAL ORDER No. 50660/2019

DATE OF HEARING: 06.05.2019
DATE OF DECISION: 06.05.2019

ARCHANA WADHWA:

Being aggrieved with the order passed by the Commissioner (Appeals),
Revenue has filed the present appeal.

2. We have heard Shri H. C. Saini, Id. Departmental Representative for
the appellant and Shri Rupender Sinhmar, Id. Advocate for the respondent-
assessee.

3. After appreciating the submissions made by both the sides and after
going through the impugned order, we find that the appellant is engaged in

the manufacture of Homeopathic Medicines falling under Chapter heading 30 of the Central Excise Tariff Act, 1985 and during the period relevant for the purposes of the present appeal, appellant was claiming the benefit of Notification No. 03/2005-CE dated 24.02.2005 in respect of their final product "Bio-chemic System". The said notification provides NIL rate of duty to the excisable goods falling under Chapter 30 to various medicaments used in 'Bio-chemic System' and not bearing the brand name.

4. Inasmuch as the appellant were embossing their retail pack with the word "SBL-WORLD CLASS HOMOEOPATHY" on the cap of the bottles (retail pack), Revenue entertained a view that such words are in the nature of brand name and as such the benefit of the notification would not be available to the assessee. Accordingly, investigations were undertaken, during the course of which the statements of various persons were recorded. On the basis of the same, proceedings were initiated against the appellant for denial of the notification benefit and for confirmation of demand of duty. The said proceedings culminated into an order passed by the original adjudicating authority.

5. On appeal against the said order, the appellate authority set aside the same by primarily relying upon the Hon'ble Supreme Court decision in the case of **Astra Pharmaceuticals (P) Ltd., vs. Collector of C. Excise, Chandigarh -1995 (75) ELT 214 (S.C.)** and arriving at a finding that the expression embossed on the bottle is nothing but house mark of the assessee's manufacturing unit. For better appreciation, we reproduce the relevant part of the impugned order:

"From the above it is clear that if the appellant is manufacturing the goods with brand name they are not eligible to avail the benefit of the

exemption notification. The department while considering their goods manufactured with the brand name have confirmed the levy of duty on such goods denying the benefit of notification and held that the embossment of inscription 'SBL WORLD CLASS HOMOEOPATHY' in a fashion all over the packing tantamounts to "brand name/ Trade name/ invented word/ signature as explained in the definition which definitely indicates a connection between the products and M/s SBL Industries Pvt. Limited. On the other hand, the appellants relying on the decision of the Hon'ble Supreme Court of India in the case of Astra Pharmaceuticals (P) Ltd. Vs. CCE, Chandigarh in Civil appeal No. 3403 (NM) of 1987 dated 16.12.1994 reported at 1995 (75) ELT 214 (SC), have contested that their goods are not manufactured with any brand name. The appellants have claimed that inscription 'SBL WORLD CLASS HOMOEOPATHY' is their house mark and not the trade mark or the brand name.

5.3 The apex Court in the above referred case has discussed that medicines to which the explanation applies, are those which have a brand name that is a name or a registered trade mark under a Trade & Merchandise Act. The medicine manufactured by the appellants is not registered under the Trade & Merchandise Act. Therefore, it would attract levy only if its container or packing carried any distinctive marks so as to establish the relation between the medicine and the manufacturer. But the identification of a medicine should not be equated with the House mark. Identification is compulsory under the Drug rules. Technicality, it is known as 'house mark'. In Narayan's Book on Trade Marks and Passing-Off, the distinction between 'house mark' and 'product mark' (brand name) is brought out thus,

"677A House mark and product mark (or brand name)

In the pharmaceutical business a distinction is made between a house mark and a product mark. The former is used on all the products of the manufacturer. It is usually a device in the form of an emblem, word or both. For each product a separate mark known as a product mark or a brand name is used which is invariably a word or a combination of a word and letter or numeral by which the product is identified and asked for. In respect of all products both the product mark and house mark will appear side by side on all the labels, cartons etc. Goods are ordered only by the product mark or brand name. The house mark serves as an emblem of the manufacturer projecting the image of the manufacture generally.

The Apex Court has further discussed about the appellant's house mark as 'AP' or 'Astra' on the container or packing was used to project the image of the manufacturer generally. It did not establish any relationship between the mark and the medicine. For instance, if the appellant had instead of using Dextrose injections, described it as Astra injections or Astra Dextrose injections, than it could be said that a relationship between the monograph and the medicine was established. In the case of the appellant it was only a monograph to identify a manufacturer.

Brand name connotes a mark, symbol design or name which is unique to a manufacturer and which instantly establishes a connection between the product and the manufacturer. House mark on the other hand is the emblem of the manufacturer projecting the image of the latter; which is used on all products of the manufacturer. In the cases of *Indian Health Pharmaceuticals Ltd., vs. CCE, Calcutta-II* [1996 (83) ELT 548 (T)] and *Commissioner of Central Excise SURAT vs. ZANDU PHARMA WORKS LTD.* [2006 (198) ELT 257 (Tri. Mumbai)], it was very categorically held that the name/ symbol found on the label is only to identify the manufacturer and not the product. This identification mark did not establish any relationship between the mark and medicine in question. Further, it is not the Department's case that the name has been registered under Trade and Merchandise Act, 1958.

5.4 In the instant case of the appellant, the embossment or the inscription as 'SBL WORLD CLASS HOMOEOPATHY' embossed or inscribed invariably on all packing's appears to be mark of the manufacturer i.e. 'house mark' and not 'mark of product' since it has no relation to the medicine. The name or mark cannot be the identity of the person (manufacturer) itself. It should be something which is appended the product and immediately establishes a link to the medicines. To illustrate the matter the appellant cited an example of "Five PHOS" which is a bio chemic combination containing five different phosphates (individual bio chemic salts) viz Cal. Phos; Kali Phos; Nat. Phos; Mag. Phos; and Ferrum Phos. Any manufacturer of Bio Combination will manufacture Five PHOS by combining the aforesaid five phosphates only. SBL also manufactures Five PHOS and describes the product as Five PHOS only. However, on packing the house mark; 'SBL WORLD CLASS HOMOEOPATHY' is also printed in fashion. Other manufacturers also markets their product in the name of 'Five Phos' and also print their house name on packaging. A buyer goes to the shopkeeper and asks for Five Phos he may give five Phos of the manufacture whose goods/ product does he has in stock. The appellant also submitted certain covers of the medicine of Five Phos 6X of different manufacturers, including their own, which clearly establishes that the appellant's embossment or the inscription as 'SBL WORLD CLASS HOMOEOPATHY' is a house mark. Further appellant also submitted some other Xeroxed copies of paracetamol which is a generic name manufacturing the salt with generic name as paracetamol powder whereas there are few other manufacturers, manufacturing with their own name for example a tablet containing Paracetamol Salt manufactured as Calpol. In such case Calpol is a product mark has relation to manufacturer and such manufacturer will not be eligible for the exemption under the notification. The appellant following the conditions prescribed under Drug Control Law is selling his product in a packaged form with details including name of manufacturer affixed on the packages. Further the medicines being sold are generic in nature, a fact which has not been rebutted by the Department in a convincing manner. Hence in the case of appellant they are not manufacturing goods with the product mark/ trade mark/ brand name but with House mark, which in my opinion is eligible for

exemption under notification No. 03/2005 dated 24.02.2005. Also similar is spirit of the notification No. 12/2012 dated 17.03.2012 under which too, the appellant is eligible to seek exemption”.

6. On going through the said finding of Commissioner (Appeals), we find no infirmity in the same. Admittedly, SBL stands as an abbreviation of the assessee's name and the expression 'WORLD CLASS HOMOEOPATHY' cannot be considered to be a brand name or trade name in the light of the explanation attached to the notification. Revenue, in their memo of appeal, had not advanced any justifiable ground to interfere in the impugned order. We find no reasons to interfere in the impugned order of Commissioner (Appeals). Accordingly, Revenue's appeal is rejected.

(Operative part of the order pronounced in open Court).

(Archana Wadhwa)
Member (Judicial)

(Bijay Kumar)
Member (Technical)