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

PRINCIPAL BENCH, COURT NO. II

Excise Appeal No.53016 of 2016 (DB)

[Arising out of Order-in-Appeal No.190-192/CE/DLH/2016 dated 22.08.2016 passed by the Commissioner (Appeals-I), Central Excise, New Delhi.]

Shri S.S. Sayal, Proprietor of **Appellant**
M/s. Hardwyn Industrial Trading Corporation,
B-136, Mayapuri Industrial Area,
Phase-I, New Delhi.

VERSUS

Commissioner of Central Excise, **Respondent**
C.R. Building, I.P. Estate,
New Delhi.

With

Excise Appeal No.53017 of 2016 (DB)

[Arising out of Order-in-Appeal No.190-192/CE/DLH/2016 dated 22.08.2016 passed by the Commissioner (Appeals-I), Central Excise, New Delhi.]

Shri Rubaljeet Singh Sayal, Director of **Appellant**
M/s.FIBA Hardwyn Locks Ltd.,
C-147, Mayapuri Industrial Area,
Phase-II, New Delhi.

VERSUS

Commissioner of Central Excise, **Respondent**
C.R. Building, I.P. Estate,
New Delhi.

With

Excise Appeal No.53018 of 2016 (DB)

[Arising out of Order-in-Appeal No.190-192/CE/DLH/2016 dated 22.08.2016 passed by the Commissioner (Appeals-I), Central Excise, New Delhi.]

M/s.FIBA Hardwyn Locks Ltd. **Appellant**
C-147, Mayapuri Industrial Area,
Phase-II, New Delhi.

VERSUS

Commissioner of Central Excise, **Respondent**
C.R. Building, I.P. Estate,
New Delhi.

With
Excise Appeal No.51069 of 2017 (DB)

[Arising out of Order-in-Appeal No.7-9/CE/DLH/2017 dated 02.03.2017 passed by the Commissioner (Appeals-I), Central Excise, New Delhi.]

M/s.FIBA Hardwyn Locks Ltd. **Appellant**
C-147, Mayapuri Industrial Area,
Phase-II, New Delhi.

VERSUS

Commissioner of Central Excise, **Respondent**
C.R. Building, I.P. Estate,
New Delhi.

With
Excise Appeal No.51070 of 2017 (DB)

[Arising out of Order-in-Appeal No.7-9/CE/DLH/2017 dated 02.03.2017 passed by the Commissioner (Appeals-I), Central Excise, New Delhi.]

S.S. Sayal, Proprietor of **Appellant**
M/s.Hardwyn Industrial Trading Corporation
B-136, Mayapuri Industrial Area,
Phase-I, New Delhi.

VERSUS

Commissioner of Central Excise, **Respondent**
C.R. Building, I.P. Estate,
New Delhi.

AND
Excise Appeal No.51071 of 2017 (DB)

[Arising out of Order-in-Appeal No.7-9/CE/DLH/2017 dated 2.3.2017 passed by the Commissioner (Appeals-I), Central Excise, New Delhi.]

Shri Rubaljeet Singh Sayal, Former Director **Appellant**
of M/s. FIBA Hardwyn Locks Ltd.,
C-147, Mayapuri Industrial Area,
Phase-II, New Delhi.

VERSUS

Commissioner of Central Excise, **Respondent**
C.R. Building, I.P. Estate,
New Delhi.

APPEARANCE:

Shri Bipin Garg, Advocate for the appellants.
Shri H.C. Saini, Authorised Representative for the respondent.

CORAM: HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI BIJAY KUMAR, MEMBER (TECHNICAL)

FINAL ORDERs NOs.50851-50856/2019

DATE OF HEARING:05.04.2019
DATE OF DECISION:05.07.2019

ANIL CHOUDHARY:

These 6 Appeals have been filed in two sets of 3 appeals each by 3 appellants namely, M/s Fiba Hardwyn Locks Ltd., Shri. Rubaljeet Singh Sayal, Director of M/s Fiba Hardwyn Locks Ltd. and Shri. S.S. Sayal, Prop. Of M/s Hardwyn Industrial Trading Corporation against two Orders-in-Appeal dt. 22.08.2016 and dt. 02.03.2017 both passed by Commissioner of Central Excise (Appeals I), Delhi. The period under dispute and the liabilities confirmed against the above said appellants in these two sets of 3 appeals each are as under:

	Appeal Nos. E/53016-18/2016	Appeal Nos. E/51069-71/2017	Total
Period	01-10-2008 to 31.03.2013	2013-14	
Duty Demand from M/s Fiba Hardwyn Locks Ltd.	Rs.40,74,612/-	Rs.12,80,274/-	Rs.53,54,886/-
Penalty on M/s	Rs.40,74,612/-	Rs.12,80,274/-	Rs.53,54,886/-

Fiba Hardwyn Locks Ltd.			
Penalty on Shri R.S. Sayal	Rs.6,00,000/-	Rs.6,00,000/-	Rs.12,00,000/-
Penalty on Shri S.S. Sayal	Rs.6,00,000/-	Rs.6,00,000/-	Rs.12,00,000/-

2. All these appeals involve common question of law namely,eligibility of S.S.I exemption to the manufacturer, in view of manufacture of branded goods and also the issue of limitation as well as imposition of penalty on the appellants. Therefore, all these six appeals are taken up together for disposal.

3. The facts in brief of the matter are that M/s Fiba Hardwyn Locks Ltd. are manufacturer of hardware items namely Doors Closers, Floor Springs, Door Handles, Locks, etc bearing brand names "HARDWYN" and "FIBA". Since the brand name FIBA belongs to them and the brand name HARDWYN has been assigned to them, they were availing S.S.I. exemption under notification 8/2003-CE, dt. 01.03.2003 as amended, on all the goods manufactured by them. The officers of Anti-Evasion wing of Delhi-II Commissionerate ofCentral Excise, in execution of Search Warrant dt. 26.08.2009 issued by Assistant Commissioner (AE), Delhi-II Commissionerate of Central Excise, searched the factory premises of the following units on 26.08.2009.

(i) M/s HARDWYN Industrial Trading Corporation (HITC) (Prop. S.S. Sayal)

(ii) M/s Efficient Devices Pvt. Ltd. (EDPL)

(iii) M/s Fiba Hardwyn Locks Limited (FHLL)

4. In course of search the officers found certain finished goods like Floor Spring, Door Handles, Door Closer, etc bearing brand name HARDWYN and also certain packing materials namely Printed Cartons bearing the above brand name in the premises of M/s Efficient Devices Pvt. Ltd. These goods, as detailed in Annexure A to the Panchnama dt. 26.08.2009, were detained by the officers for further investigation. In the premises of M/s Hardwyn Industrial Trading Corporation, the officers resumed certain records as detailed in Annexure A to the Panchnama dt. 26.08.2009 drawn on spot, for further investigation. In course of search of the premises of M/s Fiba Hardwyn Locks Ltd., the officers found that the company was engaged in manufacture of Door Handles, Mortice Locks and Pull Handles for doors etc. with the help of 25 labours. The finished goods bearing brand name HARDWYN found in the premises of M/s Fiba Hardwyn Locks Ltd. as detailed in Annexure A to the Panchnama dt. 26.08.2009 drawn on spot, were detained.

5. The officers also recorded statements of Shri S.S. Sayal and R.S. Sayal on spot under section 14 of Central Excise Act, 1944, in respect of working of the above said 3 units. In their statements dt. 26.08.2009, they stated inter alia that they are using brand name HARDWYN and FIBA on the goods manufactured by them; that brand name FIBA belong to them; that brand name HARDWYN is owned by Shri S.S. Sayal who has assigned the same to the manufacturer (FIBA) by assignment deed dt. 17.02.2006 ; that as their turnover is below 1.5 Crore and as they are not using brand name of any other person, they are availing S.S.I. exemption under Notification

No.8/2003-CE on all the excisable goods manufactured by them; that the unit is not registered with central excise department and they have filed the requisite declaration as SSI unit. It was also stated that they are using HARDWYN brand for a long time and are also holding ISI Mark. In course of investigation, Shri Rubaljeet Singh Sayal was summoned by the investigating officers and his statement was recorded by them under section 14 of Central Excise Act 1944 on 05.10.2009. In his statement, Shri Rubaljeet Singh Sayal stated that FIBA is registered brand of M/s Fiba Hardwyn Locks Ltd.; that HARDWYN is registered brand of Shri S.S. Sayal who has assigned the same to M/s Fiba Hardwyn Locks Ltd. by assignment deed dt. 17.02.2006. The branded goods bearing brand name HARDWYN which had been detained in the premises of Efficient Devices Pvt. Ltd. in course of search, was subsequently released unconditionally by the officers after scrutiny of relevant Bills/invoices relating to the detained goods.

6. The branded goods detained under panchnama dt. 26.08.2009 at the premises of M/s Fiba Hardwyn Locks Ltd. were placed under seizure by the officers under Seizure Memo dt. 22.02.2010. A show cause notice C.No. IV(Hqrs. Prev.)Int/42/D-II/09/346dt. 24.02.2010 proposing confiscation of seized goods and imposition of penalty was issued by Deputy Commissioner (AE), Central Excise, Delhi II to M/s Fiba Hardwyn Locks Ltd. and Shri Rubaljeet Singh Sayal. The said notice was adjudicated by the Deputy Commissioner, Central Excise, DivisionV, Janakpuri, New Delhi vide Order-in-Original No. 183/10 dt. 03.12.2010 in which he passed the order for confiscation of seized goods and payment of applicable duty on the same. He also imposed penalty on both the noticees. The said Order-in-Original dt. 03.12.2010 was appealed against by the appellants before ,the

Commissioner (Appeals), Central Excise, Delhi II, who vide Order-in Appeal no. 233 and 234/CE/D II/2011 dt. 20.05.2011, held that the assignment deed in respect of HARDWYN brand was valid and the assessee was, therefore, entitled to S.S.I. exemption on goods bearing the said brand name, even if the assignment deed is not registered with the trade mark authorities. The department did not prefer appeal against the said Order-in-Appeal dt.20.05.2011.

7. After completion of investigation, show cause notice C.No. IV(HQ Prev.) INT/42/D-II/2009 Pt- I/437 dt. 28.10.2013 was issued to the appellants demanding duty on branded goods bearing HARDWYN brand allegedly cleared during the period 01.10.2008 to 31.03.2013. For the alleged clearances of said goods during 2013-14, another show cause notice C.No. 20 /FHLL 26/IAR/03/2013/1821 dt. 30.06.2014 was issued to the same persons on the same grounds. Both the notices were adjudicated upon and appeals filed against the adjudication orders stands rejected by the Commissioner (Appeals) vide impugned Order-in-Appeal. Both these Orders-in-Appeal are under challenge before us vide the above mentioned 6 appeals.

8. Heard both sides

9. Shri Bipin Garg ld. Counsel for all the appellants in these appeals submitted that the appellant assessee (FIBA) is manufacturing excisable goods namely Door Closer, Floor Springs, Door Handles, Locks, etc falling under Chapter 83 of the First Schedule to the Central Excise Tariff Act, 1985 with brand name FIBA and HARDWYN. Since their turnover was below the threshold value and since both these brand name are owned by them, they were availing exemption from central excise duty in terms of notification

no.8/2003 CE dt. 01.03.2003 as amended. The officers of Anti Evasion wing of Delhi II Commissionerate of Central Excise visited and searched the premises of M/s HARDWYN Industrial Trading Corporation, M/s Efficient Devices Pvt. Ltd. and M/s Fiba Hardwyn Locks Ltd. on 26.08.2009.In course of search, the officers found goods bearing brand name HARDWYN and also some packing material bearing HARDWYN brand in the premises of M/s Fiba Hardwyn Locks Ltd. The goods engraved with brand name HARDWYN valued at Rs.5,57,920/- was first detained under panchnama dt.26.08.2009 which was subsequently converted into seizure of goods vide Seizure Memo dt. 22.02.2010. A show cause notice dt. 24.02.2010 was issued to M/s Fiba Hardwyn Locks Ltd. and Shri Rubaljeet Singh Sayal proposing confiscation of seized goods and for imposition of penalty. The ld. Deputy Commissioner of central excise, Division V, Janakpuri, New Delhi, vide Order-in-Original no. 183/10 dt. 03.12.2010 passed the order for confiscation of seized goods and demand of applicable Central Excise duty. He also imposed penalty on both the noticees. On appeal by the appellant, the Commissioner (Appeals), vide Order-in-Appeal no. 233 & 234/CE/D-II/2011 dt. 02.05.2011 set aside the Order-in-Original dated 03.12.2010, both on merits by holding that the assignment deed in respect of HARDWYN brand was valid, even without registration with the Trade Mark authorities and therefore, the assessee was entitled to S.S.I. exemption in respect of seized goods bearing HARDWYN brand. The Order-in-Appeal dt. 02.05.2011 was not appealed against by the department and thus, became final and binding on both sides. He, therefore, submitted that the finding in the Order-in-Appeal under challenge in the present proceedings, to the effect that the assignment deed dt. 17.02.2006 is void is legally unsustainable. He drew our attention to paragraphs 9 and

10 of the Order-in-Appeal dt. 02.05.2011 available at page 72 of the appeal folder He submitted that once the assignment deed has been accepted as valid conveyance of trade mark by the Commissioner (Appeals), it is impermissible for the departmental authorities to hold otherwise, particularly in view of the fact that such order has not been put to challenge by the department. He further submitted that the impugned orders have been passed in total disregard to the doctrine of judicial discipline laid down by the Hon'ble Supreme Court in the case of UOI vs Kamalakshi Finance Corporation Ltd. Reported in 1991 (55) ELT 433 (SC).

10. He further submitted that undisputedly, the appellant are using two brand names HARDWYN and FIBA. The duty demand in these cases has been confirmed on presumption that entire clearance of goods during the relevant period was of excisable goods bearing brand name HARDWYN. Since the assignment deed in respect of HARDWYN brand has been held to be a valid conveyance of brand name, by the Commissioner (Appeals), in the proceedings relating to seized goods, bearing the same brand name, it is impermissible in law to deny SSI exemption treating the said assignment deed as void.

11. The ld. Counsel also submitted that there is no evidence to suggest that the entire clearance of excisable goods during the relevant period was of HARDWYN brand goods only. It is seen that the entire sale value in the profit and loss account of the assessee appellant has been taken as assessable value of branded excisable goods with HARDWYN brand. This clearly shows that the show cause notices in these cases have been issued on the basis of presumption only, which is impermissible in law.

12. As regard registration of HARDWYN brand in the name of one Santu Devi of Bangalore, the ld. Counsel submitted that there is no evidence to show that the said brand name is used by Mrs. Santu Devi on the same or identical goods manufactured, as by the present appellant. It is also not known whether the said Santu Devi is using the brand name or has abandoned the same. It is settled law that bar of SSI exemption in respect of branded goods is inapplicable, in cases of use of brand name by the registered owner on different goods and also in cases where the use of brand name is abandoned by the registered owner.

13. The ld. Counsel further submitted that there is not an iota of evidence to suggest that the entire clearance of excisable goods by the appellant assessee during the relevant period was of only HARDWYN brand goods. The invoices relied upon by the department do not indicate only HARDWYN branded goods. It is admitted fact that the appellant assessee are manufacturing goods with both 'FIBA' and 'Hardwyn', and they have not abandoned use of brand name 'FIBA'. However, the department has presumed non-production of 'FIBA' brand goods during the relevant period. Therefore, the description as well as value of goods cleared during the relevant period has been presumed by the department. It is settled law that duty demand cannot be raised on assumptions and presumptions. He, therefore, submitted that the demand of duty in the present matters deserve to be set aside on this ground alone.

14. As regards limitation, the ld. Counsel submitted that the assessee appellant had entertained a bonafide belief that they are the owners of HARDWYN brand on the basis of assignment deed dt. 17.02.2006. Their belief was vindicated by the Order-in-Appeal dt. 20.05.2011 referred to

above, wherein the ld. Commissioner (Appeals) held that assignment deed is valid conveyance of brand name. Therefore, it is improper and illegal on the part of the department to invoke extended period of limitation for demanding central excise duty. He submitted that mens rea is an essential ingredient for invoking extended period of limitation. It is settled law that in case of bonafide belief entertained by assessee, the element of mens rea cannot be alleged and as such, the extended period is not available in such cases. Under the circumstances, he pleaded that the demand of duty in the present matters is unsustainable both on merits and on limitation. The impugned orders are, therefore liable to be set aside.

15. He further submitted that in view of un-sustainability of the duty demand in the present case, the orders for demanding interest and imposition of penalty are also unsustainable.

In support of his submissions, the ld. Counsel relied on the following case laws:

(i) Kusum Industries & Ors. Vs CCE [Final Order No. A/50319-50322/2018-EX[DB] dt.25.01.2018]

(ii) CCE Vs Minimax Industries 2011 (269)(ELT 166 (Del.)

(iii) Minimax Industries Vs CCE 2010 (261) ELT 535 (Tri. Del.)

(iv) Commissioner Vs Minimax Industries 2012 (282)ELT A106 (S.C)

(v) CC Ex Vs Vikshara Trading & Invest Pvt. Ltd. 2003 (157) ELT 4 (S.C)

(vi) Shree Vijay Kumar Garg & Ors. Vs CCE & CGST Delhi I [Final Order No. A/50068-50070/2019-EX[DB] dt.22.01.2019]

16. On the other hand, the ld. AR appearing on behalf of the department supported the impugned orders. He submitted that the exemption has been rightly denied to the appellant in view of the fact that the HARDWYN brand

was owned by other person. He also submitted that ownership of HARDWYN brand was wrongly claimed by the appellant. He further submitted that the department has taken the value of entire clearance as being of HARDWYN brand goods, due to the fact that the appellant assessee failed to provide clearance value of such branded goods. In view of ineligibility of exemption to the appellant assessee, the demand of duty is fully justified. He also submitted that non-payment of duty by way of misstatement or suppression of true facts, the intention to evade payment of duty on the part of the assessee is proved. He, therefore, submitted that extended period of limitation has been rightly invoked and penalty on the appellants has also been rightly imposed. He prayed for upholding the impugned orders.

Discussions & Findings

17. Heard both sides, considered the submissions made before us and perused the records. In these cases, the issue on merits is eligibility of exemption under Notification No.8/2003-CE, dt.01.03.2003, as amended, popularly known as SSI exemption in respect of branded goods. It is seen that the duty demand in these matters is in respect of alleged clearance of excisable goods with HARDWYN brand, which, as per department, belongs to other person and not to the appellant assessee. We find from the records that the appellant assessee is manufacturing excisable goods with brand names HARDWYN and FIBA. There is no dispute that the brand name FIBA is owned by the appellant assessee. As regards HARDWYN brand, it was stated by Shri. S.S. Sayal and Shri R.S. Sayal in their statements that HARDWYN brand is owned by Shri S.S. Sayal and is assigned to appellant assessee vide assignment deed dt.17.02.2006. The goods bearing HARDWYN brand found

in the premises of appellant assessee was first detained under panchnama dt.26.08.2009 and then placed under seizure vide Seizure Memo dt.22.02.2010 by the investigating officers on the reasonable belief that the same is liable to confiscation. Accordingly show cause notice dt.24.02.2010 was issued to the appellant assessee and Shri R.S. Sayal, proposing confiscation of seized branded goods and imposition of penalty on the noticees. The said notice was adjudicated upon by the Deputy Commissioner, Central Excise, Division V, Janakpuri, New Delhi vide Order-in-Original No.183/10 dt.03.12.2010 in which the ld. Adjudicating authority passed order for confiscation of the seized goods and to demand applicable duty on the seized good by denying exemption. The appellants preferred appeal against the said Order-in-Original No.183/10 dt.03.12.2010. The appeal so filed was decided by the Commissioner (Appeals I), Central Excise, Delhi II vide Order-in-Appeal No.233 & 234 /CE/D-II/2011 dt.02.05.2011 in which the Commissioner (Appeals) was pleased to set aside the Order-in-Original on merits . He also held that assignment deed dt.17.02.2006 was valid even without registration of the same. We find that in para 9 and 10 of Order-in-Appeal dt.02.05.2011 the ld. Commissioner (Appeal) has held as under:

> "9. In this regard, it is observed that the assignment deed dt.17.02.2006 transfers right in favour of the appellant to use the brand name HARWYN in terms of the provisions contained in Section 37 as mentioned above. Since, the rights under the Trade and Merchandice Marks Act can be conferred on other person(s) by executing Assignment deed, I observe that the

requirement of Registration with the Trade Mark authority should not be insisted upon.

"10. As regards the issue of confiscation of the seized goods. It is observed that since the appellant is entitled to use the brand name HARDWYN, the goods found in the premises bearing the brand name HARDWYN are his valid possession and therefore are not liable to confiscation and penalty imposed on this account is not sustainable."

18. We find that the department did not prefer appeal against the said Order-in-Appeal dt.02.05.2011. Therefore, the same has attained finality. As regards registration of assignment deed for the purpose of availing S.S.I. exemption under notification no.8/2003 CE dt.01.03.2003 as amended, we find that the issue stands decided in favour of assessee in the CASE OF Jepika Paints vs UOI 2008 (232) ELT 424 (MP). We find that in CCE vs Primella Sanitary Products reported in 2005 (184) ELT 125 (SC), the Hon'ble Supreme Court has affirmed this Tribunal's view that so long as assignment stands, the assessee is entitled to the benefit of SSI exemption. In the present case we find that the order of Commissioner (Appeals) holding the assignment deed valid, remains unchallenged by the department and hence, has attained finality. Therefore, we hold that so long the assignment deed in favour of the appellant remains valid, the appellant is entitled to exemption under Notification No.8/2003 CE dt.01.03.2003 as amended, in respect of goods bearing HARDWYN brand, manufactured by them.

19. We further hold that as the said Order-in-Appeal dt.02.05.2011 was not appealed against by the department, the issue has attained finality.

Under the circumstances, it is impermissible for the department to re-agitate the issue of validity of the assignment deed in another proceedings, emanating from the same cause of action. In the present case, both the show cause notices dt.24.02.2010 and dt.28.10.2013 arise out of the same cause of action, namely, the search operations conducted on 26.08.2009. In the proceedings under show cause notice dt.24.02.2010 it was held vide Order-in-Appeal dt.02.05.2011 that the assignment deed in respect of HARDWYN brand was valid. Therefore, it is impermissible to doubt validity of the assignment deed dt.17.02.2006 in the subsequent adjudication. Moreover, in view of doctrine of judicial discipline, as laid down by the Hon'ble Supreme Court in the case of Kamalakshi Finance Corporation Ltd. Reported in 1991 (55) ELT 433 (SC), the order passed by the Commissioner (Appeals) in Order-in-Appealdt.02.05.2011 is binding on the department even in respect of show cause notice dt.28.10.2013 and as such the subsequent adjudication order holding the said assignment deed as valid, in the impugned orders is unsustainable. We, therefore, set aside such finding by the lower authorities.

20. From the copy of Computer Generated Trade Mark Search Report available at page 101 of the appeal folder, we find that it has been downloaded on 22.10.2013, i.e. after two years of the order passed by the Commissioner (Appeals) in respect of the said brand name, in appellants own case. It is also seen that only class of goods has been indicated in the said Registration Certificate and description of goods has not been mentioned therein. Since the department did not challenge the order dt.02.05.2011 passed by the Commissioner (Appeals), the same attained finality and it was not proper and legal on the part of the department to re-

agitate the same issue on the basis of Trade Mark Registration Certificate alone, without making investigation about actual use of the HARDWYN brand on the same or identical goods, by the said purported owner of the brand name. The issue of eligibility of SSI exemption in cases were same or identical brand name had been used by more than one manufacturer, was considered in some of the cases. In P & B Pharmaceuticals (P) Ltd. Vs CCE reported in 2003 (153) ELT 14 (SC), the Hon'ble Supreme Court has held that owner of brand name is not obliged to make a roving enquiry to find out use of the same brand name by any other person. In CCE vs Bhalla Enterprises reported in 2004 (173) ELT 225 (SC), he Hon'ble Court has held that exemption is not to be denied merely because somebody else is also using the same brand name. Under the circumstances, we hold that re-agitating the issue of validity of assignment deed after more than two years of decision in favour of the assessee, without challenging such order is unjustified and illegal. We also hold that denial of exemption in the present case, solely on the basis of Trade Mark Registration Certificate in the name of other person is unsustainable, in view of the law laid in above cited Supreme Court judgments.

21. As stated above, the department has not investigated use of the brand name by the owner Mrs. Santu Devi.The description and nature of goods manufactured by the owner of the HARDWYN brand Mrs. Santu Devi is not on record. It is also not known whether the said owner is still using the said brand name on the products manufactured by her. In a catena of decisions, it has been held that bar of S.S.I. exemption in respect of branded goods is inapplicable if the brand name is used by the owner on different goods or the owner has abandoned use of the brand name. One such decisions is in

the case of General Pharmaceuticals Vs CCE 2007 (218) ELT 86 which stands affirmed by the Hon'ble Supreme Court in CCE vs General Pharmaceuticals (P) Ltd. Reported in 2015 (326) ELT 426 (SC). In absence of any proof to the effect that the brand name owner is using the said brand name on the same or identical goods, the denial of exemption to the S.S.I unit is impermissible. In the present case, since no attempt has been made by the department to find out the factual position as regards use or non-use of the HARDWYN brand by Mrs. Santu Devi, the denial of exemption merely on the basis of information regarding registration of HARDWYN brand in the name of Mrs. Santu Devi, without ascertaining the actual use of such brand name by the registered owner, is unsustainable.

22. As regards alleged clearance of HARDWYN brand goods by the appellant assessee, we find that there is absolutely no evidence to even suggest that the entire clearance made by the appellant assessee was only of HARDWYN brand goods. We also agree with the ld. Counsel for the appellant that the department has presumed clearance of only HARDWYN brand goods by the appellant assessee during the relevant period. We also find that the entire sale value in the profit and loss account of the appellant assessee relating to the relevant period has been taken as clearance value of HARDWYN brand goods by the department. It is admitted fact that the appellant is also manufacturing goods with 'FIBA' brand. This proves that the department has presumed the description and value of excisable goods cleared during the relevant period, for recovery of duty. It is settled law that duty cannot be demanded on assumptions and presumptions. In the present matters, since the description and value of the excisable goods has been presumed by the department, the demand of duty on basis of such

presumed facts is unsustainable in law and hence has to be set aside. Accordingly we set aside the demand of duty on this ground also.

23. As regards limitation, we agree with the appellant that they were under bonafide belief that they were using their own brand names and hence eligible to S.S.I exemption. Such bonafide belief was vindicated by the Order-in-Appeal dt.02.05.2011. It is well settled law that extended period of limitation is not available to the department in cases where the assessee entertains a bonafide belief about non-levy of central excise duty. Under the circumstances, the extended period was not available to the department in the present matter and the demand of duty is, therefore, hit by bar of limitation also.

24. In view of unsustainability of the duty demand in the present matters, we hold that interest is not payable and penal provisions of law are not attracted in these matters. Therefore we set aside the demand of interest and penalties imposed on the appellants in the present matters. The appeals are allowed with consequential relief as per law.

[Order pronounced on 05.07.2019]

(Anil Choudhary)
Member (Judicial)

(Bijay Kumar)
Member (Judicial)

Ckp.