CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Appeal No. E/404, 408 & 409/2009

Sl. No.	Appeal No.	Appellant	Respondent	Impugned Order
1.	E/404/2009	Mahalaxmi Bakery	Commissioner of Central Excise, Customs & Service Tax, Hyderabad –ii	OIO No. 01/2009-C.Ex. dt. 28.01.2009
2.	E/408/2009	Dewandas Ramnani	-do-	OIO No. 02/2009-C.Ex. dt. 29.01.2009
3.	E/409/2009	Ram Bakery	-do-	OIO No. 02/2009-C.Ex. dt. 29.01.2009

Appearance
Shri G. Shivadass & Shri G. Prahlad, Advocates for the Assessee.
Smt. B. V. Shiva Naga Kumari, Commissioner (AR) for the Revenue.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 05/07/2018
Date of Decision: 27/08/2018

FINAL ORDER No. A/31037-31039/2018

[Order per: P. Venkata Subba Rao]

These appeals are filed by the appellant against the Order-in-Original No. 01/2009-C.Ex. dt. 28.01.2009 & 02/2009-C.Ex. dt. 29.01.2009 passed by the Commissioner of Central Excise. These involve alleged clearances of goods by the appellants bearing the brand name of another person availing wrongly the benefit of SSI exemption. The appellants herein are manufacturers of various varieties of biscuits /cakes and bakery items and they have been availing the benefit of SSI exemption under Notification No. 08/2003-CE dated 01.03.2003. During the period 2003-2004 to 2006-2007 the appellants had manufactured biscuits both branded and unbranded; branded biscuits were supplied to well known bakery in Hyderabad namely M/s Karachi Bakery and they have availed the benefit of aforesaid SSI exemption Notification. Central Excise Authorities received information that they were manufacturing these biscuits using the brand name of M/s Karachi Bakery and clearing the same after availing the exemption under SSI notification. After conducting investigation, the Central Excise Authorities recorded the statements of the Proprietors who stated that they are using machinery for mixing, kneading and baking the biscuits and other bakery items in the factory and they sell the biscuits, bread, toast and cakes & pastries except fruit biscuits in loose in returnable metal trays. The fruit biscuits were cleared and supplied to M/s Karachi Bakery their packets bearing the name of Karachi Bakery. They paid an amount of Rs. 7 lakhs as duty during the investigation itself. After investigation, show cause notices were issued and after following due process of law, the lower authority had passed Orders-in-Original confirming the demand for extended period along with interest and imposed penalty. However, he did not order confiscation of the goods.

2. Aggrieved by the Orders-in-Original, the assesses have filed these appeals on the following grounds:

a) the impugned order have been passed by the Learned Commissioner in violation of principles of natural justice because they were not provided with the copy of these relied upon documents along with the show cause notice. These relied upon documents necessary for them to work out the correct duty liability and also defending their case.

b) the appellants cleared fruit biscuits in loose condition in returnable crates during the period 2003-2004 to 2005-2006. The statement of Shir Lekhraj Ramnani, Proprietor of the firm that fruit biscuits supplied by them to Karachi Bakery in card board boxes printed with the design of “M/s Karachi Bakery” printed on it. There was never a statement made that the appellants cleared fruit biscuit in boxes from 2003 onwards.

c) Karachi Bakery is not a brand name because it was not registered.

d) Burden is on the Department to prove that Karachi Bakery is a brand name.

e) the name Karachi Bakery is not owned by any particular person because it has geographical significance.

f) the display of brand name on the packing material does not amount to use of brand name of another person.

g) the appellants did not use electrical ovens for manufacture of fruit biscuit during the relevant period 2003-2004 to 2005-2006 and hence would have been exempted from duty anyway.

h) the statement recorded from the proprietor cannot be taken as a sole basis to allege that brand name has been used by the appellants.

i) entire production for the years 2003-2004, 2004-2005 & 2005-2006 is not with the aid of power and appellants are liable to pay duty only on the quantity manufacture out of the oven which is operated with the aid of power. Sales tax and VAT paid by the appellants is to be deducted from the assessable value for the period.

j) extended period of limitation not invokable.

3. The Learned Counsel for the appellants reiterated the above arguments during the hearing and argued that the demand is not sustainable and the entire Order-in-Original is set aside with consequential reliefs.

4. The Learned Departmental Representative, on the other hand, pointed out that the appellant manufactured biscuits and bakery items with the aid of power from 2003 onwards hence they are not eligible for exemption on this ground. They also manufactured and cleared branded biscuits to M/s Karachi Bakery in packed condition from 2003 onwards and the statements of Mr. Rajesh Ramnani partner of M/s Karachi Bakery and Mr. Dewandas Ramnani partner of M/s Ram Bakery clearly shows that they have cleared the goods in boxes with the brand name of M/s Karachi Bakery. The extended period is properly invoked as they have suppressed the

facts of clearance of branded goods and use of machinery till investigation was initiated by the Central Excise Authorities.

5. He further argued that it is not necessary for the brand to be registered for denying the benefit of SSI exemption under Notification No. 08/2003. Even if unregistered brands of another person are used on the products the SSI exemption will not be eligible for appellant as per the Notification No. 08/2003. There is a sufficient evidence to show that machines were used as the expenses towards diesel used for ovens and electricity charges are available in the in P & L accounts and also depreciation was claimed on machinery. Therefore, penalties imposed are also sustainable.

6. We have considered the arguments on both sides. It is the contention of the appellant that they have not been served with the relied upon the documents along with show cause notice so that they can defend their case. In view of the above, we consider that the matter must be remanded back to the Original Authority to reconsider the issue afresh after following the principles of natural justice.

7. These appeals are disposed of by way of remand.

(Order pronounced on 27/08/2018 in open court)

P. VENKATA SUBBA RAO	**M.V. RAVINDRAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Lakshmi….