

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 77959 of 2018

(Arising out of Order-in-Appeal No. 694/HWH/CE/2017-18 dated 27.03.2018 passed by the Commissioner of CGST & Central Excise Appeals-II Commissionerate Bamboo Villa (3rd Floor) 169, A. J. C. Bose Road Kolkata-700 014)

M/s. Jekay International Track Pvt. Ltd., : **Appellant**
54/2A, N. S. Road, Liluah, Howrah-711204

VERSUS

Commissioner of Howrah CGST & CX : **Respondent**
Commissionerate
Bamboo Villa (3rd Floor)
169, A. J. C. Bose Road,
Kolkata-700 014

APPEARANCE:

Shri H. K. Pandey, Advocate for the Appellant

Shri S. K. Jha, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77777/2025

DATE OF HEARING / DECISION: 25.11.2025

Order: [PER SHRI K. ANPAZHAKAN]

Excise Appeal No. E/77959/2018 has been filed by M/s Jekay International Track Pvt. Ltd.(herein after referred as the appellant) against the Order-in-Appeal No. 694/HWH/CE/2017-18 dated 27.03.2018, passed by the Ld, Commissioner (Appeals), Kolkata. In the Order-in-Appeal, the Ld. Commissioner (Appeals) had set aside the dropping of the demand of duty of Rs. 2,31,517/- and confirmed the demand raised in the SCN dated 15.02.2005. Aggrieved against the impugned order passed by the Ld.

Commissioner (Appeals), the appellant has filed this appeal.

2. The facts of the case are that the appellant is a manufacturer of Railway Track Construction Materials. The appellant received a purchase order dated 10.11.2003 from M/s Ganpati Industrial Pvt. Ltd. (GIPL) for supply of Metal Liners, to be manufactured as per RDSO Drawing nos. T-3741/T-3742 and directly supplied to Indian Railways.

2.1. A SCN dated 15.02.2005 was issued to the Appellant by the Assistant Commissioner of Central Excise, Howrah North Division-II, alleging that the metal liners bore the initials "GIPL" and thus carried a brand/trade name, disqualifying the appellant from exemption under Notification no. 9/2003-CE. The appellant replied on 30.03.2005 explaining that the markings were not brand names but only identification initials required by Railways for traceability, and the goods were not elsewhere marketable or intended for trade other than Indian Railways.

2.2. The Ld. adjudicating authority has not accepted the reply submitted by the Appellant. The Assistant Commissioner, by order dated 29.12.2005, confirmed the demand of central excise duty of Rs. 2,31,517/- along with interest and penalty.

2.3. The first appeal before the Commissioner (Appeals) was dismissed on 26.05.2006 holding that the initials "GIPL" indicated brand ownership and hence exemption under the said Notification was not available. The Commissioner (Appeals) further observed that the decision of the Hon'ble Supreme Court in the case of M/s Astra Pharmaceuticals as relied upon by the appellant, was not relevant in the context of the present case since the Apex Court

defined the "House Mark" as identification mark of the manufacturer which was compulsory under the Drug Rules only.

2.4. Aggrieved by the order, the appellant preferred an appeal before this Tribunal which, by order dated 17.08.2007, remanded the matter for de novo adjudication with specific directions to seek clarification from the Railways regarding the purpose of such marking.

2.5. The Deputy Commissioner, after due inquiry and considering the clarification, passed a de novo order dated 27.08.2009, dropping all demands and holding that the initials "GIPL" were not a brand name within the meaning of Notification No. 9/2003-CE.

2.6. The department challenged this de novo order before the Commissioner (Appeals), who by order dated 27.03.2018, allowed the department's appeal and restored the earlier demand, reinterpreting the marking "GIPL" as a brand name.

2.7. Aggrieved against the impugned order passed by the Commissioner (Appeals), the appellant filed this appeal before the Tribunal.

3. The Appellant submits that the entire case hinges on whether the marking "GIPL" on the Metal Liners amounts to use of a "brand name" within the meaning of the said Notification. The Appellant submits that the Ld. Commissioner (Appeals) has erred in treating "GIPL" as a brand name without satisfying the essential condition that the mark must indicate a connection in the course of trade with the manufacturer or owner of the brand.

3.1. The appellant submits that they manufactured the goods strictly in terms of the specifications and instructions of the purchaser, GIPL, who had

received orders from Indian Railways. The goods were never intended for commercial sale in the open market and were directly consumed by the Railways. The marking "GIPL" was not for branding but purely for traceability and rejection tracking, as clarified by Railways and as acknowledged by the Deputy Commissioner in his de novo order.

3.2. In support of their contention, the Appellant relied on the decision in the case of C.C.E Chandigarh vs. M/s Champion Industries [2013 (298) E.L.T. 245 (Tri.- Del.)], wherein it has been held that unless the Department can prove that the mark belongs to another person and is used for indicating a trade connection, exemption under a small-scale industry notification cannot be denied.

3.3. In Astra Pharmaceutical Pvt. Ltd. vs. C.C.E, 1995 (75) E.L.T. 214 (SC), the Hon'ble Supreme Court distinguished between house marks and brand names and held that markings used for identification alone, particularly in compliance with regulatory or customer requirements, are not brand names.

3.4. The Appellant further submits that the department has not issued any notice to the owner of the brand 'GIPL' as a co-noticee in the show cause notice. As they have merely executed the order received from M/s Ganpati Industrial Pvt. Ltd. (GIPL) for supply of Metal Liners and embossed the words 'GIPL' in the Metal Liners, as advised by them, only Ganpati Industrial Pvt. Ltd. alone can clarify whether embossing the word 'GIPL' would amount to fixing of brand name or not. Since, Ganpati Industrial Pvt. Ltd. has not been included in the proceedings, the Appellant submits that the demand of duty confirmed against them by denying the benefit of exemption as provided under the Notification no. 9/2003-CE., is

legally not sustainable. Accordingly, they prayed for setting aside the impugned order and restore the Denovo order dated 27.08.2009 passed by the Assistant Commissioner.

4. The Ld. A.R. submitted that the Assistant Commissioner has not passed the Denovo order as directed by the Tribunal in its order dated 17.08.2007. The Deputy Commissioner has written to the railways seeking clarification as directed by the Tribunal. But, the Railway authorities advised him to seek clarification from RDSO section of the railways. Accordingly, the Deputy Commissioner should have referred the matter to RDSO for clarification. Instead of seeking further clarification, he has decided the issue on the basis of the letter issued by railways. Thus, he submitted that the Ld. adjudicating authority has not followed the directions of the Tribunal and hence, the Commissioner (Appeals) has rightly set aside the order. Accordingly, he justified the impugned order passed by the Ld. Commissioner (Appeals).

5. Heard both sides and perused the appeal documents.

6. We find that the appellant has received a purchase order dated 10.11.2003 from M/s Ganpati Industrial Pvt. Ltd. (GIPL) for supply of Metal Liners to Indian Railways. The Appellant manufactured the goods strictly in terms of the specifications and instructions of the purchaser, GIPL, who had received orders from Indian Railways. As advised the purchaser, the Appellant indicated the marking of 'GIPL' on the Metal Liners and supplied the goods to

railways. The allegation of the department is that the metal liners bore the initials "GIPL" and thus carried a brand/trade name, disqualifying the appellant from exemption under Notification no. 9/2003-CE.

6.1. We find that the Appellant has categorically replied on 30.03.2005, explaining that the markings were not brand names but only identification initials required by Railways for traceability, and the goods were not elsewhere marketable or intended for trade other than Indian Railways. In this regard, we find merit in the submission of the Appellant. It is a fact on record that the goods were never intended for commercial sale in the open market and were directly consumed by the Railways. The marking "GIPL" was not for branding but purely for traceability and rejection tracking, as clarified by Railways, which has been acknowledged by the Deputy Commissioner in his de novo order.

6.2. In this regard, we have perused the submission of the Ld. A.R. that the Ld. Deputy Commissioner has not sought the clarification as directed by the Tribunal. We find that the Ld. Deputy Commissioner has sought the clarification from Railway authorities as directed by the Tribunal. The reply dated 20.07.2009 received from Railway authorities is reproduced below for ready reference:

"...this organization is not approving any initial/trade mark of any of the approved suppliers supplying materials as per DRDO Drawing. Since inspection of such materials are carried out by RDSO, you are requested to contact Director, Quality Assurance Civil Directorate, Research & Standard Organisation, Manak Nagar, Lucknow 226 011 further in the matter".

6.3. From the above, we find that the Railway authorities have categorically mentioned that they have not approved any initial/trade mark with the suppliers of materials. Further, as a measure of caution, they have advised him to seek clarification from RDSO. We find that as per the direction of the Tribunal, the Deputy Commissioner has sought the clarification. He was satisfied with the clarification received from Railways, as the said clarification has categorically indicated that have not approved any initial/trade mark with the suppliers of materials. Accordingly, we find that the Deputy Commissioner has rightly concluded that the initials 'GIPL' used by the Appellant would not constitute a brand name. we fully agree with the findings of the Ld. Deputy Commissioner. Thus, we do not find any merit in the submission of the Ld. A.R. that the Deputy Commissioner should have sought further clarification from RDSO section of the Railways.

6.4. We also find merit in the submission of the appellant that the department has not issued any notice to the owner of the brand 'GIPL' as a co-noticee in the show cause notice. As they have merely executed the order received from M/s Ganpati Industrial Pvt. Ltd. (GIPL) for supply of Metal Liners and embossed the words 'GIPL' in the Metal Liners, as advised by them, we are of the view that only Ganpati Industrial Pvt. Ltd. alone can clarify whether embossing the word 'GIPL' would amount to fixing of brand name or not, as the embossing of the initials 'GIPL' was done as advised by M/s Ganpati Industrial Pvt. Ltd. We also find that M/s. Ganpati Industrial Pvt. Ltd. has not been included in the proceedings as a co-noticee. Thus, we are of the

view that the entire proceedings initiated against the appellant without involving the owner of the brand/initials 'GIPL' as a co-noticee, is legally not sustainable.

6.5. Thus, we observe that the goods were never intended for commercial sale in the open market and were directly consumed by the Railways. The marking "GIPL" was not for branding but purely for traceability and rejection tracking, as clarified by Railways. Thus, we hold that the initials "GIPL" embossed on the metal Liners were not a brand/trade name. Accordingly, we hold that disqualifying the appellant from availing the exemption under Notification no. 9/2003-CE, is legally not sustainable.

6.6. In support of our view, we rely on the decision in the case of C.C.E Chandigarh vs. M/s Champion Industries [2013 (298) E.L.T. 245 (Tri.-Del.), wherein it has been held that unless the department can prove that the mark belongs to another person and is used for indicating a trade connection, exemption under a small-scale industry notification cannot be denied.

6.7. In the case of Astra Pharmaceutical Pvt. Ltd. vs. C.C.E, 1995 (75) E.L.T. 214 (SC), the Hon'ble Supreme Court distinguished between house marks and brand names and held that markings used for identification alone, particularly in compliance with regulatory or customer requirements, are not brand names.

6.8. We find that the ratio of the decisions cited supra are squarely applicable in this case. Hence, by relying on the ratio of the decisions cited supra, we hold that the demand of duty confirmed against the Appellant by denying the benefit of exemption as provided under the Notification no. 9/2003-CE., is legally not sustainable. Accordingly, we set aside the impugned order and restore the Denovo order dated 27.08.2009 passed by the Deputy Commissioner.

7. In the result, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law.

(Operative part of Order was pronounced in Open court)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)