IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.2

APPEAL NO.E/748 to 750, 813, 930/2010

(Arising out of Order-in-Original No.01/Commr./M-II/2010 dated 29/01/2010 passed by the Commissioner of Central Excise, Mumbai-IIi))

M/s.Automats (India) **Shri Sudhir Malhota** **M/s.Asra** **Shri Haresh Khimal Nanwani**	:	**Appellants**
Vs		
Commissioner of Excise, Mumbai-II	:	**Respondent**
Commissioner of Excise, Mumbai-II	:	**Appellant**
Vs.		
M/s.Automats (India)	:	**Respondent**

Appearance

Shri.Chirag Shetty & Shri Satish Joshi, Advocate for Appellant
Shri. S. Hasija, Supdt. (AR) for respondent

CORAM:

Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Shri Sanjiv Srivastava, Member (Technical)

Date of hearing : 08/10/2018
Date of decision : 08/10/2018

ORDER NO.A/87599-87603/2018

Per : Mrs.Archana Wadhwa

1. All these appeals are being disposed off by a common order as they arise out of the same impugned order passed by the Commissioner.

2. After hearing both sides represented by Shri. Chirag Shetty, Ld. Advocate for the appellant and Shri. S. Hasija, Ld. Supdt. (AR) for the Revenue, we find that M/s.Automats (India) is engaged in the manufacture of Beverage Vending Machines under the brand name of “Hot Pot” and “Automats”. As per the Revenue, both the said brand names are owned by M/s.Asra and as such M/s.Automats (India) is not entitled to avail the benefit of SSI exemption Notification No.1/93-CE dated 28/02/1993 inasmuch as they are using the brand names of another person. It may be mentioned here that Shri Sudhir Malhotra is a Proprietor of M/s.Asra and is the active partner in M/s.Automats (India).

Based upon the above, Revenue initiated proceedings against M/s.Automats (India) by issuing number of show-cause notices proposing to deny the benefit of SSI exemption notification and consequently to confirm the demands. Out of around eleven show-cause notices, ten show-cause notices stand adjudicated by the Commissioner by the impugned order confirming the demand along with confirmation of fine and imposition of penalty. In addition, penalties stand imposed on Shri Sudhir Malhotra as on M/s.Asra. As Shri Haresh Khiamal Nanwani is a partner in M/s.Automats (India), he has also filed an appeal against the said order even though there is no penalty upon him. Further, as the adjudicating authority adjudicated only ten show-cause notices and left one show-cause notice as un-adjudicated, Revenue is in appeal before us.

3. After appreciating the submissions made by both sides, we note that M/s.Automats (India) had taken a categorical stand before the authorities below that they had entered into an agreement with M/s.Asra, who has assigned the brand names to them. As such they contended that in terms of agreement, they became the owner of the brand names and as such use of the same will not debar them from the entitlement of Notification No.1/93-CE dated 28/02/1993. The said plea of the appellant does not stand accepted by the adjudicating authority on the ground that as per the decision of the Hon'ble Supreme Court in the case of *CCE, Bangalore Vs. Vetcare Organics Pvt. Ltd., reported in 2015 (321) ELT 384 (SC),* the permission of the brand name owner to use the brand name will not dilute the various clauses of the SSI exemption notification in question and the assignee of the brand name would be hit by the bar of such use and the benefit of notification would not be available to him.

4. Ld. Advocate appearing for the appellant fairly concedes that in terms of the decision of the Hon'ble Supreme Court the ground of permission of M/s.Asra to use the brand name will not make M/s.Automats (India) entitled to the benefit of SSI notification. However, he submits that even as per the Revenue, the brand name was owned by M/s.Asra, which is a proprietary unit of Shri Sudhir Malhotra. Admittedly, Shri Sudhir Malhotra is a partner in M/s.Automats (India). He submits that such use of brand name owned by an individual, who is a partner of a partnership firm has been held to be eligible for the benefit of SSI notification. He drawn our attention to the decision of the Tribunal in the case of *Anil Pumps (P)*

Ltd., Vs. CCE, Panchkula reported in 2005 (180) ELT 500 as affirmed by the Hon'ble Supreme Court reported *in 2012 (281) ELT A105 (SC).* Further reliance stands placed on the Tribunal decisions in the case of *Elex Knitting Machinery Co. Vs. CCE – 2003 (158) ELT 499 maintained by the Hon'ble Punjab & Haryana High Court – 2010 (258) ELT A48 (P&H) and Hon'ble Supreme Court – 2012 (283) ELT A 18 (SC).* In terms of the said decision, the brand name owned by the sole proprietor by virtue of being a partner in another partnership firm brand name also becomes co-owner of brand name in question and as such it cannot be said to have used the brand name of another person, so as hit by bar of the notification. However, Ld. Advocate appearing for the appellant fairly concedes that the said legal issue was not specifically raised before the adjudicating authority and his attention was not brought to the above decisions. As such he submits that the impugned be set aside and the matter be remanded for fresh consideration, in the light of the law declared in the above referred judgments or any other decisions, which he may choose to rely upon.

5. Ld. AR appearing for the Revenue does not object to the remand request.

6. In view of the foregoing, we set aside the impugned order and remand the matters to the original adjudicating authority for fresh decision in the light of the above referred judgments. Needless to say that the appellant would be given an opportunity to put forth their defence. We make it clear that we have not gone to the merits of the case to express any opinion on the same.

As regards the Revenue's appeal though we find that the left out show-cause notice could have been adjudicated by the Commissioner by a separate subsequent order and there were no need for the Revenue to file an appeal against the order, which has not adjudicated the 11th show-cause notice, but as the matter is being remand to the adjudicating authority, he would also take the left out show-cause notice for consideration while deciding the other remanded matters.

7. In view of the foregoing, all the appeals are disposed off by way of remand.

(Pronounced and dictated in Court)

(Sanjiv Srivastava)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

PJ