IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. E/556/2010

(Arising out of Order-in-Appeal No. SB(113)113/MI/2009 dated 8.12.2009 passed by Commissioner of Central Excise (Appeals), Mumbai-I)

Shruti Art Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Mumbai-I **Respondent**

Appearance:

None for appellant
Shri D.S. Chauhan, Superintendent (AR), for respondent

CORAM:

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

Date of Hearing: 10.10.2018
Date of Decision: 10.10.2018

ORDER No. **A/87624/2018**

Per: Sanjiv Srivastava

The appeal is directed against the Order in Appeal No SB(113)113/MI/2009 dated 8.12.2009 of Commissioner (Appeals) Mumbai Zone-1. By the said order Commissioner (Appeal) upheld the order of Joint Commissioner Central Excise Mumbai 1, confirming the demand of duty of Rs 13,85,222/- and also imposed a penalty of the same amount under Section 11AC of the Central Excise Act, 1944.

2.1 Appellants are manufacturers of table diaries and other printed materials. Search was undertaken in their premises on 17-07-2007. On the basis of the documents recovered during the search it was observed that the appellants are manufacturing goods falling under Chapter Heading 48 & 49 of the Central Excise Tariff. They had claimed the benefit of exemption under notification No 8/2003-CE dated 01.03.2003 during the period of 2006-07.

2.2 It was also found that the appellants had cleared branded diaries of Life Insurance Corporation without payment of duty. Since these diaries have logo of LIC printed on them, the exemption under notification No 8/2003-CE was not available in respect of these products. Investigations revealed that raw material for printed diary was supplied by M/s LIC and appellants had charged labor charge of Rs 6.25 per diary and VAT @ 4%.

2.3 On the basis of investigations carried at the appellants end and at the end of LIC, duty due on diaries supplied to LIC, was determined as Rs 13,85,522/-[Rs 13,58,355/- (Basic Duty)+Rs 27,167/-

(Education Cess)] and the appellant paid the same during the course of investigation. A show cause notice was issued to appellant on 31.03.2008, demanding the above amount under Section 11A along with interest under section 11AB of the Central Excise Act, 1944. Show Cause Notice also proposed penalty under section 11AC and Rules 25 and 26 of Central Excise Rules, 2002. Amount already deposited was also proposed to be appropriated against the demand made.

2.4 The show cause notice was adjudicated confirming the duty demanded along with interest and penalty. Against the said order Appellants filed the appeal before Commissioner (Appeal) who upheld the order of Joint Commissioner. Against the said order of Commissioner (Appeal) party is in appeal before us.

3.0 In their appeal appellants have assailed the impugned order on various counts, including, that they have rightly availed the exemption under notification No 8/2003-CE as amended, as LIC is neither manufacturer nor trader of diaries. Since the logo of LIC printed on the diaries do not establish any connection between the diaries and them. Further they have printed the said logo as required by LIC. Further LIC is also not in trade of selling the diaries, but is organization engaged in the business of insuring the life of people. Thus the logo of

LIC printed on diary cannot be termed as brand name, but is only a house mark of LIC embossed on the diaries. Further there is no suppression of facts and hence larger period of limitation is not applicable in the present case.

4.0 Appellants were not present for hearing despite the notice, we have heard Shri D S Chauhan, Superintendent Authorized Representative for the revenue.

5.1 Para 4 of Notification No 8/2003-CE, provides that *“exemption contained in this notification shall not apply to specified goods bearing a brand name or trade name, whether registered or no, of another person, except in the following cases:-*

(a) .....

(b) .....

(c) .....”

Admittedly the case of appellants do not fall within (a), (b), or (c). Hence the said clauses have not been reproduced. In respect of Notification No 1/93-CE, predecessor notification to the one under consideration Board has clarified the position by the Circular No 71/71/94-CX. For ease of reference the said circular is reproduced below:

Circular No. 71/71/94-CX, dated 27-10-1994

From F.No. 341/45/94-TRU

Government of India

Ministry of Finance (Department of Revenue)

Tax Research Unit

Subject : Clarification regarding brand name provision in the general SSI Scheme under Notification No. 1/93.

I am directed to refer to paragraph 4 of Notification No. 1/93 which provides that under this notification, exemption would not apply if the goods in question bear a brand name or trade name of another person. In this context certain doubts have been raised following examples have been cited and clarifications have been sought whether the benefit of notification No. 1/93 would be available under such circumstances.

Illustration I

2. It has been represented that in the case of castings, there is a trade practice under which the SSI units produce the castings as per the design supplied by the customers and such castings may bear the brand name/design/logo as required by the users of castings. Such castings are finally used in the manufacture of other machinery like diesel engines. It has been represented that such castings are not traded as such in the open market and they are made for use by specific users. In such cases, the brand name which is put on the castings is the brand name of the machinery manufacturer, and thus putting the brand name is only to suit the manufacturing needs of the customer. Consequently, in such cases, the benefit of SSI exemption should not be denied.

Illustration II

3. There are certain SSI units which produce goods on behalf of another person and names of both the manufacturer and the person on whose behalf the goods are manufactured are reflected in the finished goods. For example, in the case of electricity meter covers, the name of the manufacturer as well as the name of the electric company who supplies such electricity meter covers to the consumers are both indicated. Here also it is represented that the use of the brand name is not in the ‘course of trade".

4. The matter has been examined in the Board. The scope of brand name and trade name has already been *clarified vide Ministry's letter F.No. B. 40/12/94-TRU, dated the 1st September, 1994 (Circular No. 52/52/94-CX.)*

5. As explained in paragraph 3 of the letter, to attract the mischief of the provisions relating to brand name, two conditions have to be satisfied.

(1) Such brand name must indicate a connection between the branded goods and some person using such brand name.

(2) Such connection should be in the course of trade.

6. Consequently if there is no "trade" of such goods, the brand name provision would not apply.

7. Coming to the first illustration, castings are manufactured as per the specific requirement of the customers and the brand name which the small scale unit puts on such castings is meant for use of the customer only for further manufacture. Castings having such brand name are not sold in the market as castings as such, because it will be of no use to another person. It is felt that when such castings are not "traded" but only sold to a particular manufacturer for his own use, the embossing of the brand name of the customer on the castings would not amount to using brand name so as to deny the benefit of Notification No. 1/93. Of course if it is found that such branded castings are traded in the market as such, it will amount to use of such castings in the course of trade and the benefit of exemption notification will not be available. In other words, so long as the branded castings are being supplied to the customer for further manufacture, and are not otherwise "traded", the benefit of small scale exemption in such cases should not be denied merely on the ground that it contains brand name of another unit. Whether such supply is in the course of trade or not, of course, will be a matter of fact and has to be ascertained from the nature of transaction between the small scale unit and the brand name owner. So long as they are made to order as per the design and specification of a particular manufacturer and sold to that manufacturer for his own use, the benefit of Notification No. 1/93 cannot be denied.

8. As regards the second illustration, the Collectors Conference held at Chandigarh on 17th June, 1994 had already taken a view that in such cases the use of names of the user like electricity boards etc. are embossed on the goods to guard against theft or misuse of public property and are not meant for sale by State Electricity

Boards. Use of the brand name in such cases will not attract the mischief of para 4 of Notification No. 1/93, and the benefit of notification No. 1/93 cannot be denied under such circumstances. The Board agrees with the view taken in the Conference as here also the element "in the course of trade" is absent.

5.2 From plain reading of the said Notification and Circular referred above it is evident that the use of brand name should in the course of trade in the goods under consideration. If the same is not in the course of trade then benefit of the exemption contained in this notification cannot be denied. In the present case LIC Logo printed on diaries do not establish any connection between the goods and the logo, hence the same cannot be said to be in the course of trade. Further it cannot be said that LIC is in trade of selling the LIC diaries. Thus without establishing such connection between the goods and logo printed on the diaries benefit of exemption under Notification No 8/2003-CE cannot be denied.

5.3 Same view has been expressed by the tribunal in case of,-

Electrohms (P) Ltd vs Commissioner Central Excise Bangalore [2000 (116) ELT 265 (T)]

"5. *On a careful consideration of the rival submissions and records of the case, we find that in this case the fixation of the words 'Indian Railways' on the name plate of the product in question, does not amount to use of a brand name of non-SSI unit, as is contemplated under the notification noted above, because of a simple reason* *that the said words are only indicating the owner of the goods, which are not even traded but only used by 'Indian Railways' for captive consumption. In the case of Astra Pharmaceuticals (P) Ltd. (supra) the Hon'ble Apex Court had held that merely a few alphabetical words of monograph do not constitute the brand name, even if the goods are otherwise traded with that monographs. In the appellants case, we find that their position is stronger inasmuch as that not only such a monograph does not amount to the use of brand name, but the goods themselves are not traded. We, therefore, find that the impugned Order-in-Original needs to be set aside by applying the ratio of the aforesaid noted decision of the Hon'ble Supreme Court. Ordered accordingly. The appeal is allowed with consequential relief, if any, as per law."*

Commissioner Central Excise Chandigarh Vs Hemkunt Builder [2002 (141) ELT 376 (T-Del)]

"4. *We have considered the submissions of both the sides. It is not the case of the Department that the concrete cement slabs which bear the mark 'ESSAR' are being sold by the persons, on whose behalf these have been manufactured by the respondents, in the market and, therefore, the question of identifying such poles with any person, in the course of trade does not arise. As per Explanation to Notification No. 16/97, brand name means brand name, that is to say, a name or mark which is used in relation to any specific goods for the purpose of indicating or so as to indicate a connection during the course of trade. As concrete cement slabs are not being traded it cannot be said that the name is used for indicating the connection during the course of trade. Accordingly, the mischief of para 4 of the Notification No. 16/97 is not attracted. This was the view held by the*

Tribunal in both the decisions, relied upon by the ld. Advocate for the respondents. Following the ratio of these two decisions, we reject the appeal filed by the Revenue."

6.0 We find that that the issue is also squarely covered by the decision of this tribunal reported in 2018-TIOL-563-CESTAT-MUM, wherein after analyzing the text of the notification No 8/2003-CE and Circular No 71/71/94-CX, the bench concluded "*6. ..., we find that it is admitted fact that the diaries manufactured by the appellant for LIC have not been traded by LIC. Accordingly, we hold that the appellant is entitled to exemption under Notification No. 8/2003-CE read with* ***Circular No. 71/71/94-CX*** *dated 27/10/1994..."*

7.0 Following the above referred decisions we allow the appeal and set aside the impugned order of Commissioner (Appeals).

(Pronounced in court)

(Archana Wadhwa)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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