CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Appeal No. E/783/2011

(Arising out of Order-in-Appeal No. SB(19)19/MV/2011 dated 22/02/2011 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I.

M/s Asian Rubber **.... Appellant**

Versus

Commissioner of Central Excise, Mumbai-V **.... Respondent**
Mumbai

Appearance:

Shri V.S. Sejpal, Advocate for the Appellant

Ms. A.S. Parab, AC, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85686/2019

Date of Hearing: 14.02.2019

Date of Decision: 14.02.2019

Per: P. Anjani Kumar

M/s. Asian Rubber (Represented by the Proprietor Shri Jethalal D. Chedda), who are manufacturing Rubber Gaskets and Rubber Washers of various types falling under Heading 4016.19 and 4016.91 of Central Excise Tariff Act, 1985 and were availing the benefit of SSI Exemption under Notification No.1/93 dated 28/02/1993 as amended from time to time. On the basis of an investigation by the Preventive Unit, the Central Excise served Show Cause Notice on 09/02/1999 to the appellants seeking exclusion of the branded products manufactured by them from the benefit of the notification. The Show Cause Notice was initially confirmed by the Joint Commissioner vide Order dated 08/09/1999 and in the second round of litigation, vide Order dated 31/05/2006, confirmed duty of Rs.3,64,534/- was confirmed while imposing equal penalty under Section 11AC and a penalty of Rs.5,000/- under Rule 173Q. The Commissioner (Appeals) vide Order-in-Appeal dated 22/02/2011 upheld the Order of the lower authority, hence this.

2. The Learned Council for the Appellants have manufactured cleared Rubber Gaskets for Pressure Cooker and sold part to OEM (original equipment) manufacturers. The supplier's identification marks were embossed on the Rubber Gaskets. The Appellants contended that the identification mark was simple English font and was not in the style or in the form of Registered Trade Mark or Logo of OEM manufacturer. They have produced various letters/certificates/ statements of original equipment manufacturers to support their case. They have submitted that only letters were used by them and original logos of the manufacturers were different in colour, style and form. The initials used by them were only for the sake of identification. Relying on the following cases, he has submitted that it was not proper on the part of the departments to see such identification marks as registered brand name, etc.

(i) Vir Rubber Products Pvt. Ltd. Vs. CCE, Mumbai-III-2003(161) E.L.T. 623 (Tri.-Mumbai).

(ii) Vir Rubber Products Pvt. Ltd. Vs. CCE, Mumbai-III-2015(318) E.L.T. 578 (SC).

(iii) Swathe Industry Vs. CCE, Chennai-2001(131) E.L.T. 345 (Tri.-Chennai).

(iv) Kohinoor Elastics Pvt. Ltd. Vs. CCE, Indore-2005(188) E.L.T. 3(S.C.).

(v) CCE, Trichy Vs. Grasim Industries Ltd – 2005(183) E.L.T. 123(SC).

(vi) Cosmic Dye Chemical Vs. CCE, Bombay -1995(75) E.L.T. 721 (SC).

(vii) Supreme Rubber Industries Vs. CCE, Mumbai-V -2011(273) E.L.T 301(Tri.-Mumbai).

He requested that duty demand and penalty imposed may set aside.

3. The Learned Authorized Representative for the department has contended that the Learned Commissioner (Appeals) has rightly concluded that even the use of part of brand name or trade name so long it indicates connection in the course of trade can be sufficient to disentitle the person from getting the exemption under the notification.

4. Heard both sides and perused the records of the case. For proper appreciation of the issue involved, it is necessary to go through the wordings of the notification. We find that the explanation (A) under condition No.5 of the Notification 8/98 Central Excise dated 02/06/1998 reads as follows:

Explanation:

(A) “brand name” or “trade name” shall mean a brand name or trade name, whether registered or not, that is to say a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

(B) “Where the specified goods manufactured by a manufacturer bear a brand name or trade name, whether registered or not, of another manufacturer or trader, such specified goods shall not, merely by reason of that fact, be deemed to have been manufactured by such other manufacturer or trader."

5. A plain reading of the explanation gives an understanding that a name or mark such as symbol, monogram, label, signature or invented words so as to indicate the connection in the course of trade between such goods and some person using such name would be considered as a brand name or trade name. In the instant case, the appellants are manufacturing, by their own admission, parts of pressure cookers of brand such as "Elite", "Kanchan", "Jewel", etc., for the original equipment manufacturers. They are manufacturing Rubber Gaskets for Pressure Cookers and for the sake of reference for these reasons as claimed by them are mentioning the name or initial of the original equipment manufacturer on the gaskets. The contention of the appellants is that it is not a brand of the original equipment manufacturer, but it is only an indication as to which part i.e. gasket would fit to which brand of pressure cooker. It is not denied that the original equipment manufacturers are not in the trade of manufacturing pressure cookers. Therefore such gaskets manufactured by Appellants with identification marks would certainly indicate the connection of the original equipment manufacturers with particular trade, which is in the instant case pressure cookers. Therefore, in view of the explanation under the Notification as cited above, we find that Learned Commissioner (Appeals) has correctly concluded that the goods manufactured by the Appellants where the brand name or the trade name of the original equipment manufactured as long as such words indicate the connection in the trade.

6. It is a settled principle in law as well as there is no ambiguity in the wordings of notification, the same needs to be construed strictly. We find that Learned Commissioner has concluded in his

statement that the Proprietor of the Appellants has admitted the usage of the brand names and not simple initials to indicate the names of the original equipment manufacturers. Therefore we find that the Learned Commissioner (Appeals) has correctly held that the reliance placed by the Appellant in the case cited by them is not applicable. In view of the above, we find that there is no infirmity in the Order as far as it relates to confirmation of the duty.

7. However, we find that even though penalty has been imposed u/s 11 AC of CEA 1944, both the authorities below has not extended the benefit to discharge the penalty subject to fulfillment of condition laid down there under. Consequently the appellant is allowed to discharge 25% penalty under Section 11AC and CEA 1944 subject to fulfillment of condition laid down. Penalty imposed under Rule 173Q is set aside. To the extent the appeal is partially allowed.

(Operative portion of the order pronounced in open court)

(Dr. D.M. Misra)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

Ramasuri