CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Excise Appeal No: 677 of 2011

[Arising out of Order-in-Appeal No: SB(43-44)/MV/2011 dated 28th March 2011 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – I.]

Capital Controls India Limited 15/AJ Laxmi Industrial Estate, Link Road, Andheri (West), Mumbai – 400 053	… ***Appellant***
versus	
Commissioner of Central Excise Mumbai – V 5th Floor, Utpad Shulk Bhavan, Plot No. C-24, Block 'E' Bandra Kurla Complex, Bandra (E), Mumbai - 400051	***…Respondent***

APPEARANCE:

Ms Mansi Patil, Advocate for the appellant

Shri Anil Choudhary, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A/87425 / 2019

DATE OF HEARING:	02/01/2019
DATE OF DECISION:	02/01/2019

PER: C J MATHEW

The issue in this appeal of M/s Capital Controls India Limited, against order-in-appeal no. SB(43-44)/MV/2011 dated 28th March

2011 of Commissioner of Central Excise (Appeals), Mumbai Zone – I, pertains to the upholding of the order of the original authority which had confirmed duty liability of ₹ 5,16,413/-, along with the interest thereon, while setting aside the penalties imposed on the appellant herein.

2. The appellant is a small scale unit, manufacturing chlorinators/ vacuum regulators and parts thereof, in joint venture with a company in United States of America (USA). The appellant had been clearing manufactured goods under the brand name 'ADVANCE' which allegedly belonged to the joint venture partner in the United States of America and the use being that of an ineligible brand name, it was concluded that duty liability should be discharged without the benefit of the exemption notification.

3. We have heard Learned Authorised Representative.

4. It is pointed that the trade mark was assigned to the appellant in terms of agreement dated 9th January 1996 and that it was registered under the Trademarks Act, 1958 on 30th August, 2005 with effect from 18th August 1999 for which the application was moved with the registry of Trade Marks.

5. It is seen from the decision of the Tribunal in *Commissioner of Central Excise, Mumbai – V [2010 (260) ELT 117 (Tri.-Mumbai)]* that

*‘**7.** Nevertheless, with regard to registration of the trade mark, we have not found any inconsistency between the additional Clause 19 and the original clauses of the agreement. A right to get the brand name registered in the assessee’s name in India was intended to be transferred to them under the original provisions. This right has been reiterated or reaffirmed in the additional clause inserted on 9-1-1996. The conduct of the party also has been in keeping with this purport of the agreement inasmuch as they applied for registration in August 1999 and obtained the same in 2005. We have seen a copy of the registration certificate issued to them by the competent authority under the Trade and Merchandise Marks Act. This certificate, on its face, says that it will have effect from the date of application, i.e., 18-8-1999. It cannot have retrospective effect farther into the past. The claim made by the learned counsel that the registration of the trade mark in favour of the assessee should take effect from 9-1-1996 is, therefore, unacceptable. We think, in this context, the Hon’ble Supreme Court’s judgment cited by the JDR is relevant. Their lordships, in Prince Valve Industry’s case (supra), were considering a similar question in relation to SSI Notification 1/93-C.E. It was held, that, as long as the brand name continued to be registered in the name of M/s. Sant Brass Metal Works, a partnership firm, of which the assessee was a partner in the past, the assessee was not entitled to exemption under the said Notification in respect of their products cleared under the brand name after their exit from the said partnership. This decision of the apex court would show that the registration of a brand name/trade mark would per se be determinative where the question under consideration is whether the goods cleared under the brand name can claim SSI benefit. In the instant case, obviously, the brand name ‘Advance’ should be considered to have been registered in the name of the assessee from 18-8-1999 and, therefore, the clearances effected by them*

from that date will not be hit by the bar created in para 5 of Notification 8/98-C.E. or para 4 of any of the other two Notifications. However, for the period prior to 18-8-1999, the assessee cannot claim the benefit, having regard to the relevant provisions of the Trade Mark Registered User Agreement dated 16-11-1995 (as amended by the supplement agreement dated 9-1-1996). These provisions of the agreement, as we have already noted, would go to show that any absolute right over the brand name was not transferred or assigned by the Licensor to the assessee. Therefore, the respondent cannot claim SSI benefit on the strength of the said agreement, though they can claim the benefit on the strength of the certificate of registration. It is ordered accordingly.'

6. The decision of the Tribunal pertains to the period from April 1998 to June 2000. The present dispute pertains to the period from April 2003 to November 2003 and from May 2004 to December 2004. In the light of the above decision of the Tribunal, entitling the appellant the use of brand name as their own, the findings of the first appellate authority fails.

7. Accordingly, the impugned order is set aside and appeal allowed.

(Pronounced in open court)

(C J Mathew)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

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