CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

Excise Appeal No: 1031 of 2009

[Arising out of Order-in-Appeal No: SB(38-39)/MV/2009 dated 24th June 2009 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – I.]

Apex Enterprises … ***Appellant***
79-B Govt Industrial Estate, Kandivli (W)
Mumbai – 400 067

versus

Commissioner of Central Excise ***…Respondent***
Mumbai – V
Utpad Shulk Bhavan, Sector – E, Plot C-24, Bandra Kurla
Complex, Bandra (E), Mumbai – 400 051

WITH

Excise Appeal No: 1035 of 2009

[Arising out of Order-in-Appeal No: SB(38-39)/MV/2009 dated 24th June 2009 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – I.]

Pradeep Hira Mandani … ***Appellant***
10 Jubilee Court, Linking Road, Bandra (W)
Mumbai – 400 050

versus

Commissioner of Central Excise ***…Respondent***
Mumbai – V
Utpad Shulk Bhavan, Sector – E, Plot C-24, Bandra Kurla
Complex, Bandra (E), Mumbai – 400 051

APPEARANCE:

Shri Mayur Shroff, Advocate for the appellant

Shri SJ Sahu, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR P DINESHA, MEMBER (JUDICIAL)

<u>FINAL ORDER NO: A/88587-88588 / 2018</u>

DATE OF HEARING: 08/05/2018
DATE OF DECISION: 08/05/2018

<u>PER: C J MATHEW</u>

These appeals lie against order-in-appeal no. SB(38-39)/MV/2009 dated 24th June 2009 in which the duty liability of ₹1,07,320/-, as confirmed by the original authority, has been upheld along with penalties under Central Excise Act, 1944. The assessee-appellant herein is a manufacturer of ‘testing equipment’ and had been claiming the benefit of notification no. 1/1993-Central Excise dated 1st March 1993 and notification no. 16/1997 dated 1st April 1997, as amended, for the period between 1996-98. According to central excise authorities, the goods were being affixed with the logo/monogram ‘PTM’ which was allegedly owned by M/s Precision Testing Machines for whom the appellant had also undertaken manufacturing work. The clearances for the impugned period were clubbed and the consequent duty liability fastened on M/s Apex Enterprises along with other detriments leading to the present appeals.

2. Learned Counsel for the appellant places reliance on the decision of the Hon'ble High Court of Delhi in *Commissioner of Central Excise v. Minimax Industries [2011 (269) ELT 166 (Del.)]*.

3. *Per contra,* Learned Authorised Representative placed reliance on the decision of the Hon'ble Supreme Court in *Union of India v. Ind-Swift Laboratories Ltd [2011 (265) ELT 3 (SC)].*

4. We find that the decision of the Hon'ble Supreme Court cited by Learned Authorised Representative pertains to interpretation of taxing statute wherein it has been held that

> *'19. A taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statute so as to supply any assumed deficiency. In support of the same we may refer to the decision of this Court in Commissioner of Sales Tax, U.P. v. Modi Sugar Mills Ltd. reported in (1961) 2 SCR 189 wherein this Court at Para 10 has observed as follows : -*
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> > *"10. ……. In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed : it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency."*
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> *20. Therefore, the attempt of the High Court to read down the provision by way of substituting the word "OR" by an "AND" so as to give relief to the assessee is found to be erroneous. In that regard the submission of the counsel for the appellant is well-founded that once the said credit is taken the beneficiary is at liberty to utilize the same, immediately thereafter, subject to the Credit rules.'*

5. On the other hand, we find that the use of the brand name

belonging to another entity was a matter of consideration in the decision of the Tribunal in *Minimax Industries v. Commissioner of Central Excise, Delhi – I [2010 (261) ELT 535 (Tri.-Del.)]* and it was held that

> *'8. Plain reading of the definition of the terms "brand name" and "trade name" in the notification discloses that in "order to classify a logo to have acquired the brand name or trade name within the meaning of the said expression under the said notification, it must be established that the same has been used by a person manufacturing a product for the purpose of indicating or so as to indicate a connection in the course of trade between such product and the manufacturer using such name or mark. In the absence of any material in that regard and finding of the authority based on analysis of the materials to the effect that the name or mark in question as having acquired the status of being a brand name or trade name within the meaning of the said expression under the said notification, question of violation of condition No. 4 cannot arise. Merely because a manufacturer is using a particular logo or name of others, same will not be sufficient to arrive at a finding that the same is a brand name or trade name of such other manufacturer. This is further clear from explanation X to the said notification which reads thus -*
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> > *"For the purpose of this notification, where the specified goods manufactured by a manufacturer, bear a brand name or trade name (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".*
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> *9. In other words, the acquisition of the good will by the manufacturer in relation to the name or logo used by him in relation to the particular product manufactured by him to be established before accusing another manufacturer of having used such name or logo for his product.'*

6. The Hon'ble High Court of Delhi, on appeal by Revenue, has held that the application of the principles pertaining to use of brand name by the Tribunal could not be faulted and observed that

> *'15. Admittedly, MEI has not got the brand name/logo "Minimax" registered either under the Registration Act or under the Trade Mark Act or any other Act. It has also never claimed, at any time, its exclusive rights over the use of logo "Minimax" and never taken any action against the partnership firm. It is not a case of the department that the said MEI has allowed the partnership firm to use the said name. The Tribunal has also arrived at a finding of fact that "Minimax" has not acquired any such reputation that it can be associated with "MEI".*
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> *16. At this stage we would like to revert to the recent pronouncement of Supreme Court in the case of Commissioner of Central Excise, Delhi v. M/s. Ace Auto Comp. Ltd. [Civil Appeal No. 3051/2003 decided on 16th December, 2010] [2011 (263) ELT 3 (SC)]. On the Facts of that case, the Supreme Court has held that the respondent assessee has infringed condition No. 4 and, therefore, was not entitled to exemption. However, once we take note of the facts of that case, it would be established that this is clearly distinguishable. In that case the assessee was manufacturing cover assembly for TATA 310 vehicle under the brand name "Ace". However, since the product was manufactured for TATA, the TATA has allowed the assessee to pre-fix the symbol and logo TATA along with its brand name "ACE". It was on these facts that the Supreme Court has held that the assessee was using such name or mark which clearly indicated the identity of other person. Not only TATA had allowed the assessee to use the name, it was not even in dispute that symbol/logo of TATA*

filled the description of 'brand name/trade name'. In fact the reading of the judgment would reveal that there was no such issue raised. The Court proceeded on the basis that TATA was a brand name and in fact it was established that this brand name was allowed to be used by the TATA to the said assessee.'

7. It is seen that no case has been made out by the Central Excise authorities that any benefit was derived by the appellant in terms of goodwill or market enhancement or that the appellant was not entitled to use the brand name.

8. In these circumstances, we find no merit in the impugned order which is set aside to allow the appeals.

(Pronounced in open court)

(C J Mathew)
Member (Technical)

(P Dinesha)
Member (Judicial)

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