

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI**

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 392 of 2011

(Arising out of Order-in-Original No. 49/BR-49/Th-I/2010 dated 10.12.2010 passed by the Commissioner of Central Excise, Thane-I)

Dr. Smita's Herbal Laboratories
Plot No.W-247-A, MIDC Phase-II, Dombivali
(East), Thane

.... Appellant

Versus

Commissioner of Central Excise, Thane-I
4th Floor, Navprabhat Chambers, Ranade Road,
Dadar (W), Mumbai-400 028.

.... Respondent

WITH

Excise Appeal No. 393 of 2011

(Arising out of Order-in-Original No. 49/BR-49/Th-I/2010 dated 10.12.2010 passed by the Commissioner of Central Excise, Thane-I)

Dr. Smita Raste
Plot No.W-247-A, MIDC Phase-II, Dombivali
(East), Thane

.... Appellant

Versus

Commissioner of Central Excise, Thane-I
4th Floor, Navprabhat Chambers, Ranade Road,
Dadar (W), Mumbai-400 028.

.... Respondent

AND

Excise Appeal No. 394 of 2011

(Arising out of Order-in-Original No. 49/BR-49/Th-I/2010 dated 10.12.2010 passed by the Commissioner of Customs (NS-V),)

Shantanu Sharad Raste
Plot No.W-247-A, MIDC Phase-II, Dombivali
(East), Thane

.... Appellant

Versus

Commissioner of Central Excise, Thane-I
4th Floor, Navprabhat Chambers, Ranade Road,
Dadar (W), Mumbai-400 028.

.... Respondent

AND

Excise Appeal No. 395 of 2011

(Arising out of Order-in-Original No.49/BR-49/Th-I/2010 dated 10.12.2010 passed by the Commissioner of Central Excise, Thane-I)

Pitambari Products Pvt. Ltd.

3rd Floor, Hemendra Co. Op. Hsg. So.,
Gokhale Road, Thane-2

.... Appellant

Versus

Commissioner of Central Excise, Thane-I

4th Floor, Navprabhat Chambers, Ranade Road,
Dadar (W), Mumbai-400 028.

.... Respondent

AND

Excise Appeal No. 86414 of 2017

(Arising out of Order-in-Original No. SK/87-90/TH-I/2017 dated 26.04.2017 passed by the Commissioner of Central Excise, Thane-I)

Dr. Smita Raste

Plot No.W-247-A, MIDC Phase-II, Dombivali
(East), Thane

.... Appellant

Versus

Commissioner of Central Excise, Thane-I

4th Floor, Navprabhat Chambers, Ranade Road,
Dadar (W), Mumbai-400 028.

.... Respondent

AND

Excise Appeal No. 86415 of 2017

(Arising out of Order-in-Original No. SK/87-90/TH-I/2017 dated 26.04.2017 passed by the Commissioner of Central Excise, Thane-I)

Shantanu Raste

Plot No.W-247-A, MIDC Phase-II, Dombivali
(East), Thane

.... Appellant

Versus

Commissioner of Central Excise, Thane-I

4th Floor, Navprabhat Chambers, Ranade Road,
Dadar (W), Mumbai-400 028.

.... Respondent

AND

Excise Appeal No. 86416 of 2017

(Arising out of Order-in-Original No. SK/87-90/TH-I/2017 dated 26.04.2017 passed by the Commissioner of Central Excise, Thane-I)

Pitambari Products Pvt. Ltd.

3rd Floor, Hemendra Co. Op. Hsg. So.,
Gokhale Road, Thane-2

.... Appellant

Versus

Commissioner of Central Excise, Thane-I

4th Floor, Navprabhat Chambers, Ranade Road,
Dadar (W), Mumbai-400 028.

.... Respondent

AND

Excise Appeal No. 86417 of 2017

(Arising out of Order-in-Original No. SK/87-90/TH-I/2017 dated 26.04.2017 passed by the Commissioner of Central Excise, Thane-I)

Smita's Herbal Laboratories

.... Appellant

Plot No.W-247-A, MIDC Phase-II, Dombivali (East), Thane

Versus

Commissioner of Central Excise, Thane-I

.... Respondent

4th Floor, Navprabhat Chambers, Ranade Road, Dadar (W), Mumbai-400 028.

Appearance:

Shri Rajiv Dinkar Waglay, Advocate for the Appellants

Mrs. A. S. Parab, AC and Shri N.N. Prabhudesai, Supdt., Authorized Representatives for the Respondents

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85398-85405/2022

Date of Hearing: 12.01.2022

Date of Decision: 22.04.2022

Per: P. Anjani Kumar

Dr. Smita's Herbal Laboratories (hereinafter referred to as the appellants or M/s DSHL) are manufactures of Ayurvedic products falling under chapter 30 of Central Excise Tariff Act 1985. On the basis of an intelligence receive the affect that the appellants have cleared the products manufactured by them, having brand names " Cureon" , "Vasundhara", "Healmate" and "Herboral" which were exclusively marketed by M/s Pitambari Products Pvt. Ltd. (hereinafter referred to as the appellants or M/s PPPL); as the said brands were owned by M/s PPPL, the appellants have violated the provisions of Notification no. 8/2003 CE- dated 01.03.2003; statements of partners Dr. Smita Raste,

Shri Ravindra Prabhudesai, CEO and MD of M/s Pitambari Products, were recorded. On conclusion of the investigation a show cause notice, dated 02 July 2010 was issued to the appellants inter alia, demanding duty, of Rs. 1,08,93,144/- , covering the period 2005-06 to 2009-10, under proviso to Section 11 (A) of Central Excise Act, 1944 along with interest and penalty under Section 11 A(C); Dr. Smita Raste, Shri Shantanu Raste and M/s Pitambari Products Pvt. Ltd were asked to show cause as to why penalty should not imposed on them under Rule 26 of Central Excise Rules 2002. The show cause notice was confirmed by the impugned order dated 08.12.2010, vide which the commissioner

- i. Confirmed Duty of Rs.68,99,938/- on M/s Dr. Smita Herbal Laboratories along with interest under Section 11AB and imposed equal penalty under Section 11C of Central Excise Act, 1944.
- ii. Imposed Penalties of Rs.68,99,938/- and Rs.10,00,000/- respectively on Dr. Smita Raste and Shri Shantanu Sharad Raste, partners of the appellant.
- iii. Imposed Penalty of Rs. 20,00,000/- on M/s Pitambari Products

1.1. Another show cause notice dated 11.06.2011 was issued covering the period 1.04.2010 to 28.02.2011 was issued demanding duty of Rs. 6,13,433/- and imposition of penalties; the same was adjudicated, vide order in original dated 14.12.2016, vide which the demanded duty of Rs.1,92,005 was confirmed along with interest and equal penalty; amount paid by the noticee was appropriated; penalties of Rs.6,00,000/-,

Rs.1,00,000/- and Rs. 2,00,000/- respectively, were imposed on Dr. Smita Raste, Shri Shantanu Sharad Raste and M/s PPPL. On an appeal filed by the appellants commissioner appeals, vide order in appeal 87-90/Thane-I/2017, confirmed the order of the lower authority. Hence, the following appeals are filed:-

Appellant	Appeal No.
Dr. Smita Herbal Laboratories	E/392/2011, E/86417/2017
Dr. Smita Raste	E/393/2011, E/86414/2017
Shri Shantanu Raste	E/394/2011, E/86415/2017
Pitambari Products Pvt. Ltd.	E/395/2011, E/86416/2017

2. Learned Shri Rajeev Waglay, Advocate, appearing for the appellants submits that the only contention of the department is that three brands "Cureon" , "Vasundhara", "Healmate" were owned by M/s Pitambari Products Pvt. Ltd and hence the appellants i.e. Dr. Smita Herbal Laboratories cannot avail the exemption as per notification no.8/2003-CE dated 01.03.2003. He submits that as per the explanation A to the notification, the brand name/ trade name should not be used by other persons in relation to manufacture of specified goods and the ownership of the brand is not at all material. He submits that it is not the case of the department that the said brands are being used by M/s Pitambari Products in the manufacture of specified products; An FDA license is required for manufacture of ayurvedic medicines; it is not the case of the department that M/s Pitambari Products pvt ltd. are holding the said license for the impugned products; though M/s Pitambari had a license in respect of "Vasundhara" they have surrendered the same on 02.11.2006 and they never had any license in respect of other "Cureon" , "Healmate "; as

per the ER-1 returns filed by Pitambari Products for April 2008 to September 2008 and January 2009, they did manufacture of any of the above brands; Tax audit reports for the period ending 31.03.2011 show that M/s PPPL are engaged in sale of the goods of the brands "Cureon" , "Vasundhara", "Healmate". Learned Advocate further submits that M/s PPPL have assigned all the three brands to the appellant by virtue of 3 separate deeds of assignments dated 14.06.2005 and 28.11.2006; after such assignment M/s Pitambari products have not at all used the brand names in the manufacture of specified goods.

3. Learned Advocate vide his written submission dated 12.10.2021 submits that the bench, during the course of hearing, directed them to submit the proof, if any, that M/s Pitambari did not use the three brand names for manufacturing their goods during the period June 2005 to February 2011; the appellant tried their level best to get the details from Excise and Income Tax authorities but were not successful as the departments expressed their inability to trace the old records. However, he submitted the copies of the following documents which he relied upon during the course of hearing.

- i) Surrender of license for "Vasundhara" by M/s Pitambri Products on 02.11.2006*
- ii) ER-1 returns filed by M/s Pitambari for the period April- September 2008 and January 2009*
- iii)Annexure 8 of form 3CD for the period ending 31.03.2011*
- iv)Information obtained through RTI by the appellants from FDA*

4. Learned Advocate relies upon the case of *General Pharmaceuticals Pvt. Ltd. v/s CCE - 2007 (218) ELT 86 (Tri-Mum)* (P.75-77) (departments appeal dismissed 2015 (326) ELT 426 (SC) and *Bigen Industries Ltd. - 2006 (197) ELT 305 (S.C.)* submits that where the brand owner abandons the brand and

does not object to the use of the brands by others, the other person is free to use the brands; learned advocate further submits that invocation of extended period is not justified as the appellant was a SSI unit and had a *bona fide* belief that the exemption was available as the brand is assigned to them. He relies upon *Primella Sanitary Products - 2005 (184) ELT 125 (SC)*. He also submits that as the issue involves interpretation of the eligibility of notification and therefore penalty cannot be imposed as held in *Bata India Ltd. v/s CCE-2015 (321) ELT 194 (SC)*; he also submits that while calculating the demand learned commissioner has not extended cum-duty benefit.

5. Smt. A. S. Parab and Shri N.N. Prabhudesai, learned Authorized Representatives appearing for the Revenue, reiterate the findings of the OIO and OIA and submit that the exemption notifications define "brand name" or "trade name" – "brand name" or "trade name" that is to say a name or a mark, such as symbol, monogram, label, signature or invented word or writing (whether registered or not) 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 persons using such name or mark with or without any indication of the identity of that person. They rely upon the following cases:-

- i. *Commissioner of Central Excise Versus Grasim Industries Ltd. [2005(183) ELT123 (SC)]*
- ii. *Commissioner of Central Excise, Delhi Versus Ace Auto Comp. Ltd., [2011 (263) ELT3 (SC)]*
- iii. *Commissioner of Central Excise Trichy, Versus Rukmani Pakkwell Traders [2004 (165) E.L.T.481 (SC)]*
- iv. *Commissioner of Central Excise, Chandigarh-II Versus Bhalla Enterprises . [2004 (173) ELT225 (SC)]*
- v. *Commissioner of Central Excise, Thane-II Versus Amit Engg. Works [2008 (223) ELT166 (Bom.)]*

6. Learned Authorized Representatives submit that as per the terms and conditions of the deeds of assignment, they were limited for three years; assignments were in respect of particular Trade Marks; no use of the said Trade Mark shall be made by the assignees, which in any manner will be prejudicial to the ownership rights of the Assignors in respect of the said trade mark; the assignors were required to pay an amount per annum as consideration for getting the assignment of the Trade Mark; the assignors have right to terminate the agreements by giving one week's notice in advance to the assignees and the decision of the assignors in this respect shall be final; in case of use of the Trade Marks by assignee after termination or expiry of the agreement, they shall be liable to compensate Assignors. Further as per the assignment deeds, the assignee was liable to compensate the assignors till use of the Trade Mark continued, as a percentage of turnover made by using the trade mark; the following specific clause (at no.8 in both the deeds dated 28/11/2006) in the deeds shows that the Trade name was never transferred or passed on to the assignee it says *"This Assignment is not intended to convey, transfer or pass on the ownership, title or rights of the Assignors over and in respect of the said Trade-Name and the title and ownership of the said Trade Name, shall always be held and shall always be considered to be vested in the Assignors, even during the currency of this Agreement."* They further submit that the appellants have specifically accepted in both the assignments that the trade marks belong to the assignors. They rely upon *Zarafshan Chemicals Pvt. Ltd. v/s Commissioner [2000 (124) ELT 256 (Tribunal)]* and submits that assignment deed does not transfer

the right, title and interest ; they rely on *Commissioner of Central Excise, Bangalore Versus Vetcare Organics P.Ltd. [2015 (321) ELT 384 (S.C.)]* and submits that brand name assigned will not confer any right hence exemption is not available; user of the brand name does not become owner of such brand name even if permission is given by the actual owner for its use. They also rely upon *Vee Gee Faucets Pvt Ltd Versus CCE, Gurgaon[2010-TIOL-1572-CESTAT-DEL or 2010 (259) ELT273 (Tri.-Del.)]*, *Swarn Enterprises Vs Commissioner of Central Excise, Delhi-I [2012-TIOL-1432-CESTAT-DEL]* and *EU-Medicaments Versus Commissioner of Central Excise, Mumbai-V [2013-TIOL-149-CESTAT-MUM]*

7. Learned Authorized Representatives submit that thus, it is incorrect to say that M/s PPPL was not using the brand names. Even in the compromise deed, it is a condition that all the goods manufactured by DSHL with the said brand names affixed should be exclusively sold to M/s PPPL only; further, as alleged in the notice, during the relevant period, the website of M/s PPPL was showing that these were their brands; this fact has never been refuted Appellants. Additionally, the Appellants in the written submission stated that their name was substituted in the place of M/s PPPL in 2013, it means up to 2013, M/s PPPL was having the brand names in their name. Further as per the conditions in the deeds of assignment, and the fact of marketing of the said branded goods by M/s PPPL show that the brand names were used by PPPL; The affidavit dated 09.03.2011 filed by Shri Ajay A. Joshi director of M/s PPPL categorically indicates that the brands/trademarks belong to them. Shri D.V. Mahajani Director of M/s PPPL in his statement dated 27.07.2007 made it clear that

they were purchasing the entire production from the appellants and trademarks were owned and possessed by them; even the annexure 8 of Form 3 CD of income tax returns filed by M/s PPPL indicate that they were trading in the goods with above brand names. Learned AR relies on *Yash Krishni Food Services Ltd Vs. Commissioner of Central Excise, Mumbai [2015 (318) ELT 144 (Tri.-Mumbai)]* submits that even if the brand name owner was not a manufacturer or trader , the same will not have any bearing on the notification .

8. They further submit that there was a dispute between the appellants and M/s Pitambari Products Pvt. Ltd. and civil court order dated 24.10.2007 clearly states that "Suit is disposed as withdrawn"; there is no adjudication; a compromise decree cannot act as *res judicata* in view of the following case law.

- i. *Municipal Corporation of Delhi Vs Gurunam Kaur [1989 AIR 88]*
- ii. *Pulavarthi Venkata Subba Rao and Vs Valluri Jagannadha Rao [1967 AIR 591, 1964 SCR (2) 310]*
- iii. *Kumar Ganganand Singh And Ors. Vs Maharaja Sir Rameshwar Singh [102 Ind Cas 449]*
- iv. *Baldevdas Shivlal Vs Filimistan Distributors (India) P. Ltd [1970 AIR 406, 1970 SCR (1) 435]*
- v. *Krishna Processors Versus Union of India [2012 (280) ELT186 (Guj.)]*
- vi. *Booz Allen and Hamilton Inc. Vs. SBI Home Finance Ltd. and Ors. [Civil Appeal No.5440 of 2002] [2012(10)TMI 459- Supreme Court]*
- vii. *Commissioner of C.Ex., Chandigarh - II Versus Bhalla Enterprises [2004 (173) E.LT. 225 (S.C.)]*
- viii. *Double Cola Mfg. Co. (India) Pvt. Ltd, Versus Commissioner, of Central Excise, Nashik [2017 (349) E.LT. 776 (Tri. Mumbai)]*

9. Learned Authorized Representatives further submit that the appellants claim that the trade marks authority substituted their name in place of M/s Pitambari Products Pvt. Ltd. with effect from 27.09.2010; However, the brands were registered in the name of the appellants only on 07.03.2013 in response to

their applications dated 27.09.2010; in view of Apex Court's judgment in the case of *Megha Biscuits Industries Vs CCE UP - 2007 (210) ELT 161 (SC)*, the exemption under 8/2003 would be available only with effect from such registration that is 07.03.2013. They also rely upon *CCE Bangalore Vs. Meyer Healthcare Pvt. Ltd. - 2011 (267) ELT145 (SC)* and *Seal Jet India Pvt. Ltd Vs CCE Pune-I - 2014 (314) ELT 507 (Tri.-Mumbai)*. He distinguishes the cases relied upon by the appellants and submits that the case of General Pharmaceuticals (supra) is about trade names which did not belong to any person and therefore the facts are distinguishable; in the case of Primella Sanitary Products (supra) there was no dispute regarding the assignments and rights conferred thereof.

10. Learned Authorized Representatives further submit that the appellants cannot claimed *bona fide* belief; *bona fide* belief cannot be a blind belief; exemption notification needs to be strictly interpreted and the appellants have rendered themselves liable to penalty; they rely upon the following cases:-

- i. *Continental Drugs Company Pvt. Ltd. Vs Commissioner Service Tax Mumbai [2015 (39) STR 154 (T-Mum)]*
- ii. *Hanuman Sahakari Dudh Vyvasaik Krushi Purak Seva Sanstha Versus C.C.E., Pune-II [2014 (309) ELT273 (Tri.- Mumbai)]*
- iii. *Motiram Tolaram Versus Union of India [1999 (112) ELT749 (S.C.)]* and *Mysore Metal Industries Versus Collector of Customs Bombay, [1988 (36) ELT369 (S.C.)]*
- iv. *Commissioner of Cus. (import), Mumbai Versus Dilip Kumar & Company [2018 (361) ELT577 (S.C.)]*

11. Heard both sides and perused records of the case.

12. The brief issue involved in the case is whether the appellants are eligible to avail the exemption contend in notification no.8/2003, as amended from time to time on the products bearing the brand names " Cureon" , "Vasundhara", "Healmate", assign to them by M/s Pitambari Products Pvt. Ltd.

as per agreements; whether in the facts and circumstances of the case extended period can be invoked; whether penalties imposed for the appellants are justified and as to whether the appellants are eligible for cum-duty benefit. The appellants rely mainly on the submission that the brands have been assigned to them by M/s Pitambari Products Pvt. Ltd. under various written arguments; M/s Pitambari Products Pvt. Ltd. never manufactured the specific products during the impugned period; M/s. Pitambari Products Pvt. Ltd. did not have FDA license to manufacture the specified branded goods and it is evident that M/s. Pitambari Products Pvt. Ltd. had never objected to the manufacture of impugned goods by the appellants and therefore the bar contained in the notification is not applicable and therefore the exemption notification is squarely available to them.

13. We find that the learned commissioner, in the impugned order, after extracting the provisions of notification no.8/2003, finds that the explanation provided in the said notification reproduced in the above Para (A) & (B) clearly distinguish the brand owner and the person merely using such brand name belonging to others. Learned Commissioner further observes that it is clear that any assessee availing exemption under Notification No. 8/2003-CE dated 01.03.2003, even if they manufacture goods of the agencies mentioned at Sl. No. (i) to (v) (above), they are entitled for exemption from payment of Central Excise duty only up to the aggregate specified value of clearances; therefore, it is crystal clear that if any goods are manufactured by a manufacturer using the brand name or trade name of any other person other than the above mentioned at sl. No. i to v of Para 4 of the said notification are not entitled for the

said exemption, but are required to pay Central Excise duty at full rate on such clearance of goods. In the present case, the assessee, M/s DSHL are engaged in the manufacture of "Ayurvedic Products falling under Chapter 30 to the First schedule to the CETA, 1985 and are also licensed under FDA; Till May 2005, these goods were manufactured on loan licensee basis and from May 2005, they also inter alia manufactured similar products for M/s Pitambari Products Pvt. Ltd. (PPPL) viz. "Cureon Oil, Vasundhara Baby Massage Oil and Healmate cream", These were trademarks/Brand names belonging to PPPL which were assigned to DSHL under various "Deeds of Assignment", (DOA) entered between DSHL & PPPL, only for a period of three years for the manufacture and exclusive sale of the said products back to the trademarks owner; the trademark "Cureon" earlier belonged to one M/s Cardinal Products Pvt. Ltd and was initially assigned by them to DSHL in the year 2005. Later on the said assignor company amalgamated with M/s Vasundhara Products Pvt. Ltd which in turn amalgamated with M/s PPPL, who are the present owners; all these trademarks have been applied for registration with the Trade Mark authorities and pending registration (during the currency of the proceedings) .

14. We find that Shri. D.V. Mahajani, Director of M/s. Pitambari Products Pvt. Ltd. that they are engaged in manufacture and marketing of various consumer products; some of them are manufactured at the factories located in Kalwa, Rabale, Baroda, Salem, Anagaon; some products exclusively marketed by them were procured from different units including the appellants; three products "Cureon", "Vasundhara",

"Healmate" are manufactured by the appellants; the entire production is purchased and marketed by them; they have independently conducted research and develop the products and applied for their registration; registered trade mark are owned and possessed exclusively by them. We find that Shri Ravindra Prabhudesai, CEO of M/s. Pitambari Products Pvt. Ltd. stated that the brands are assigned to DSHL only for compliance of FDA norms. We find that earlier M/s Cordinal Products Pvt. Ltd. had assigned a trade mark of "Cureon Oil" to the appellants for period of 3 years that is up to 30.06.2008; thereafter M/s. Cordinal Products Pvt. Ltd. got amalgamated with M/s. Pitambari Products Pvt. Ltd; the trade marks "Vasundhara baby massage oil" and "heal mate cream" were assigned DSHL for a period of 3 years up to 27.11.2009. On going through the agreements, we find that the ownership in respect of the trade marks/Brand names were always with M/s. PPPL, even during the currency of assignment; at no point of time the title of the ownership of the brands or trademarks were passed on to the appellants; the agreement was not intended to convey, transfer or passed on the ownership, title or rights of the assigners.

15. We find that the impugned notification explains the scope of "Trade name" "Brand Name" as follows:- gives an explanation as follows:-

Explanation:- For the purpose of this notification-

(A) "brand name" or "trade name" means a brand name or a mark, such as symbol, monogram, label, signature of 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 same person using such a name or mark with or without any indications 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".

16. The facts of the case conclusively establish that the appellants i.e. M/s DSHL were never owners of the title of the Brand Name/trademark and they have always manufactured the impugned goods of impugned brands for and on behalf of M/s. PPPL. The said goods were exclusively sold to M/s PPPL and the connection of the impugned products, in the course of trade, was always with M/s PPPL and not with M/s DSHL.

17. We find that Apex Court has been consistently holding that the exemption is only to such parties who do not associate their products with some other person (*Grasim Industries - 2005 (183) ELT 123 (SC)*) and that in order to avail the benefit of the exemption notification, the assessee must established that his products is not associated with some other person (*ACE Auto Company Ltd. 2011 (263) ELT 3 (SC)*). Supreme Court in the case of *Vetcare Organic Pvt. Ltd. - 2015 (321) ELT 384 (SC)* held, quoting thereon judgment in the case of *Stangen Imino Diagnostic - 2015 (318) ELT 585 (SC)* (in Para 5) that

5.

6.....Explanation VIII defines that brand name or trade name. As per this explanation, it would be 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 the trade between such specified goods and some person using such name or mark with or without any indication of the identity of the person. Therefore. what follows from the reading of this Explanation is that if the brand name issued in relation to the specified goods indicating a connection in the course of the trade between such specified goods and some other person using the name, a would fit the description and the matter would be covered by the mischief of Explanation VIII. It is nowhere stated that brand

name which is the name of other person and is being used by the SSI which is claiming benefit has to be in relation to some goods. Therefore, that could not have been reason to drop the proceedings and the CEGAT was not justified in dismissing the appeal of the Department on this ground.

7....The aforesaid principle of law is no more res integra and has been decided by this Court authoritatively in couple of judgments. In Commissioner of Central Excise, Chandigarh-I v. Mahaan Dairies- (2004) 11 SCC 798 this Court while interpreting the similar nature of definition of brand name or trade name, held as under:

"We have today delivered a judgment in CCE v. Rukmani Pakkwell Traders wherein we have held in respect of another notification containing identical words that it makes no difference whether the goods on which the trade name or mark is used are the same in respect of which the trade mark is registered. Even if the goods are different, so long as the trade name or brand name of some other company is used the benefit of the notification would not be available. Further, in our view, once a trade name or brand name is used then mere use of additional words would not enable the party to claim the benefit of the notification. "

8.....It is clear from the above that the Court was of the view that even if the goods are different, so long as brand name or trade name of some other Company is used, the benefit of Notification would not be available. To the same effect is the judgment of this Court in the case of Commissioner of Central Excise, Chandigarh-II v. Bhalla Enterprises (2005 (8) SCC 308) wherein aforesaid judgment in Mahaan Dairies was followed by reiterating the same principle."

18. In the instant case we find that the appellants could not establish that the brand has no connection in manufacture or trade of impugned goods with some other person that is M/s PPPL. The ownership of the brand or trademark is not taken away, even when the appellants got an assignment in their favour from the brand owner. We find that even with respect to the assignments there was dispute between the two parties which ended in a civil suit which was settled by withdrawal on mutual consent. We find that Tribunal in the case of Vee Gee Faucets Pvt. Ltd.(supra) held that merely because there is some arrangement between the parties giving consent for use of such

brand name or trade name cannot result in nullifying the mandatory condition imposed in the notification. The notification does not provide any scope for any benefit on assignment. Thus, even on assignment of right to manufacture goods, with others Brand name or trade name by the owners thereof, such manufacturer would not be eligible for exemption under the notification. This view is upheld by the Hon'ble Supreme Court in *Vee Gee Faucets Pvt. Ltd. Vs. Commissioner [2015 (316) ELT A72 (SC)]*. Further we find that the learned authorized representative submits that the website of M/s PPPL continued to show the brands to be belonging to M/s PPPL. Only in 2013 the brands were registered the name of the appellants. Therefore, we find that till 2013 that is during the entire impugned period, the brands remained under the title of ownership of M/s PPPL. The appellants were merely manufacturing the goods using the brands belonging to M/s PPPL. The terms of the notification being very clear, there is no need for interpretation and the same need to be strictly construed. In view of the facts and circumstances and the case law discussed as above, we are of the considered opinion that the exemption is not available to the appellants.

19. The appellants have submitted that it was their *bona fide* belief that they are eligible for the benefit of the notification No. 8/2003 and as such extended period cannot be invoked. On the other hand the learned Authorized Representatives for the Department submit that the appellants were availing SSI benefit and have not been filing monthly or periodic returns. Therefore, the department had no wherewithal to find out the availment of benefit in violation of the conditions of the Notification and

consequential evasion of duty by the appellants. Going by the catena of Judgments cited by the Authorized Representative and the clear wording of the notification, we find that the appellants cannot take the plea of *bona fide* belief. Therefore, we find that extended period is rightly invoked in this case. We find that the impugned orders have imposed equal penalty on the company as well as the Director in addition to penalty of other director of the appellants and the Director of M/s PPPL. Going through the facts of the case and the role played by directors of the appellants, we find that the penalty is quite harsh and is not commensurate with the part played. Therefore, we are inclined to reduce the penalties imposed on the directors of the appellants. Coming to the penalty imposed on M/s PPPL, we find that the role played by them in the evasion of duty by the appellant is not clearly coming forth. M/s PPPL have assigned/allowed the appellants to used their brand names in the manufacture of specified goods and have purchased and marketed entire production of the appellant. It was for the appellants to pay appropriate Central Excise Duty and for the nonpayment of the same M/s PPPL cannot be faulted with. Therefore, in our considered opinion the penalty imposed on the director of M/s PPPL need to be set aside.

20. The appellants have also submitted that the adjudicating authority has not given the benefit of cum-duty benefit. We find that there is merit in the submission of the appellants. For the purpose of computation of duty the value at which the impugned goods are cleared needs to be taken as cum-duty value and the benefit thereon should be given to the appellants.

21. In view of the discussion as above we pass the following order :-

- i. Appeals Number E/392/2011 and E/86417/2017 are partly allowed by way of remand to the original authority; it is directed that the duty liability shall be arrived after allowing the cum-duty benefit; interest under Section 11AB of Central Excise Act, 1944 shall be on such recalculated duty; penalty under Section 11AC shall be equal to the duty confirmed after allowing cum-duty benefit.
- ii. E/393/2011 and Appeal no E/86414/2017 are partly allowed by reducing the penalty imposed on Dr. Smita Raste, under Rule 26 of Central Excise Rules 2002 to 5,00,000/- (Five Lac only) and 1,00,000/- (One Lac only) respectively.
- iii. E/394/2011 and Appeal no E/86415/2017 are partly allowed by reducing the penalty imposed on Shantanu Raste, under Rule 26 of Central Excise Rules 2002 to 1,00,000/- (One Lac only) and 10,000/- (Ten Thousand only) respectively.
- iv. Appeal Nos. E/395/2011 and E/86416/2017 are allowed.

(Pronounced in open court on 22.04.2022)

(S.K. Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)