CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
Single Member Bench

Excise Appeal No. 1503 of 2012

(Arising out of Order-in-Appeal No. BR(50) MV/2012 dated 27.08.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-I)

M/s. Ramani Hotels Ltd. **Appellant**
(Ramee Guest Line Hotels),
462, AB Nair Road, Juhu,
Mumbai 400 049.

Vs.

Commissioner of Central Excise, Mumbai-V **Respondent**
5th Floor, Utpad Shulk Bhavan,
Plot No. C-24, Block 'E',
Bandra-Kurla Complex, Bandra (E),
Mumbai 400 051.

Appearance:

Shri Vinod Kumar, Company Representative, for the Appellant
Shri P.K. Acharya, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 16.09.2022
Date of Decision: 16.09.2022

FINAL ORDER NO. A/85861/2022

This appeal is directed against Order-in-Appeal No. BR(50) MV/2012 dated 27.08.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-I. By the impugned order, the Commissioner (Appeals) upheld the Order-in-Original No. 12/172/ACADH/09 dated 30.06.2009 of the Assistant Commissioner of Central Excise, Mumbai-V, holding as follows:-

"ORDER

I. The goods viz. cakes, pastries and other prepared foods, manufactured and cleared by M/s. RHL should be classified under Chapter subheading Nos. 19059010 (erstwhile CHS 1905.20) of Central Excise Tariff Act, 1985, attracting Central Excise duty at the prevalent rate, at the relevant time.

II. M/s. Ramani Hotels Ltd. is not entitled for the benefit of SSI exemption under relevant notifications during the period *from April 2008 to December 2008 in respect of excisable goods manufactured and cleared by them.*

III. I confirm the demand of Central Excise duty of Rs. 16,977/- (Rupees Sixteen Thousand Nine Hundred and Seventy Seven only) Duty + Rs. 340.00 + Rs. 170.00 (Rupees Three Hundred and Forty and Rupees One Hundred and Seventy only- Edu Cess & Higher Education Cess Respectively)

IV. I order to recover the interest, at appropriate rate from M/s Ramani Hotels Ltd under the provisions of Section 11AB of Central excise Act, 1944.

V. I Impose a penalty of Rs. 2000/- (Rupees Two Thousand only) under Rule 25 of the Central Excise rules, 2002 on M/s. Ramani Hotels Ltd."

2.1 Appellants are engaged in manufacturing cakes and pastries falling under chapter sub-heading 1905.20 of the Central Excise Tariff Act, 1985. Intelligence was gathered to the effect that the appellants were manufacturing cakes and pastries by using the brand name "Ramee Guestline Hotel" on the packing material for packing cakes which belonged to another company. The appellants have restaurant where food is served to the customers staying in the hotel and that the kitchen is located on the ground floor of the hotel. On the carton boxes used for packing the cakes they used the name and logo of Ramee Guestline Hotels. It was alleged that the appellants have short paid the central excise duty leviable on the cakes and pastries by mis-utilizing the exemption provided under Notification No. 8/2001-CE dated 01.03.2003. Accordingly a show cause notice was issued to the appellant asking them to show cause as to why:-

"i. the goods, viz, Cakes, Pastries, manufactured at their Hotel situated at the above address in Mumbai and cleared by them, should not be classified under Chapter sub-heading no 19059010 (erstwhile CSH 1905 20). of Central Excise Tariff Act, 1985, attracting Central Excise Duty, at the prevalent rate, at the relevant time;

ii. the benefit of SSI Notification should not be denied to them during the concerned period, for the excisable goods *manufactured by them, using the Brand & Logo belonging to "RAMEE GUEST LINE", as detailed in Annexure-A to Show Cause Notice;*

iii. the Central Excise Basic Duty of Rs.16,977/- alongwith Education Cess amounting to Rs.340/- and higher education cess of Rs.170/- on the goods valued at Rs. 2,12,216/-(two lakhs twelve thousand two hundred and sixteen only), manufactured and cleared during the period from April 2008 to Dec 2008, without payment of appropriate Central Excise Duty. as detailed in Annexure - A to the SCN, should not be demanded and recovered from them under the provisions of Section 11A(1) of the Central Excise Act, 1944;

iv. the interest, at the appropriate rate, on the total amount of Central Excise Duty determined to be payable, should not be demanded and recovered from them for the relevant period under the provisions of Section 11AB of the Central Excise Act, 1944;

v. penalty should not be imposed upon the said Noticee under Rule 25 of the Central Excise Rules, 2002."

2.2 This show cause notice has been adjudicated by the Assistant Commissioner as per the order-in-original referred in para 1 above. Appeal filed by the appellant against the order-in-original has been dismissed by the Commissioner (Appeals) by the impugned order. Hence this appeal.

3.1 I have heard Shri Vinod Kumar, Company Representative, for the appellant and Shri P.K. Acharya, Superintendent, Authorised Representative for the Revenue.

3.2 Arguing for the appellant, the company representative submits that:-

- A show cause notice for the earlier period was issued to the appellant. The said show cause notice has been decided in their favour. In the said order, the Commissioner (Appeals) has specifically held that the appellants hold the brand name/trade name to which they were clearing the cakes and pastries manufactured by them.

- No new facts have been pointed out in the show cause notice now or in the adjudication order or appellate order. Since the earlier order has decided in their favour, this appeal should be allowed setting aside the earlier order.
- He also submitted various Government registration wherein the brand name "Ramee Guest Line Hotel" embedded with Ramani Hotels Ltd. is shown –
  - PAN of Ramani Hotels Ltd.
  - GST registration.
  - Service tax registration of ST-2.
  - Consent of Maharashtra Pollution Control Board.
  - Luxury Tax registration.
  - Certificate of Importer-Export-Export Code.
  - Incorporation Certificate.
  - Four Star Hotel Certificate.

3.3 Arguing for the Revenue, learned AR submits that:-

- The issue is in respect of misuse of exemption provided under Notification No. 8/2003-CE dated 01.03.2003. As the goods cleared by the appellant bear the brand name of another company, the exemption under this notification was not available to the appellant.
- He would rely upon the decisions in the case of:-
  - Connaught Plaza Restaurants [2003 (154) ELT 187 (Tri.-Del.)]
  - Sai Aditya Hotel & Supermarket [2005 (186) ELT 188 (T)]
  - Model Soap Company [1993 (68) ELT 420 (T)]
  - Kohinoor Elastics Pvt. Ltd. [2005 (188) ELT 3 (SC)]
  - Capital Controls (I) Pvt. Ltd. [2008 (232) ELT 357 (Tri.-Mumbai)]
  - Prince Valves Industry [2006 (196) ELT 141 (SC)].
- He also produced copy of three certificates of registration of trademarks dated 19.07.2005, 31.01.2006 and 14.08.2008. On the basis of these, he argued that this brand name is registered in the name of Ramee Hotels Pvt. Ltd. and not in the name of the appellant.

- Accordingly he submits that the appeal should be dismissed.

4.1 I have considered the impugned order along with the submissions made in appeal and during the course of argument.

4.2 Para 1 of the show cause notice reads as follows:-

"WHEREAS, ***it appears that M/s. Ramani Hotels Ltd. (Ramee Guest Line Hotels), having PAN No. AAACR5513J, and operating under the name & Style of "Ramee Guest Line Hotels" situated at 462 AB Nair Road, Juhu Mumbai 400 049 (herein after for sake of brevity referred to as "M/s. RGLH"), during the period April 2008 to Dec, 2008, have manufactured the Branded Excisable goods, viz. Cakes & Pastries, etc., classifiable under CSH No. 19059010 (Erstwhile C.S.H 1905.20) of Central Excise Tariff Act, 1985, with the Brand Name & Logo belonging to "RAMEE GUESTLINE HOTEL (hereinafter referred to as the 'said goods')****, totally valued at Rs.2,12,216/-(Rupees two lakhs twelve thousand two hundred sixteen only), and cleared the same without payment of Central Excise Duty, totally amounting to Rs. 17,487/-(Rupees seventeen thousand four hundred eighty seven only) leviable thereon as detailed in Annexure-A' to this Notice, and have thereby contravened the provisions of Section 6 of the Central Excise Act, 1944 read with Rule 9 of Central Excise Rules 2002, Section 4 of Central Excise Act, 1944 read with Rule 6, Rule 4 read with Rule 8, Rule 11 and Rule 12 of the Central Excise Rules, 2002, in as much as:"*

Annexure A to the show cause notice reads as follows:-

"On the basis of intelligence, received that ***M/s. Ramani Hotels Ltd. (Ramee Guest Line Hotels), having PAN No. AAACRS5133, and operating under the name & Style of "Ramee Guest Line Hotels situated at 462, AB Nair Road, Juhu, Mumbai-400 049 (herein after for sake of brevity referred to an M/s RGLH"), were engaged in the manufacture and sale of excisable goods viz, cakes, pastries, classifiable under CSH- No 19059010 (erstwhile no 1905.20), of the Central Excise Tariff Act, 1985, (hereinafter for sake of brevity referred to as the said goods"), and also using printed carton boxes as its***

packing material bearing Brand Name, belonging to another company "RAMEE GUESTLINE HOTEL"*; have evaded Central Excise duty, on the manufacture & Sale of the said excisable goods, letter was issued to them on 14 9.2004, under F.No. V(PI)12-2/Enq/AND/04, to submit details of the bakery items viz Cakes/Pastries/ Biscuits/Chocolates etc., manufactured and cleared by them during the preceding five years, along with the relevant Balance Sheets. Based on the evidences collected, a Show-cause-cum-demand-notice no. V/Adj (Ch.19) 158-118/A-Prev./2005 dated 04.08.2005 for the period from Apr 2000 to Mar'05 demanding C.Excise duty amounting to Rs. 34,519/-was issued to them followed by subsequent periodical Show Cause Notices.*

2. As the said noticee continued to remain unregistered and effected clandestine production and clearance of the said goods viz. cakes and pastries falling under Chapter 19 of the Central Excise Tariff Act, 1985, they were requested to furnish clearance figures for further period from Jan 08 onwards. They have stated vide their letter dated 28.01.09 that there was no production of cakes and pastries from Dec 07 to March 08 due to renovation work at the premises. Ms. Ramani Hotels Ltd, and have ultimately furnished relevant clearance figures of Cakes and pastries vide their letter dtd 28.01.09 amounting to Rs 2,12,216 /- for the relevant production period Apr 08 to Dec.08.

3. ***Since there is no change in the products manufactured and cleared and their manufacturing and clearance procedures, the department propose to rely on the earlier investigations conducted and records obtained including statements of various officials recorded, which were relied upon in the earlier proceedings; in the present proceeding too. Besides, the department also relies on the worksheet of production and clearance furnished by the noticee, under their letter dated ibid 10.10.2006."***

4.3 From the above, it is quite evident that this show cause notice is based on investigation made for earlier show cause notice for the period April 2000 to March 2005 issued to the appellant. Further, para 3 of the annexure specifically states that there is no change in products manufactured and cleared and their manufacturing and clearing procedures. The department relies on the earlier investigation conducted and records obtained during the earlier proceedings. This clearly shows that the present show cause notice which has been issued is just in continuation of the earlier show cause notice without any new facts being brought on record. The show cause notice of 2005 was finally concluded by order-in-appeal dated 21.07.2009 and in paras 8 to 15 the Commissioner (Appeals) has specifically concluded as follows:-

"08. In this case the destine Hotels belongs to the app and not other person as the appellant engaged in the business of hotel providing boarding, lodging and conference facilities. They have branches at Tirupati, Range, and Juhu Mumbai and the three its pot together are called "Ramee O Holy" "Ramen Heel" is the group name of their own hotels and it the brand name of the any other manufacturer. ***The SSI exemption as stated above restricts the use of the brand name of any other person or manufacturer who is not eligible for exemption. In this case the brand name & logo "Ramee Guestline Hotels on packing material used for packing of cake by the appellant and the cake were not sold in the market but fully weed the restaurant to cater to the requirement of customers Therefore it cannot be said to the mischief of brand name theory in as much as the said brand belongs to their group "Ramee Guestline Hotels"*** *. Therefore, the cake manufactured and sold in restaurant to their customers is not covered the sale of branded goods, hence not liable to duty upto exemption limit of Rs. 1 crore.*

09. Further, the cake manufactured by them in their restaurant is not traded further in the market, but actually consumed by their customers. As per CHEC's Circular No. 71/71/94-CE dated 27.10.1994, if the goods are not further traded in the course of trade, the benefit of SSI Notification cannot be denied. The appellant are not putting any trade name or house mark on the cake being sold. It is only on the packing paper board, the name of the group is written such as "Ramee Guestline Hotels" which is nothing but the name of their group *hotels. Merely selling the products across the counter will not disqualify the SSI exemption to the appellant.*

10. I find that the gist of the present cases is covered by Hon'ble Tribunal's following two judgements:-

i) CCE V/s Best Foods-173 ELT 478- Wherein it is held that Trade name and Brand name should be specific to goods and goods should be recognized in trade with brand name-SSI exemption not to be denied.

ii) Susangat Engg Works V/s. CCE, Rajkot- 2004(170) ELT 59(Tri Mumbai)- Word and Phrases - Term " Belonging to another person" in Notification No. 1/93CE must mean, whatever property belongs to another person is not available to any one else and exclusively belongs to that person. Brand name of another persona- burden of proof - Appellants when contesting that the burden name used by them does not belong to any one burden is on the department to establish ownership of brand name.

14. The brand name used by the appellant, in fact is their own brand as they (Ramani Hotels Ltd.) bas branches at Banglore, Tirupati and Juhu at Mumbai and all the three units put together are called "Ramee Guestline Hotels" which is their group name and not the brand/trade name of any other person and that they do not get any fees in terms of royalty, marketing licence or any other remuneration and to this effect they filed an affidavit dated 25.5.2007, signed by Assistant Finance Controller of the firm also and copy of the same submitted to the department.

12. Further, it is seen from the copies of balance sheets for the financial year 2001-02, 2002-03 and 2003-04 submitted by the appellant at the time of personal hearing that they have consolidated balance sheet in the name of M/s.Ramani Hotels Ltd. The documents/schedules attached with the copy of the said balance sheet incorporated the name "Ramani Hotels Ltd." as well as "Ramee Guestline Hotels" situated at Tirupati, Juhu Attibele, Banglore which proves that "Ramee Guestline Hotels" is the name of the their group. From the balance sheet it appears *that M/s. Ramee Investment was formed only in May 2002, wherein the investment company was formed to finance the ongoing projects and to buy the share holding of Mahindra & Mahindra & Accor group and accordingly Ramee Investment purchased balance of 50% of Allianz Distributors Services Ltd. The Department is totally relying upon this schedule 'M' of the balance sheet to say that the brand name belongs to investment company, whereas M/s Ramee Investment is the major share holder of their hotel and they are in the business of investment and Ramee Investment is their sister concern and therefore it cannot be said that the brand name "Ramee" belongs to any other person, but belongs to their group company.*

13. In view of the above, the use of brand name "Ramee Guestline Hotels" by the appellant is not contrary to the provision of exemption under SSI Notification No. 8/2001 as amended and appellant are entitled for exemption as stipulated under the said Notification. "Ramee Guestline Hotels" is their group name which consists of three units of Juhu (Mumbai), Banglore and Tirupati. It is not a brand name of any other person or a manufacturer and therefore the cake manufactured and sold in restaurant to their customers is not covered under the sale of branded goods and hence not liable to any duty upto the limit of Rs. 100 lakhs.

14. Under the above circumstances, as stated by then Commissioner (Appeals) vide Order-in-Appeal No.CPA/(672)64/MV/2007 dated 30.03.2007, now the question is whether the clearances made by all the group company exceeded the exemption limit as stipulated in the Notification under reference and the products cleared by the appellant are liable for Central Excise duty.

15. It is fact that no other unit except M/s Ramani Hotels Ltd. (Ramee Guestline Hotels) Juhu, Mumbai have an in-house facility of preparing cakes and pastries and the appellant had manufactured and cleared the same during the period April 2002 to March 2005 totaling to Rs.2,59,416/- only. Even during the period under dispute their clearances of captively manufactured *cakes were not 1 lakh per year which was well within the SSI exemption limit of Rs. 100 lakhs."*

4.4 Since the present show cause notice is entirely based on the same facts and investigation and also to the same effect. Distinguishing the earlier order, the impugned order in para 5 records as follows:-

"05. It is revealed from the records of this case that the present appellant have entered into an arrangement with "Ramee Guestline" chain of hotels, wherein they have been allowed to use the Brand name and logo of Ramee on the packing material used for packing of cakes and pastries. Nothing is brought on record by the appellant to prove that Ramee Guestline chains of Hotels are the owners of M/s Ramani Hotels Ltd or vice versa. The appellant have simply placed reliance on the earlier Order in Appeal No. SB(46 to 48) 46 to 48/MV/2009 dated 21.07.2009 of Commissioner (Appeals) which has held that the brand name belongs to the appellant. Perusal of the said Order in Appeal reveals that appellant has not disclosed full facts during subject Order in Appeal, hence new facts have emerged."

4.5 However, this finding recorded is contrary to the facts as stated in the show cause notice and the annexure to it. Hence para 5 distinguishing the case from the earlier order of the Commissioner (Appeals) cannot be sustained.

4.6 Notification No. 8/2003-CE dated 01.03.2003 provides as follows:-

"3. For the purposes of determining the aggregate value of clearances for home consumption, the following clearances shall not be taken into account, namely: (a) clearances, which are exempt from the whole of the excise duty leviable thereon (other than an exemption based on quantity or value of clearances) under any other notification or on which no excise duty is payable for any other reason, (b) clearances bearing the brand name or trade name of another person, which are ineligible for the grant of this exemption in terms of paragraph 4;

……

"brand name" or "trade name" means a brand name or a 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;"

4.7 The show cause notice itself makes an averment that the appellants operate under the name and style of Ramee Guestline Hotel and have cleared the goods with the brand name and logo belonging to Ramee Guestline Hotel. If that is the case, then the appellants were clearing the goods under the brand name and logo held by them.

4.8 In view of the above, they cannot be hit by clause 3(b) of Notification No.8/2003.

5.1 Accordingly in view of the above discussion, I do not find any merits in the impugned order. Setting aside the same, I allow the appeal.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

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