

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

Excise Appeal No. 1770 of 2012

(Arising out of Order-in-Appeal No. US/532 to 534/M-II/2012 dated 31.08.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-II)

M/s. Saniya Bakers

Appellant

21-A, Azmi Compound,
Usmania Khairani Road,
Sakinaka, Mumbai 400 072.

Vs.

Commissioner of Central Excise, Mumbai-II

Respondent

9th Floor, Piramal Chambers, Jijibhoy Lane,
Lalbaug, Parel, Mumbai 400 012.

WITH

Excise Appeal No. 1771 of 2012

(Arising out of Order-in-Appeal No. US/532 to 534/M-II/2012 dated 31.08.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-II)

Sabina Javed Alam Ansari

Appellant

Partner of Saniya Bakers
21-A, Azmi Compound,
Usmania Khairani Road,
Sakinaka, Mumbai 400 072.

Vs.

Commissioner of Central Excise, Mumbai-II

Respondent

9th Floor, Piramal Chambers, Jijibhoy Lane,
Lalbaug, Parel, Mumbai 400 012.

WITH

Excise Appeal No. 1772 of 2012

(Arising out of Order-in-Appeal No. US/532 to 534/M-II/2012 dated 31.08.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-II)

Aman Ansari

Appellant

Partner of Saniya Bakers
21-A, Azmi Compound,
Usmania Khairani Road,
Sakinaka, Mumbai 400 072.

Vs.

Commissioner of Central Excise, Mumbai-II

Respondent

9th Floor, Piramal Chambers, Jijibhoy Lane,
Lalbaug, Parel, Mumbai 400 012.

WITH

Excise Appeal No. 86585 of 2015

(Arising out of Order-in-Appeal No. CD/306 to 308/M-II/15 dated 12.02.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai-II)

M/s. Saniya Bakers

21-A, Azmi Compound,
Usmania Khairani Road,
Sakinaka, Mumbai 400 072.

Appellant

Vs.

Commissioner of Central Excise, Mumbai-II**Respondent**

9th Floor, Piramal Chambers, Jijibhoy Lane,
Lalbaug, Parel, Mumbai 400 012.

AND

Excise Appeal No. 86840 of 2015

(Arising out of Order-in-Appeal No. 385 to 387/M-II/2015 dated 04.05.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai-II)

M/s. Saniya Bakers

21-A, Azmi Compound,
Usmania Khairani Road,
Sakinaka, Mumbai 400 072.

Appellant

Vs.

Commissioner of Central Excise, Mumbai-II**Respondent**

9th Floor, Piramal Chambers, Jijibhoy Lane,
Lalbaug, Parel, Mumbai 400 012.

Appearance:

Ms. Lalita Phadke, Advocate, for the Appellant
Shri P.K. Acharya, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 23.02.2023
Date of Decision: 23.02.2023

FINAL ORDER NO. A/85329-85333/2023

PER: SANJIV SRIVASTAVA

These appeals are directed against Orders-in-Appeal No. US/532 to 534/M-II/2012 dated 31.08.2012, No. CD/306 to 308/M-II/15 dated 12.02.2015 and No. 385 to 387/M-II/2015 dated 04.05.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai-II. By the impugned orders, Commissioner (Appeals) has upheld the Orders-in-Original No. ADJ/JSC/26/11-

12 dated 09.11.2011, No. 14/RD/ADDL/M-II/2013-14 dated 28.06.2013 and No. RC/Adj./116/Powai/Saniya/13 dated 04.02.2014 holding as follows:-

Order-in-Original No. ADJ/JSC/26/11-12 dated 09.11.2011

"ORDER

1. I hereby confirm the duty demand amounting to Rs.858517/- (Rs. Eight lakhs fifty eight thousand five hundred seventeen only) under Section 11A(2) of Central Excise Act, 1944, and order the same to be paid forthwith by M/s. Saniya Bakers.

2. I order that the applicable interest on the demand confirmed, under the provisions of Section 11 AB of the Central Excise Act, 1944, be charged and recovered from M/s. Saniya Bakers

3. I impose a penalty of Rs.858517/-/- Rs. Eight lakhs fifty eight thousand five hundred seventeen only) on Saniya Bakers Mumbai-72, under Section 11AC of Central Excise Act, 1944. However, in terms of proviso to Section 11AC, the assessee having paid the duty & interest liable thereon, they have the option to pay penalty to the extent of 25% of the penalty so imposed provided the same is paid within thirty days from the date of communication of the order.

4. I hereby impose a penalty of Rs 150000/- (Rs. One lakh fifty thousand only) on Shri Aman Ansari and Rs150000/- (Rs. One lakh fifty thousand only) on Smt. Sabina Javed Alam Ansari, both partners of M/s. Saniya Bakers under Rule 26 of Central Excise Rules, 2002.

Order-in-Original No. 14/RD/ADDL/M-II/2013-14 dated 28.06.2013

"ORDER

19. I confirm demand of Central Excise duty amounting to Rs. 43,26,067/4 Rs. Fortythree lakh twentysix thousand sixty seven only) under the provisions of Section 11A (1) (now Section 11 A(2)) of the Central Excise Act, 1944,

20. I appropriate the amount of Rs. 8,65,212/-(Rs. Eight lakh sixtyfive thousand two hundred twelve only) deposited by M/s Saniya Bakers towards their Duty liability.

21. I order recovery of interest at appropriate rate on the amount of duty determined at Sr. No. 19 above under Section 11AB (now Section 11 AA) of the Central Excise Act, 1944.

22. I impose penalty of Rs. 43,26,067/-(Rs. Fortythree lakh twentysix thousand sixty seven only on M/s Saniya Bakers under Section 11AC of CEA 1944 and Rules 25of CER 2002.

23. I also impose penalty of Rs.6,00,000/-(Rs. Six lakh only) on Shri Aman Ansari and Rs. 6,00,000/-(Rs. Six lakh only) on Smt. Sabina Javed Alam Ansari under Rule 26 of CER 2002."

Order-in-Original No. RC/Adj./116/Powai/Saniya/13 dated 04.02.2014

"ORDER

i) I hereby confirm the duty demand amounting to Rs.2071920/- (Rs. Twenty lakhs seventy one thousand nine hundred and twenty only) under provisions of Section 11A(1) of Central Excise Act, 1944, and order the same to be paid forthwith by M/s. Saniya Bakers.

ii) I order that the applicable interest under the provisions of Section 11AB/11AA of the Central Excise Act, 1944 be charged and recovered from M/s. Saniya Bakers.

iii) I impose a penalty of Rs 2071920/-(Rs. Twenty lakhs seventy one thousand nine hundred and twenty only) on M/s. Saniya Bakers Mumbai-72, under Rule 25 of Central Excise Rules, 2002.

iv) I hereby impose a penalty of Rs 250000/- (Rs. Two lakhs fifty thousand only) on Shri Aman Ansari and Rs 250000/- (Rs Two lakhs fifty thousand only) on Smt. Sabina Javed Alam Ansari, both partners of M/s Saniya Bakers under Rule 26 of Central Excise Rules, 2002."

2.1 Appellant is manufacturer and clearing excisable goods, viz. biscuits and cookies falling under Chapter Heading 19059020 of the First Schedule to the Central Excise Tariff Act and under trade mark of 'Kwality' along with logo. They are availing the benefit of exemption under Notification No. 8/2003-CE dated 01.03.2003 as amended, from 2003 onwards.

2.2 Shri Aman Ansari and Smt. Sabina Javed Alam Ansari are the partners of M/s. Saniya Bakers who are engaged in the manufacture of 'Kwality' Brand/Trade Mark Cookies. This trade mark belongs to Smt. Khurshid Bano Shariff Ahmed Ansari who had licensed M/s. Saniya Bakers to use the said trade mark 'Kwality' in connection with the goods manufactured by M/s. Saniya Bakers under licensed user agreement. M/s. Saniya Bakers were fixing labels on packages of goods which show maximum retail price (MRP) and sell through the distributors at the selling price which is less than MRP. Under, the Licensed User Agreement, the Licensor had allowed permission to the user to use the 'Kwality' trade mark, but the ownership of the said trade mark continue to vest with the Licensor. The noticee was using the said trade mark belonging to other person, and thereby the SSI exemption was not admissible to them in respect of excisable goods viz. biscuits and cookies manufactured and cleared by the said Noticee with the trade mark 'Kwality'.

2.3 Revenue after undertaking investigation has concluded that the appellant has contravened the provisions of the said Notification as amended, as the brand name or trade name which has been used by them is not belonging to them. Accordingly show cause notices were issued to them from time to time as detailed below:-

Sr. No	SCN No	Date	Period	Amount (Rs)
1	V/Adj /Powai/R-05/SAN/DR-39/AC/M-II/09	17.03.2010	04/2009 to 11/2009	245510
2	V/Adj/ Powai/R-05/Saniya/DC/DR-36/10	09.09.2010	12/2009 to 03/2010	135790
3	V/Adj/ Powai/R-05/Saniya/DC/DR-4A/10	17.01.2010	04/2010 to 09/2010	229575
4	V/Adj/ Powai/R-05/Saniya/AC /DR-19/11	10.08.2011	10/2010 to 03/2011	247642

2.4 The above show cause notices were adjudicated by the orders-in-original referred in para 1 above and the appeals filed by the appellant against the said orders have been rejected by the Commissioner (Appeals). Hence these appeals.

3.1 We have heard Ms. Lalita Phadke, Advocate for the appellants and Shri P.K. Acharya, Superintendent, Authorised Representative for the Revenue.

3.2 Arguing for the appellants, learned counsel submits that –

- The issue involved in the present appeals is denial of small scale exemption under Notification No.8/2003-CE dated 01.03.2003 as amended, for the period from September 2003 to August 2013 on the ground that the goods manufactured by the appellant under the brand name of 'Kwality' which does not belong to them could not be entitled for the exemption under the said notification.
- The above order has been passed ignoring the fact of permanent assignment of brand name 'Kwality' in favour of the appellant from 2003 onwards.
- Taking note of the above, Commissioner (Appeals) has himself for the period from September 2003 onwards allowed the appeal in favour of the appellant.
- The issue is squarely covered in their favour by the said order of the Commissioner (Appeals) and the Tribunal judgment in the case of Zarafshan Chemicals Pvt. Ltd. [200 (124) ELT 256].
- Accordingly appeals may be allowed.

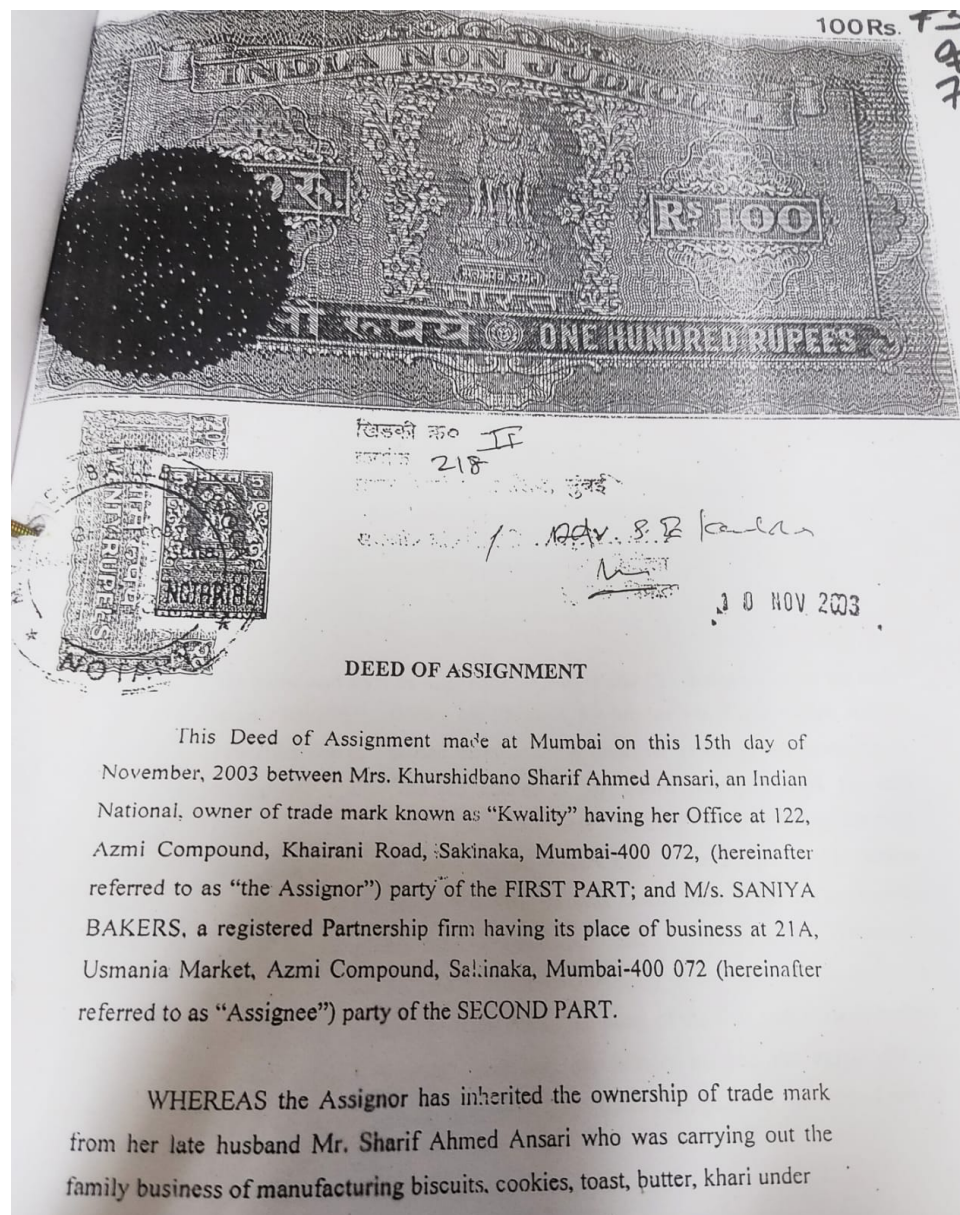
3.3 Learned AR arguing for the Revenue, while reiterating the findings recorded in the impugned order, submits that:-

- The assignment deed was purportedly executed on 25.07.2003. However, the appellants failed to submit the same till 05.11.2010. Thus, the appellants failed to submit the same for seven years. Also the said deed is not registered or even notarized.

- The date of demise of the trade name holder Shri Shariff Ahmed Ansari is not submitted by the appellants. Therefore it cannot be verified whether Smt. Khurshidbano Sharif Ahmed Ansari was legally authorized to execute the said assignment deed or otherwise.
- As seen from the website of the Registrar of Trade Marks, the registration of the said trade name has been challenged by Kwaliti Frozen Foods for infringement. The outcome of the said challenge and therefore ownership of the trade name is not known.

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

4.2 Admittedly, there is a deed of assignment dated 15.11.2003 which reads as follows:-



the name and style as M/s. Kwaliti Bakers and Confectioners under the trade mark "Kwaliti". During his life time, his brother Mr. Sagir Ahmed Ansari branched out and started manufacturing cakes under the family brand name "Kwaliti". After the sad demise of Mr. Sharif Ahmed Ansari, the said Proprietary firm holding the brand name "Kwaliti" is inherited by his wife Mrs. Khurshidbano Sharif Ahmed Ansari. One of the Partner of M/s. Saniya Bakers who is the assignee is Mrs. Shabina Javed Alam Ansari is daughter-in-law of brand owner Mrs. Khurshidbano Sharif Ahmed Ansari. Therefore, when party of the Second part approached party of the first part for acquiring the right, title, interest in trade mark, the party of the first part initially agreed to give it as a licensed user and accordingly entered the agreement on 25.8.2003 as a licensed agreement and allowed the party of the second part to use the trade mark.

Khurshid. Bano

Shabina

WHEREAS after entering into the said agreement, the party of the Second part approached the party of the first part with a request to get the trade mark permanently assigned to them. After having mutual negotiations, the party of the first part keeping in view that one of the Partner of party of the Second part is a member of the family has agreed to execute this deed of assignment of trade mark in favour of M/s. Saniya Bakers party of the Second part which shall be an affirmation of the global assignment deed and shall have the universal territory.

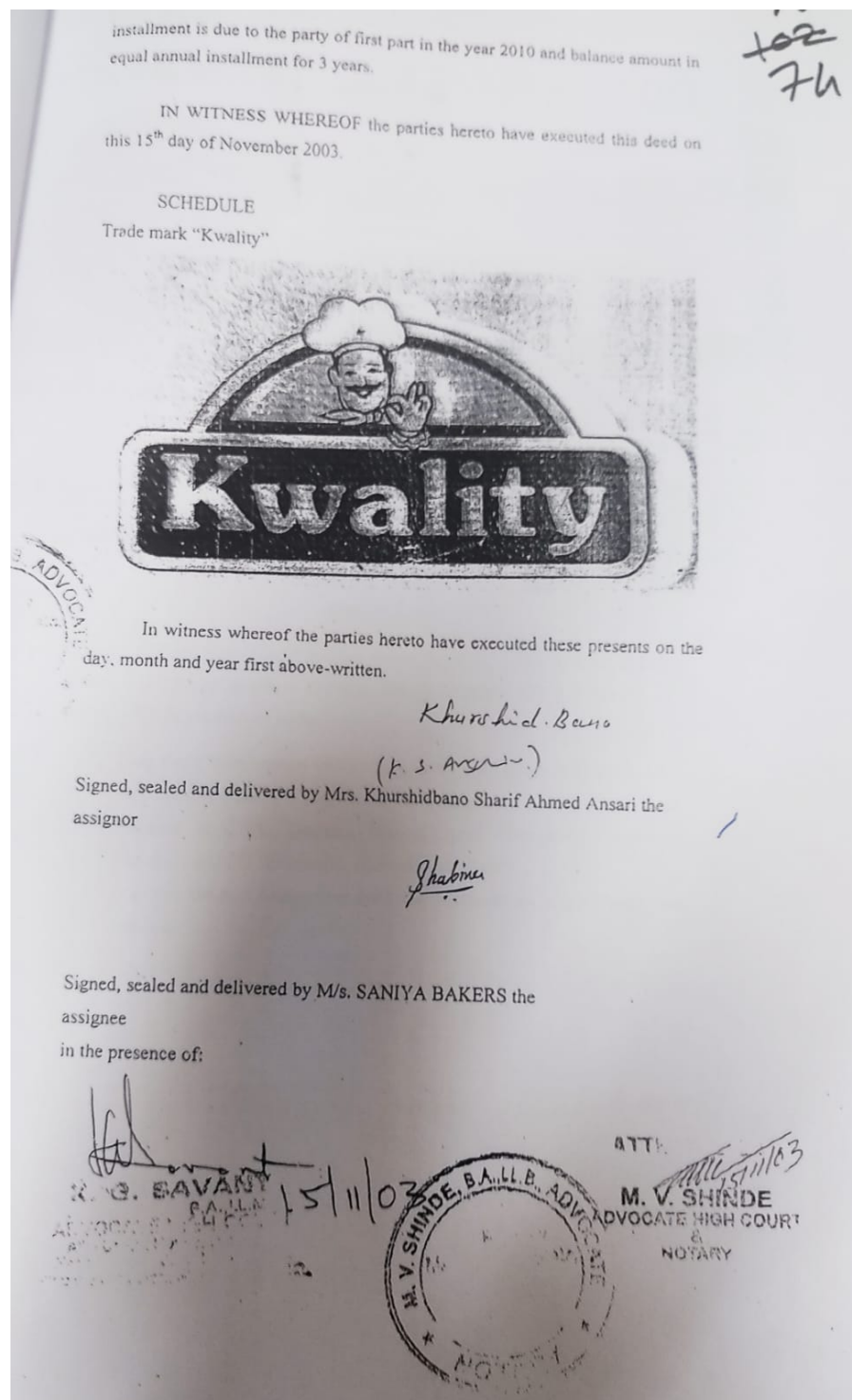
WHEREAS, the assignor hereby agrees that the present deed of assignment in respect of the trade mark "Kwaliti" is a permanent assignment deed with respect to the products more specifically described in Annexure 'A' to this Deed of Assignment which includes Biscuits, cookies, etc. and the said assignment shall be deemed to have taken effect from the date of earlier licensed agreement which is executed on 25th August 2003.

WHEREAS, the assignor and assignee hereby agree that present deed of assignment is exclusive and permanent whereby the party of the Second part will have all the rights, title and interest in and unto the trade mark with respect to specified products i.e. biscuits and cookies.

WHEREAS, the expression "the assignor" and "the assignee" shall include their successor-in interest and assigns as applicable.

NOW THIS DEED WITNESSETH that in consideration of Rs. 1,50,000/- which is payable to assignor, the assignor hereby agrees to transfer all rights, title and interest in and to the trade mark together with goodwill of the business in which the said trademark has been used for specified products referred in schedule hereunder and the goodwill appurtenant to, associated with and symbolized by the trade mark and all the rights which the assignor may have been acquired including the application for registration of trade mark by assignor or on behalf of the assignor and/or predecessors of assignor and all rights of use and other benefits and advantages in any manner accruing to the assignor including the reputation without any limitation, rights derived by reason of use or heritance and ownership of trademark which have or deemed to have been vested in or which have or which are deemed to have ensured to the benefit of assignor.

WHEREAS the amount of consideration which has been agreed to be paid by the party of second part to the party of first part. The party of first part has agreed to receive the said amount in installment and has agreed that the first



4.3 Taking note of the above deed, Commissioner (Appeals) in his order dated 20.04.2016 has held as follows:-

"5. The same issue for an earlier period was decided in the Order-in-Appeal No.CD/306 to 308/M-II/15 dt. 12.02.2015 by the present Appellate Authority. The issue & facts in this case is similar to that of earlier proceedings.

6. In the last two appeal proceedings, on the same facts and grounds, decision was taken against the appellant. However, during the personal! hearing, they inter alia produced a copy of the Hon'ble CESTAT's judgment in the case of Zarafshan Chemicals Pvt. Ltd.,Vs. Commissioner of Central) Excise,

Chandigarh (2000(124)ELT 256(Trib.) in support of their claim and requested that since their matter is similar to the facts and circumstances of the above case they sought relief based on the above Tribunal's decision. The relevant portion of the CESTAT's judgment is reproduced below:

ZARAFSHAN CHEMICALS PVT. LTD. Versus COMM R OF C. EX, CHANDIGARH (2000 (124) E.LT. 256 (Tribunal)

"Liquid gold - Dyes, colours, paints - Liquid gold having lost its metallic content in any identifiable form because of its chemical composition classifiable under sub-heading 3207.90 of the Central Excise Tariff Act, 1985. The process of manufacture of liquid gold has been dealt with in - detail in the Allahabad High Court judgment in Rattan Lal Garg case and it has been explained that liquid gold was not gold since after its manufacture it has become a compound of gold and not an alloy of gold. Chapter 71 which includes precious metals and articles thereof would cover goods which have metallic content. Liquid gold having lost its metallic content in any identifiable form because of its chemical constitution would be more appropriately classifiable under Chapter 32 covering dyes, colours, paints, etc., forming part of Section VI of the Central Excise Tariff Act consisting products of chemical or allied industries. [paras 12, 13]

SSI exemption - Brand name Evidence, documentary evidence Assignment deed transferring brand name to the assessee not to be brushed aside unless the department disproves the claim and establishes that the assignment deed though dated 3-4-1993 was in fact executed after the date of seizure Assessee claim to ownership of brand name "Golden Oriole" having been established on the basis of assignment deed, benefit of Notification 1/93-C.E. and consequential benefit subject to other conditions of Notification 1/93-C.E. admissible. [paras 18, 20]

Interpretation of Statutes- An interpretation given to an expression used in another statute or rules made thereunder does not have binding effect on the authorities adjudicating a

matter under a different statute. There is merit in the submissions made on behalf of the appellants that the Allahabad High Court judgment relied on by them would be applicable to the facts of the present case and the question raised herein even where the definition per se may be in pari materia with a definition given in another statute, the interpretation given in the context of one statute can! have only persuasive value in interpreting the definition in another statute: for the obvious reason that each definition has to be seen and interpreted in the context of the legislation in which it occurs and each definition has to be read as part of the main legislation where it occurs and not in relation to another piece of legislation. [para 11]

16. The appellants have argued that as per the deed of assignment the right, title and interest whether with the goodwill of their brand name had been transferred by M/s. National Gold Industries to the appellants on 3- 4-1993. The Commissioner (Appeals) could not have dismissed the said documentary evidence just because the Managing Director could not produce the same at the time of making his statement. The onus to prove that the said deed of assignment was ante dated was on the Department. The said documentary evidence could not be dismissed merely on the basis of conjectures or on the suspicion that since one of the partners of M/s. National Gold Industries was closely related to the appellants' Managing Director the possibility of the deed of assignment being created was a cover up measure.

18. We have considered the submissions and have perused the records. We find that the Commissioner (Appeals) has rejected the appellant's claim to the ownership of the brand name "Golden Oriole" merely on the ground that the Managing Director of the appellant firm could not produce a copy of the agreement on the date of seizure. The Commissioner (Appeals) had taken the view that if the said deed was in existence on 3-4-1993, nothing prevented the appellants from producing it before the visiting Officers. His further observation was that since the partners of both the firms were close relations, the possibility of the said document having been created as an afterthought could

not be dismissed. We find that the observations made in the impugned order are based merely on suspicion and speculation and not on the basis of any evidence, it is well settled that where documentary evidence is produced, it is impermissible to dismiss its evidentiary value on the basis of oral statement to be contrary. The appellant's submission is that the Commissioner (Appeals) has rejected the deed of assignment without any basis or evidence. We find force in this argument. We feel that it was for the Department to disprove the claim and to establish that the deed of assignment, though dated 3-4-1993 was in fact executed after the date of seizure. Without establishing this, the assignment deed cannot be brushed aside. In the above set of facts, the impugned order cannot sustain and has to be set aside. We therefore hold that appellants' claim to be owners of the brand name "Golden Oriole" on the date of visit of the officers to the appellant's factory on 10-8-1994 is established on the basis of the assignment deed and accordingly, they were entitled to the benefit of Notification No. 1/93."

7. In pursuance of the request, I have analysed the Order of the Hon'ble Tribunal. Since this judgement pertains to the year 2000, reference was made to Chandigarh Commissionerate to inquire whether the said judgement was accepted-by-the department or any appeal has been filed against the said judgement. The Chandigarh Commissionerate intimated that this matter may be pertaining to Jammu Commissionerate on the ground that during the restructuring, this unit might have fallen under the jurisdiction of Jammu Commissionerate. Accordingly, reference was made vide this office letter dt.22.01.2016 to Jammu Commissionerate, Chandigarh-1/II Commissionerate and Ludhiana Commissionerate. Jammu Commissionerate vide their letter dt. 11.03.2016 intimated that the case pertains to Central Excise Commissionerate, Agra. Reference to Agra Commissionerate vide this office letter of even no. dt. 14th March, 2016 was made who vide their letter dt. 18.03.2016 intimated that the before reorganization, Agra division was a part of Kanpur Commissionerate, so it is possible that the said case file may be available there. This office made a reference to Kanpur Commissionerate vide! letter of even no. dated 31

March, 2016 and Kanpur Commissionerate vide letter dt.06.04.2016 intimated that the appeal pertaining to M/s.Zarafashan Chemicals Pvt. Ltd., has been accepted by the department on 18.02.2000.

Since, the above decision was accepted by the department and the facts and circumstances of the case are similar to this case, there is a justification for honouring the judgement of the Hon'ble Tribunal.

8. The appellant has also submitted a copy of the judgement of Hon'ble Apex Court in the case of UOI Vs Kamalakshi Finance Corporation Ltd 1991 (55) ELT 433 wherein it was observed that:

UNION OF INDIA Versus KAMLAKSHI FINANCE CORPORATION LTD. 1991 (55) E.LT. 433 (S.C.)

Strictures passed by Bombay High Court against two Assistant Collectors (for flouting of Collector Appeals' order on classification based on a Tribunal judgment against which department had gone in appeal to Supreme Court) upheld by Supreme Court - Department directed to pay utmost regard to judicial discipline and give effect to orders of higher appellate authorities which are binding on them.

"order of higher appellate authorities should be unreservedly followed by subordinate authorities unless operation of the same has been stayed by competent court. Since, a higher forum of authority has already decided the issue, the matter gets settled over there, unless the same is set aside by the higher court."

They also inter alia, relied upon the following case law in support of their claim.:

Commissioner of Central Excise, Goa Vs. Primella Sanitary Products(2005(184)B.LT:125(5.0) wherein it was held that SSI Exemption-Brand/Trade mark - Assignment of trade mark "Comfit Always" for a consideration of Rs.100/- whether d bonafide assignment Tribunal had held that so long as

assignment stands, assessee is entitled to benefit of Notification Nos 175/86-CE. and 1/93-C.E Tribunal - Tribunal's Order upheld.

9. Even though the facts and circumstances are similar right from first Adjudication Order, the department in the last so many years should have carried out a detailed investigation as to whether the Assignment Deed was properly executed, whether the witnesses were properly signed, whether the notarization was done properly. They should have approached the Trade Mark Authorities to know whether the said Assignment Deed assigned by these appellants were truly in existence, if so, whether the Assignment Deed has been recognized by the Trade Mark Authority for legal and statutory purposes. However, the department chose not to do anything to prove or disapprove this matter as stated above.

10. Just because the Adjudication Order was issued and Appellate Order has also been issued in this matter, the said Adjudication Order or Appellate Order should not be a base for routine future Adjudications. In other words, nothing prevented the department from carrying out a full fledged investigation even after the issue of first Adjudication Order/Order-in-Appeal. Uptil now, four Adjudication Orders are issued but the department has never undertaken any investigation to prove or disprove even after first Appellate Order when there is no change in material facts over the period. Vide Order-in-Appeal No.CD/306 to 308/M-II/15 dt. 12.02.2015 at Para 10 it was stated by the undersigned that "However, the department should have verified the authenticity of the stamp paper when there was a big stamp scam in Maharashtra during the relevant time. Similarly, the department should have verified whether it has been property notarized through registered Notary and the witnesses statements Should have been recorded to know the authenticity of the Assignment Deed and affidavit Department should have taken up the matter even with the Trade Mark Registry to check the authenticity of the Assignment Deed. Department has failed to verify the genuineness of the Assignment Deed. Department should have investigated so as to dislodge their claim". Inspite of above observation which has a

direct bearing on the matters, no action has been undertaken by the department. It is clearly indicative of the department's inability to prove or disprove the appellant's claim with cogent evidence.

11. Since the above decision of the Hon'ble Tribunal is applicable to this case and also the Hon'ble Supreme Court decision in the case of Kamalakshi Order of the Hon'ble Tribunal has been accepted by the department way back in the year 2000. The said Order of the Hon'ble Tribunal has attained finality. Judicial discipline demands honouring the said judgement when there is no appeal against the said decision. Accordingly, Revenue has to maintain consistency and uniformity which is a basic philosophy of Tax Administration. Apart from consistency; uniformity, certainty is also an essential element of Tax Administration. The reversing of my earlier decision is also in line with the Board's Instructions issued under F.No. 1080/09/DLA/MISC/15/751, as part of Action Plan to Reduce Litigations in the Department.

In view of above, I choose to reverse my earlier two decisions based on the judgement of Hon'ble Tribunal in the case of ZARAFSHAN CHEMICALS PVT LTD(supra). Accordingly, it is to be correctly held that the said assignment deed was in existence and benefit of SSI exemption is to be extended to the appellant.

12. With regard to the penalty on the partners, the matter is well settled that the partnership firm and the partners are one and the same in the eyes of law and the partners cannot be separated from the partnership firm and vice versa. The following case laws produced during the personal hearing indicates that partners cannot be imposed penalty when the partnership firm was penalized.

(i) C.C.E. & C., SURAT-II Versus MOHAMMED MOHAMMED GHANI (2010 (259) E.L.T. 179 (Guj.)

Penalty on partner Separate penalty when same also imposed on partnership firm Tribunal upheld view that no separate penalties warranted on partners - Under law partnership, firm having no legal existence apart from its partners and merely a

compendious name to describe partners as distinguished from a company which stands as separate entity distinct from its shareholders - No question of penalizing partners separately for same contravention, unless intention to treat firm and partners or distinct entities borne out from statute itself as in case of Income Tax Act, 1961-Explanation to Section 140 of Customs Act, 1962 equates partnership firm with company in respect of commission of offences but no such corresponding provision in relation to imposition of penalty - No separate penalty warranted - Section 112 ibid. [paras 8, 9]

(ii) COMMISSIONER OF CENTRAL EXCISE Versus JAI PRAKASH MOTWANI (2010 (258) E.L.T. 204 (Guj.)

Penalty on partner Shortage of imported goods in EOU No specific role attributed to respondent/partner in firm Once the firm has already been penalised, separate penalty cannot be imposed upon the partner A partner is not a separate legal entity and cannot be equated with employees of a firm-Section 112(b) of Customs Act, 1962. (paras 5, 6]

(iii) COMMISSIONER OF CUSTOMS (E.P.J Versus JUPITER EXPORTS (2007 (213) E.L.T. 641 (Bom.)

Reference to High Court DEEC, Advance licence- Whether licence holder or transferee of licence obtained by manipulation and forging the documents for creating false records are entitled to import validly and legally and exempted from payment of duty Question relates to transferee, hence cannot be allowed to be raised in application under Section 130A of Customs Act, 1962 since the Commissioner has held that transferees of licences were entitled to import and no import duty could be recovered from them. [para 23]

Penalty - Imposition of When partnership firm is penalised, separate penalties cannot be imposed on partners Section 112 of Customs Act, 1962. [para 19]

EXIM Licence issued by DGFT whether valid or not Issue to be determined by DGFT and not by the Customs Authorities- Until

licenses are cancelled by licensing authority they are deemed to be valid. [para 22]

(iv) KAMDEEP MARKETING PVT. LTD. Versus COMMISSIONER OF C. EX., INDORE (2004 (165) ELT. 206 (Tri. - Del.)

Penalty under Rule 209A of erstwhile Central Excise Rules, 1944 - Imposable only if person concerned in physically dealing with excisable goods with knowledge or belief that goods are liable to confiscation under Act/Rules Presence of mens rea necessary- Neither of the essential ingredients of offence under Rule 209A ibid shown to exist - Essential requisite for imposition of penalty not satisfied - Penalties set aside - Rule 26 of Central Excise Rules, 2002. [para 3.2]

Words and Phrases Expression any other manner in Rule 209A of erstwhile Central Excise Rules, 1944 be understood in accordance with principle of ejusdem generis - Then, means any other mode of physically dealing with the goods. [para 3.2]

Penalty - Personal penalty on partners/proprietor in addition to the firm not imposable Rule 209A of erstwhile Central Excise Rules, 1944 – Rule 26 of Central Excise Rules, 2002. [para 3.

In view of the above judicial pronouncements, penalty imposed on the individual partners is not legally sustainable.

Respectfully following the above judicial pronouncements of Hon'ble CESTAT and Hon'ble Supreme Court, Instructions of CBEC and factual matrix, it is held that the appellant is entitled to the SSI Exemption Notification No. 8/2003 CE dt.1.3.2003, as amended.

13. Accordingly, the Orders-in-Original Nos i) MKM/Adj./68/Powai/Saniya/14-15 dt.19.3.2015 and (ii) MKM/Adj./80/Powai/Saniya/14-15 dt.28.5.2015 are set aside and the appeals filed by the appellants are allowed with consequential relief if any. under the law.”

4.4 It has been submitted that the above order of the Commissioner (Appeals) has been accepted by the Revenue and no further appeals have been filed.

4.5 We find merits in the above referred order of the Commissioner (Appeals) and take note of the same while deciding these appeals in favour of the appellants.

5.1 For reasons as stated above, the appeals are allowed and the impugned orders set aside.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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