

CASE NO.:
Appeal (civil) 8563 of 2001

PETITIONER:
Commissioner of Central Excise, Jaipur

RESPONDENT:
M/s Sri Ganganagar Bottling Co

DATE OF JUDGMENT: 31/08/2007

BENCH:
Dr. ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 8563 of 2001

Dr. ARIJIT PASAYAT, J.

1. Appellant calls in question legality of the judgment rendered by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (in short the 'Tribunal') holding that the respondent which is a small scale industrial unit (in short the 'SSI Unit') is eligible for exemption in terms of Notification No.1/93-CE dated 28.2.1993.

2. Background facts in a nutshell are as follows:

The respondents are manufacturers of aerated water. They are SSI units. They manufactured aerated water and cleared the same after affixing the brand name "Citra" during the period 1993-94. The brand name belonged to another person namely M/s Limca Flavours and Fragrances Ltd. (in short 'M/s Limca') which was eligible for exemption (as SSI unit) under Notification No.1/93-CE dated 28.2.1993. These facts are not in dispute. The Department by show cause notice (in short 'SCN') proposed to recover Central Excise Duty on the clearances of the aforesaid branded goods effected by the appellants in 1993-94, alleging that the exemption under the Notification was not available to such goods inasmuch as identical goods were not manufactured by the brand name owners. The party contested the notice. The dispute was adjudicated by the jurisdictional Assistant Commissioner, who accepted the assessee's defence and dropped the proceedings. The defence was that it was sufficient for purposes of para 4 of Notification No.1/93 that the brand name owner should also be eligible for exemption under the Notification and it was not necessary that they should actually manufacture identical goods and market the same affixed with the brand name. This contention was accepted by the Asst. Commissioner. The order of the Assistant Commissioner was reviewed and accordingly, an appeal was preferred by the Department to the Commissioner (Appeals). The lower appellate authority allowed the Department's appeal. Assessee preferred appeals before the Tribunal. As noted above, Tribunal allowed the appeals.

3. In support of the appeal, learned counsel for the appellant submitted that the real purpose of paragraph 4 of the Notification has been lost sight of.

4. In response, learned counsel for the respondent submitted that the Tribunal's view is unexceptionable and the appeal is sans merit.

5. We notice that in the instant case the brand name owner M/s Limca which is SSI unit had eligibility for availing the exemption under the Notification No.1/93-CE in respect of the products. Therefore, the question whether there is brand name of owner for exemption under the Notification did not arise.

6. In the instant case, the brand name owner was also a unit eligible for exemption under the Notification and was the manufacture of specified goods. That being so, the view taken by the Tribunal has to be accepted.

7. In the case of Namtech Systems Ltd. v. Commissioner of Central Excise, New Delhi (2000 (115) E.L.T./ 238 (Tribunal), the larger Bench of CEGAT has held that affixation of specified good with a brand name of ineligible Indian manufacturer will entail disqualification from exemption. It was further held that the benefit of small scale exemption under Notification No. 175/86-CE as amended, is not available to the specified goods if they are affixed with the brand name or trade name of a trader who is not a manufacturer. The judgment of the larger Bench in Namtech Systems Ltd.'s case (supra) has not been considered by the CEGAT in present case.

8. Notification No.175/86-C.E. dated 1.3.1986 reads as follows:

"EXEMPTION TO SMALL SCALE UNITS

In the exercise of the powers conferred by sub rule (1) of rule 8 of the Central Excise Rules, 1944 and in supersession of the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 85/85-Central Excises dated the 17th March, 1985 the Central Government hereby exempts the excisable goods of the description specified in annexure below and falling under the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the "specified goods'), and cleared for home consumption on or after the 1st day of April in any financial year, by a manufacturer from one or more factories.\027

xxx	xxx	xxx
ANNEXURE		
xxx	xxx	xxx

4. All other goods specified in the said Schedule other than the following, namely :-

(i) all goods falling under Chapters 9, 24, 31, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 71, 73 and 74;

(ii) all goods falling under heading Nos. 21.06, 25.04, 36.03, 40.11, 40.12, 40.13, 87.01, 87.02, 87.03, 81.04, 81.05, 87.06, 87.11, 91.01, 91.02 and 96.13;

(iii) all goods fallings under sub-heading Nos. 2101.10, 2101.20, 3304.00, 3305.90, 3307.00, 4005.00, 4006.10, 4008.21 and

9505.10 and

(iv) Sandalwood oil strips of plastic intended for weaving of fabric or sacks, polyurethane foam and articles of polyurethane loam broadcast television receiver sets refrigerating and air-conditioning appliances and machinery, and parts and accessories thereof.

9. The said Notification was amended by Notification No.223/87-C.E. dated 22.9.1987. The amendment reads as follows:

"In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby makes the following further amendments in the Notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 175/86- Central Excise, dated the 1st March, 1986, namely:

In the said notification, \027

(I) after paragraph, 6, the following paragraph shall be inserted, namely:-

"7. The exemption contained in this notification shall not apply to the specified goods with a brand name where a manufacturer affixes the specified goods with a brand name or trade name (registered or not) of another person who is not eligible for the grant of exemption under this notification:

Provided that nothing contained in this paragraph shall be applicable in respect of the specified goods cleared for home consumption before the 1st day of October, 1987".

(ii) after Explanation VII, the following Explanation shall be inserted, namely :-

"Explanation VIII - "Brand name" or "trade name" shall mean a brand name or 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."

10. Clause 7 of the Notification after amendment deals with exemption of specified goods and circumstances where the exemption is not available. The notification is 'goods specific'. What is required is that a person, who may be a manufacturer, must be eligible for exemption under the notification in respect of the specified goods. Any other interpretation would render the purpose for which the

notification has been issued redundant.

11. As noted above, the notification is 'goods specific'. The emphasis is on 'specified goods'.

12. The intention is crystal clear that at the relevant time, the unit should be eligible for exemption under the Notification in respect of the 'specified goods'.

13. The position was discussed at length by this Court in Commissioner of Central Excise, Chandigarh v. M/s Khanna Industries & Ors. (2006 (9) Supp. SCR 725).

14. Above being the position, the appeal is without merit and deserves dismissal which we direct. There will be no order as to costs.

JUDIS