Commnr. Central Excise, Delhi

v.

M/S. Ace Auto Comp. Ltd

(Supreme Court Of India)

HON'BLE MR. JUSTICE D.K. JAIN HON'BLE MR. JUSTICE H.L. DATTU

Commnr. Central Excise, Delhi v. M/S. Ace Auto Comp. Ltd

Civil Appeal No. 3051 Of 2003 | 16-12-2010

D.K. Jain, J.

1. The present civil appeal, filed under Section 35(L)(b) of the Central Excise Act, 1944 (for short "the Act") by the Revenue, is directed against order dated 10th October, 2002 passed by the Customs, Excise & Gold (Control) Appellate Tribunal (for short "the Tribunal") wherein it has been held that the respondent was entitled to the benefit of Notification Nos. 1/93-CE and 16/97-CE.

2. Shorn of unnecessary details, the facts material for the adjudication of the present appeal may be Stated as under:

The respondent (hereinafter referred to as "the assessee"), a small scale industrial unit (for short "SSI"), is engaged in the manufacture of clutch plates, clutch cover assemblies and pressure plates, falling under Sub-heading No. 8708.00 of the Schedule to the Central Excise Tariff Act, 1985. Admittedly, the assessee prefixed the symbol and logo "TATA" along with their own brand name "ACE" on cover assembly manufactured for TATA 310 vehicle. The assessee filed declaration Nos. 545/96 w.e.f. 4th November 1996; 104/97 w.e.f. 25th March, 1997; 105/97 and 106/97 w.e.f. 1st April 1997, claiming the benefit of SSI Notification Nos. 1/93 and 16/97.

3. A raid was conducted at the premises of the assessee, which resulted in issuance of a show cause notice dated 13th May, 1998 to the assessee asking them to explain as to why duty amounting to Rs. 1,46,151/-; and penalty under Rules 9(2), 173Q and 226 of the Central Excise Rules, 1944 (for short "the Rules") together with penalty under Section 11 AC of the Act may not be levied on them, for clearing branded goods of another person.

4. The Additional Commissioner of Central Excise (for short "the Adjudicating Authority"),vide Order-in-Original No. 06 dated 3rd June, 1999, while confirming the duty and penalty as contained in the show cause notice, observed that:

"Any person who buys the product, it is the TATA brand name which will strike the eyes of the buyer first as it is a well known and established brand name rather than the other logo ACE. As such going by the Tribunal decision cited by the party the case has to be decided against them.....

14. The other point raised by the party is that since they do not sell the product to TATA's, the owner of the brand name TATA, there is no connection between the branded product and the brand name owner. I fail to see the logic in this contention. The explanation IX to notification No. 1/93 dated 28.2.1993 merely means that by looking at a particular brand name or trade name an association between the brand name owner and the product should get established. In fact this is the very purpose of using a brand name. In the instant case any person buying the product will naturally assume the product to have the quality, specification, etc. associated with products of TATA group. It is not necessary to actually sell the product to TATA companies to establish any connection between the product and the brand name owner.

15. Thus once it is held that the cover assembly was branded with the TATA logo which did not belong to the party, and no evidence was produced that the TATA group of companies was themselves eligible for the excise exemption, benefit of Notifications 1/93 and 16/97 cannot be extended to these products manufactured by the party but carrying the TATA brand name or logo."

5. Being aggrieved, the assessee preferred an appeal before the Commissioner of Central Excise (Appeals). The Commissioner (Appeals),vide order dated 10th February, 2002, allowed the appeal, observing thus:

"5.4 Thus, we find that the appellate bodies are treating any slight variation in the brand names as different entities as in "Mahaan" and "Mahaan Tastemaker" or "AGI" and "AGI Switches". Here, the two conflicting brand names are "TATA" and "TATA ACE" and the sole reason for this usage of the name "TATA" is that it stands earmarked for a particular vehicle. They are also manufacturing auto parts for use in the other vehicles of different manufacturers for which they do not use this logo.

5.5. In the light of the above decisions of the Hon'ble CEGAT, I have no alternative but to follow the judicial precedent. I thus hold that 'TATA ACE' brand name is different from the popular brand name "TATA"."

6. Aggrieved, the revenue took the matter further in appeal to the Tribunal. As Stated above,vide the impugned order, the Tribunal has dismissed the appeal. The Tribunal has come to the conclusion that:

"According to the Notification, exemption shall not apply if the specified goods are bearing the brand name of another person. It is not the case of the Revenue that 'Tata Ace' is the brand name of another person. The very fact that there is no material to prove that the brand name, which the excisable goods manufactured by the respondents bear, belongs to another person, the mischief of Para 4 of the Notification No. 1/93 will not be attracted. .....

We also find substance in the finding of the Commissioner (Appeals) that the usage of the name 'Tata' in the brand name is with a view to indicate that the part is for a particular vehicle manufactured by Tata."

7. Hence, the present civil appeal.

8. Mr. B. Bhattacharya, learned Additional Solicitor General appearing on behalf of the Revenue, while assailing the impugned order, urged that in light of the decisions of this Court in Commissioner of Central Excise, Calcutta v. Emkay Investments (P) Ltd. & Anr., I (2005) SLT 235=(2005) 1 SCC 526, and Commissioner of Central Excise, Chandigarh-I v. Mahaan Dairies, VIII (2005) SLT 1030=(2004) 11 SCC 798, it is settled that whenever the assessee affixes the brand name of another person on its goods with the intention to indicate some connection between the goods and the said brand name, the assessee is barred from availing the benefit of the Notifications. It was asserted that in view of the fact that indubitably the brand name "TATA", which did not belong to the assessee but to another identified company, had been affixed by the assessee on their product, although in conjunction with the word "ACE" the Tribunal's conclusion that there was no material to prove that the brand name "TATA ACE" belonged to another person, is clearly a misconstruction of para 4 of the notifications in question and therefore, its decision deserves to be set aside.

9. Mr. S.K. Bagaria, learned Senior Counsel, appearing as Amicus Curiae, submitted that the Tribunal has rightly concluded that there was no evidence to prove that the brand name "TATA ACE" belonged to another person, and the said finding of fact deserves to be affirmed as it has not been specifically challenged by the Revenue. Learned Counsel argued that in the present case the pre-requisite for invoking paragraph 4 of Notification No. 1/93 is not satisfied in as much as the Revenue has not been able to establish that the brand name "TATA ACE" belongs to another person. In support of the submission that the burden to prove that the brand name belongs to another person is on the Revenue, learned Counsel placed reliance upon the decision of this Court in Commissioner of Trade Tax, U.P. & Anr. v. Kajaria Ceramics Ltd., V (2005) SLT 322=(2005) 11 SCC 149. Commending us to the

decision of this Court in Pappu Sweets and Biscuits & Anr. v. Commissioner of Trade Tax, U.P., Lucknow, VIII (1998) SLT 166=(1998) 7 SCC 228, learned Counsel argued that paragraph 4 of Notification No. 1/93 being an exclusionary Clause, the same has to be strictly construed. Learned Counsel contended that since both the Tribunal as also the Commissioner (Appeals) have concluded that the use of the word "TATA" was merely to denote that the product was meant for use in a particular vehicle, the affixation of "TATA" was merely descriptive of the assessee's product and not as if the goods had been marketed with another brand name. Relying on the decisions of this Court in Nirlex Spares (P) Ltd. v. Commissioner of Central Excise, (2008) 2 SCC 628; Commissioner of Central Excise, Jamshedpur v. Superex Industries, Bihar, (2005) 4 SCC 207 and Emkay Investments (P) Ltd. (supra), learned Counsel submitted that mere use of the word "TATA" should not disentitle the assessee from the benefit of the two Notifications. Learned Counsel further urged that the Revenue's argument that the use of the word "TATA" would create an impression in the minds of the consumer that the said product was manufactured by one of the Tata companies was misplaced in as much as no such test was envisaged under the Notifications. Moreover, the Revenue had not made any such allegation in the show cause notice, and in light of the decisions of this Court in Commissioner of Customs, Mumbai v. Toyo Engineering India Ltd., VI (2006) SLT 594=(2006) 7 SCC 592and Commissioner of Central Excise, Nagpur v. Ballarpur Industries Ltd., (2007) 8 SCC 89, it is trite that the foundation of the Revenue's case is laid in the show cause notice, and the same must be confined to the allegations contained therein.

10. Before adverting to the rival submissions, it would be useful to extract relevant portions of Notification No. 1/93-CE dated 28th February, 1993 as amended, which grants exemption from payment of Central Excise duty to small scale industrial units. It read as:

"4. The exemption contained in this notification shall not apply to the specified goods, bearing brand name or trade name (registered or not) of another person:

.....

.....

Explanation IX.- "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."

Notification No. 16/97- CE dated 1st April, 1997 contains the same definition of "brand name" as Notification No. 1/93-CE, and also provides that the exemption contained therein shall not be available to goods bearing the brand name of another person.

11. It is manifest from a bare reading of Clause 4 of the Notification, read with Explanation IX that it clearly debars an assessee from the benefit of exemption under the notification, if he uses another person's brand or trade name with the intention of indicating a connection between the assessee's goods and such other person. It is evident that the object of the exemption notification is to grant benefits only to those industries which otherwise do not have the advantage of brand or trade name. (See: Commissioner of Central Excise, Chandigarh-II v. Bhalla Enterprises, (2005) 8 SCC 308; Nirlex Spares (P) Ltd. (supra); Commissioner of Central Excise, Raipur v. Hira Cement, II (2006) SLT 250=(2006) 2 SCC 439.

12. In Kohinoor Elastics (P) Ltd. v. Commissioner of Central Excise, Indore, (2005) 7 SCC 528, while construing an identical Notification (No.1 of 1993-CE), dated 28th February 1993, this Court had observed that:

"Clause 4 of the notification is unambiguous and clear. It specifically States that the exemption contained in the notification shall not apply to specific goods which bear a brand name or trade name (registered or not) of another person. It is settled law that to claim exemption under a notification one must strictly comply with the terms of the notification. It is not permissible to imply words into the notification which the Legislature has purposely not used. The framers were aware that use of a brand/trade name is generally to show to a consumer a connection between the goods and a person. The framers were aware that goods may be manufactured on order for captive consumption by that customer and bear the brand/trade name of that customer. The framers were aware that such goods may not reach the market in the form in which they were supplied to the customer. The framers were aware that the customer may merely use such goods as an input for the goods manufactured by him. Yet Clause 4 provides in categoric terms that the exemption is lost if the goods bear the brand/trade name of another. Clause 4 does not State that the exemption is lost only in respect of such goods as reach the market. It does not carve out an exception for goods manufactured for captive consumption. The framers meant what they provided. The exemption was to be available only to goods which did not bear a brand/trade name of another. The reason for this is obvious. If use of brand/trade names were to be permitted on goods manufactured as per the orders of customers or which are to be captively consumed then manufacturers, who are otherwise not entitled to exemption, would get their goods or some inputs manufactured on job-work basis or through some small party, freely use their brand/trade name on the goods and avail of the exemption. It is to foreclose such a thing that Clause 4 provides, in unambiguous terms, that the exemption is lost if the "goods" bear a brand/trade name of another."

We are in respectful agreement with the reasoning in the afore-extracted paragraph.

13. In Commissioner of Central Excise, Trichy v. Grasim Industries Ltd., III (2005) SLT 673=(2005) 4 SCC 194, a Bench of three Judges of this Court, while construing Notification No. 5/98-CE, dated 2nd June 1998, which was similar to the one under consideration by us, had observed that:

"....Even the name of some other company, if it is used for the purposes of indicating a connection between the product and that company, would be sufficient. It is not necessary that the name or the writing must always be a brand name or a trade name in the sense that it is normally understood. The exemption is only to such parties who do not associate their products with some other person. Of course this being a notification under the Excise Act, the connection must be of such a nature that it reflects on the aspect of manufacture and deal with quality of the products. No hard-and-fast rule can be laid down however it is possible that words which merely indicate the party who is marketing the product may not be sufficient. As we are not dealing with such a case we do not express any opinion on this aspect."

(Emphasis supplied by us)

14. Therefore, in order to avail of the benefit of the exemption notification, the assessee must establish that his product is not associated with some other person. To put it differently, if it is shown that the assessee has affixed the brand name of another person on his goods with the intention of indicating a connection between the assessee's goods and the goods of another person, using such name or mark, then the assessee would not be entitled to the benefit of exemption notification. We may hasten to clarify that if the assessee is able to satisfy the Adjudicating Authority that there was no such intention, or that the user of the brand name was entirely fortuitous, it would be entitled to the benefit of the exemption.

15. In the instant case, admittedly, the brand name "TATA" did not belong to the assessee. It is also evident that by using the said brand name, the assessee had not only intended to indicate a connection between the goods manufactured by them and a Tata Company; but also the quality of their product as that of a product of Tata Company, as they were supplying their goods to the said company. Thus, the bar created in Clause 4 read with Explanation IX of the Notification is clearly attracted in the present case, disentitling the assessee from the benefit of the exemption notifications under consideration. We are of the opinion that the decision of the Tribunal is clearly erroneous and deserves to be set aside.

16. Consequently, for the foregoing reasons, the appeal is allowed; the impugned order is set aside and the order passed by the Adjudicating Authority is restored.

17. Before parting with the case, we place on record our deep appreciation for the valuable assistance rendered by Mr. S.K. Bagaria, the learned Amicus Curiae.

18. There will be no order as to costs.

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