

SUPREME COURT OF INDIA

M/S. Vir Rubber Products P. Ltd

Vs.

Commnr. of Central Excise, Mumbai-III

C.A.No.2609 of 2004

(A.K.Sikri and Rohinton Fali Nariman JJ.)

27.03.2015

JUDGMENT

A. K. SIKRI, J.

The appellant herein was engaged in the manufacture of certain articles from vulcanized rubber as bushes for use in the motor vehicles. Indubitably, the appellant is a Small Scale Industrial unit (hereinafter referred to as 'SSI' for short). The appellant has its own brand name "VIR" and has been manufacturing these products under the said brand name and supplying the same to various customers. In addition, the appellant was also having job orders from some automobile companies like Hindustan Motors, Kinetic Honda, etc. Insofar as orders for manufacture of spare parts placed by these automobile companies are concerned, on the said goods, the appellant had been putting the identification mark such as "HM", "PAL", "KH", etc. The goods which were supplied to these automobile companies used to be cleared by the appellant on payment of excise duty. However, in respect of manufacture of its own goods under the brand name "VIR", the appellant claimed SSI benefit in terms of Notification No. 1/93 which provides for exemption from payment of excise duty on fulfillment of certain conditions. It is admitted case that the appellant fulfils all the conditions mentioned in the aforesaid notification except one, in respect of which the dispute has arisen. This condition under the notification stipulates that the aggregate value of clearances in the preceding financial year should be less than Rs.3 crores. There is a lis as to whether the appellant fulfils this condition or not.

While interpreting this notification, the Department included the value of goods supplied to the automobile companies under the brand name 'HM' "PAL", "KH",

etc. and on that basis, came to the conclusion that the total value of goods cleared by the assessee in the previous financial year was much more than Rs.3 crores. The contention of the appellant, on the other hand, was that since the appellant had been using the brand name of the automobile industries while carrying out their job work and even clearing those goods on payment of excise duty, the turnover in respect of these goods should not be included while arriving at the figure of Rs.3 crores. To put it otherwise, submission was that it is only in respect of "VIR" brand goods, which is the proprietary brand of the appellant, the value of clearances in the preceding year should be taken into consideration and if, that is done, the total value of clearances was much less than Rs. 3 cores. This contention of the appellant, however, has not been accepted by the authorities below including Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as 'CEGAT'). Rejecting the aforesaid contention of the assessee and accepting the plea of the Department, the CEGAT has gone by the definition of "brand name" or "trade name" contained in para 4 of the aforesaid Notification and reads as under: -

"4. The exemption contained in this notification shall not apply to the specified goods bearing a brand name or trade name, whether registered or not, of another person, except in the following cases: -

(a) where such specified goods, being in the nature of components or parts of any machinery or equipment or appliances, are cleared for use as original equipment in the manufacture of the said machinery or equipment or appliances by following the procedure laid down in Chapter X of the Central Excise Rules, 1944. Provided that manufacturers, whose aggregate value of clearances for home consumption of such specified goods for use as original equipment does not exceed rupees fifty lakhs in a financial year as calculated in the manner specified in the said Table, may submit a declaration regarding such use instead of following the procedure laid down in Chapter X of the said rules;

(b) where the specified goods bear a brand name or trade name of -

(i) the Khadi and Village Industries Commission; or

(ii) a State Khadi and Village Industry Board; or

(iii) the National Small Industries Corporation; or

(iv) a State Small Industries Development Corporation; or

(v) A State Small Industries Corporation.

5. This notification shall come into force on the 1st day of April, 1999.

Explanation.- For the purposes of this notification,- (A) "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;"

The aforesaid para of the Notification specifically mentions that the exemption contained in that Notification is not to apply to those goods bearing brand name or trade name whether registered or not of another person, except in certain cases which are mentioned therein. The brand name or trade name is defined to mean a brand name or trade name whether registered or not, that is to say, a name or a mark such as a symbol, monogram, label, signature or invented word, etc., 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.

From the aforesaid definition of brand name, it becomes apparent that on the goods manufactured by the appellant for the aforesaid automobile companies, the appellant had been using brand name or trade name on those goods. In such cases, in respect of those goods which are manufactured for the other person, obviously no exemption is to be given as the aforesaid Notification does not apply to those specified goods. To put it pithily, what would be the position if the appellant was doing job work only for other companies and using their brand name on the goods manufactured? Was it permissible to seek exemption of notification in such circumstances? This issue has been considered time and again by this court in number of judgments.

In a recent judgment dated 11.03.2015 pronounced by this very Bench in the case of 'Commissioner of Central Excise, Jamshedpur v. M/s. Tubes & Structural and Another' [Civil Appeal Nos. 7955-7956 of 2003], after taking note of two earlier judgments of this court, the issue was dealt with as under: -

"This issue, on the facts of the present case as noted above, is no more res integra and has been settled by few judgments of this Court. It is not necessary to refer to all those judgments. Our purpose would be served in mentioning the judgment titled Commissioner of Central Excise, Chennai-II v. Australian Foods India (P) Ltd. (2013) 287 E.L.T. 385 (SC). In the said case the Court took note of the original para 4 in Notification No. 1/93 dated 28.2.1993 where the words mentioned are "the exemption contained in this Notification shall not apply to the specified goods, bearing a brand name or trade name (registered or not) of another person."

This para 4 was amended vide Notification No. 59/94-CE dated 1.3.1994 and the word "affixes" was substituted by the word "bearing". The reason for this substitution is explained in para (iii) of para J of the changes 1994-95 dealt with "changes in the SSI scheme". This is so stated in para 10 of the said judgment which we reproduce below for the sake of clarification:

Part (iii) of Para J of the Budget Changes 1994-95 dealt with "Changes in the SSI schemes" explains the purpose of the amendment in the following words:

"(iii) Brand name provision has been amended so as to provide that SSI concession shall not apply to the goods bearing the brand name or trade name of another person. The effect of this amendment is that if an SSI unit manufactures the branded goods for another person irrespective of whether the brand name owner himself is SSI unit or not, such goods shall not be eligible for the concession. Another implication of this amendment is that the requirement of affixation or brand name by the SSI unit has been changed and now the only condition is that the goods cleared by SSI unit bearing a brand name of another person shall not be eligible for the concession irrespective of the fact whether the brand name was affixed by the SSI unit or that, the input material used by the SSI unit was already affixed with brand name."

It becomes clear from the reading of the aforesaid paras that amendment in para 4 in the manner mentioned above was brought to deny the benefit of Notification to those SSI units which have been making use of branded good for another person irrespective of whether the brand name owner himself is SSI unit or not. It was also made abundantly clear here that the requirement of affixation or brand name by the SSI unit was immaterial. That was the purpose for substituting the word "affixing" by the word "bearing". Going by the aforesaid consideration this Court

held in Australian Foods (India) (P) Ltd. case that after this amendment in para 4 it was not necessary that there has to be affixation of the name or mark on the goods.

Applying the ratio of this case to the facts of the present case, the irresistible conclusion is to hold that the impugned order of the CEGAT is untenable and not in accordance with law. We may mention that while giving its decision the CEGAT has gone by the unamended para 4 without taking into consideration the amended para and the implication thereof."

Once we come to the conclusion that in respect of those goods where brand name of other party is used on manufactured goods and that other party is not a SSI unit, exemption is not available, it would lead to inevitable result that the value of such goods cannot be added as well, while considering the value of the goods cleared by the assessee in the previous year.

We, however, find that the CEGAT has given two other reasons to deny the relief to the appellant. In its order it has observed that letters such as "HM" and "PAL", no doubt, were initials of the buyers of the goods and they constitute the brand name as well, however, what was indicated was only initials with the sole purpose to identify the goods for particular automobile company. After the supply of these goods, the said automobile companies were affixing their proper trade mark/ brand name thereupon. On this basis, it is mentioned that the Notification in question would not apply. This reasoning of the CEGAT is contrary to the law laid down by this court in 'Kohinoor Elastics (P) Ltd. v. Commissioner of Central Excise, Indore' [(2005) 7 SCC 528]. This very argument was repelled by the court in the following words:

"However, the words "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 trade between such specified goods and some person using such name or mark" cannot be read de hors clause 4. They have to be read in the context of clause 4. The word "used" indicates use by the manufacturer. It is the manufacturer, in this case the appellant, who is applying/affixing the brand/trade name on the goods. Thus, the words "for the purpose of indicating" refers to the purpose of the manufacturer (appellant). The "course of trade" is of that manufacturer and not the general course of trade. Even if a manufacturer only manufactures as per orders of customer and delivers only to that customer, the course of trade, for him is such manufacture and sale. In such cases it can hardly be argued that there was no trade. Such a manufacturer

stated that it was not argued that here was no trade. Such a manufacturer may, as per the order of his customer, affix the brand/trade name of the customer on the "goods" manufactured by him. This will be for the purpose of indicating a connection between the "goods" manufactured by him and his customer."

The other reason given by the CEGAT is that "HM" and "PAL" are not the brand names. Here again, it has fell into legal error. Similar contention was rejected by this Court in 'Commissioner of Central Excise, Trichy v. M/s. Grasim Industries Ltd.' [2005 (3) SCR 466] in the following words: -

"In our view, the Tribunal has completely misdirected itself. The term "brand name or trade name" is qualified by the words "that is to say". Thus, even though under normal circumstances a brand name or a trade name may have the meaning as suggested by the Tribunal, for the purposes of such a Notification the terms "brand name or trade name" get qualified by the words which follow. The words which follow are "a name or a mark". Thus even an ordinary name or an ordinary mark is sufficient. It is then elaborated that the "name or mark" such as a "symbol" or a "monogram" or a "label" or even a "signature of invented word" is a brand name or trade name. However, the contention is that they must be used in relation to the product and for the purposes of indicating a connection with the other person. This is further made clear by the words "any writing".

The upshoot of the aforesaid discussion would be to hold that value of the goods meant for "HM", "PAL", "KH", etc. could not have been included while considering as to whether the appellant is entitled to the benefit of the aforesaid Notification or not. Once that is excluded and the case is confined to the brand name 'VIR' which is the appellant's own brand name and in respect of which the appellant had claimed exemption, the value of goods cleared in the previous year was less than Rs.3 crores. Therefore, the appellant shall be entitled to the exemption under the said Notification.

This appeal is, accordingly, allowed, upsetting the order of CEGAT and the authorities below, with direction to give the appellant exemption of the aforesaid Notification for the year in question.