Katari Refractories Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jul-11-1997

Reported in : (1999)(110)ELT767Tri(Chennai)

Appellant : Katari Refractories

Respondent : Commissioner of C. Ex.

Judgement :

1. The present appeal is filed against the orders passed by the Commissioner and adjudicating authority, wherein he denied the benefit of Notification 1/93 on the ground that the appellant is using the brand name of M/s. Katari Ceramic Industries.

2. Shri Rama Mohana Rao, the learned Consultant for the appellant contended before us that M/s. Katari Refractories and M/s. Katari Ceramic Industries are two different. He pointed out that merely because the name Katari is used, the same is not sufficient to hold that they are using the name of M/s. Katari Ceramic Industries. It has been his contention that by coincidence, the names of the two units started with the name Katari and in this view of matter, the benefit of Notification 1/93 cannot be denied to the appellants. In this connection he drew our attention to the Board's letter F.No. B.40/12/94-TRU, dated 1-9-1994 and drew our attention to para 4 wherein it is mentioned as follows :- "From the above mentioned opinion of the Law Ministry, it is clear that if a brand name is not owned by any particular person, the use thereof will not, deprive a unit of the benefit of the small scale exemption scheme. This applies ' not only to locks but to all other

goods specified in Notification No. 1 /93-C.E." 3. Relying on the above said para, it was contended that if a brand name is not owned by any person, the use thereof will not deprive an user of the benefit of the small scale exemption scheme and this was issued in connection with locks and it was also mentioned that this principle will apply to all other goods specified in the Notification 1/93.

4. The learned JDR for the department Shri Saroop, on the other hand contended before us that Mrs. Subbalakshmi, Managing Partner of the appellant's firm has clearly admitted that they are using the brand name of M/s. Katari Ceramic Industries. He also drew our attention to the statement of Shri K.S. Ramesh, Managing Partner of M/s. Katari Ceramic Industries, that their brand name is used by the appellants.

He, therefore, stated that the benefit of the notification was correctly denied to the appellant. He also stated that the goods of the appellants falls within the mischief of the Explanation VIII at the relevant period, of the above said notification.

5. We have considered the submissions of both the sides. The contention of the appellants is that by mere concidence they are using the name Katari and it is not the brand name of M/s. Katari Ceramic Industries.

It was the contention of the appellants that M/s. Katari Ceramic Industries cannot be said to be the owner of the above brand name. We have examined this aspect which was canvassed before us. We find that Smt. K. Subbalakshmi, Managing Partner of the appellant had given a statement before the officers on 23-5-1995 stating that M/s. Katari Refractories was established in the Year, 1980 and M/s. Katari Ceramic Industries is a sister concern. She has also admitted that the brand name of M/s. Katari Ceramic Industries is "Katari" and this brand name is used by the appellants for manufacture and marketing of ceramic pickle jars. The statement of Smt. Subbalakshmi is corroborated by Shri K.S. Ramesh, Managing Partner of M/s. Katari Ceramic Industries. In his statement dated 23-5-1995, he has clearly admitted that the surname belongs to M/s. Katari Ceramic Industries and they are marketing their goods in their brand name. He has also stated that this brand name of theirs was adopted by their sister concern M/s. Katari Refractories for marketing their goods. Thus, it is clear that the appellant was using the brand name of M/s. Katari Ceramic Industries, as is evident from the above said statements and, therefore, the impugned order denying them the benefit of Notification 1/93, dated 28-2-1993 is legal and proper. Therefore, the contention of the appellants in this regard cannot be accepted.

6. In the above view of the matter, the demand of duty is sustainable and we confirm the same.

7. It has been contended before us, merely the name Katari used, it cannot be stated that there was a nexus between the brand name as well as the production. In our view, the statements given by the above said persons clearly indicate that there was a nexus between the marketing of the appellant's goods with the brand name of M/s. Katari Ceramic Industries and there cannot be any two opinions in this regard in the light of the clear admissions given by the above said two persons, his argument also cannot be accepted.

8. However, in the facts and circumstances of the case, the penalty is reduced to Rs. 7,500/- (Rupees seven thousand five hundred).