innit Pvt. Ltd. Vs. Collector of Central Excise

innit Pvt. Ltd. Vs. Collector of Central Excise

SooperKanoon Citation : sooperkanoon.com/14808

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-08-1998

Reported in : (1999)(105)ELT311TriDel

Appellant : innit Pvt. Ltd.

Respondent : Collector of Central Excise

Judgement :
1. These are three Appeals filed by the above mentioned appellants against two orders passed by Collector (Appeals) dated 29-11-1991 and another order passed by Additional Collector dated 28-8-1991. The issue in all these three Appeals being common, they were taken up together for hearing.

2. When the matter was called none was present for the appellants. It appears from the record that they have prayed for disposal of the appeals on merits.

3. We have heard Shri H.K. Jain, Id. SDR who explained the facts of the cases. We have also perused the records. Ld. SDR explains that the issue relates to denial of the benefit of Notification No. 175/86 by the Department to the appellants for three different periods on the same ground. The appellants, M/s. Innit Pvt. Ltd., are manufacturers of Paints and Varnishes under the brand name "Indeco" belonging to M/s.

Comet Paints Ltd. The benefit of Notification 175/86 was denied to the appellants on the ground that no proof had been adduced to show that the brand name owners, M/s. Comet Paints Ltd. were a SSI Unit.

4. We find from the records that there is a certificate dated December, 1979 given by the General Manager, District Industries Centre, Nadiad, certifying that M/s. Comet Paints Ltd., Anand is a small scale industrial unit bearing the Registration No. 04-10-220/PMT-SSI, dated 19-6-1976. From the records of Appeal No. 864/92-C (Annexure E to Appeal) it appears that the appellants had filed a copy of the agreement dated 26th June, 1986 entered into between M/s. Comet Paints and the appellants M/s. Innit Pvt. Ltd. according to which use of brand name of the Comet Paints has been transferred to M/s. Innit Pvt. Ltd. at the rate of 4% royalty on all its net turnover. Ld. DR pointed out that Clause 1 of this agreement showing the charging of royalty at four percent from the owner of the brand name to its user necessarily shows that the original brand name owner has transferred and sold the brand name to the purchaser and that the owner of the brand name has allowed the appellants to manufacture the item and sell the final product under its brand name. The Additional Collector in his order dated 28-8-1991 had given a finding that M/s. Comet Paints Ltd. had ceased production.

Ld. DR submitted that the authorities below had rightly denied the benefit of Notification 175/86 in the absence of any proof to show that brand name owner was a SSI and it was still in existence or that they had not themselves crossed the clearance limit for continuing to be a beneficiary of Notification 175/86. He referred to the observation made by the Addl. Collector in the impugned order that M/s. Comet Paints Ltd. had ceased the production.

5. We find that on the facts as brought to our notice, viz. the certificate issued by the District Industries Centre, Nadiad, there cannot be any dispute that M/s. Comet Paints was eligible for benefit of exemption Notification 175/86. In view of this fact, we find that the view taken by the authorities below that the appellants have not been able to prove that the brand name owner was a SSI unit was not correct.

6. Accordingly, we allow all the three Appeals and set aside the impugned orders with consequential benefits to the appellants in accordance with law.