

**Ga Vs. Laboratory (P) Ltd**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Mar-02-2000

**Reported in :** (2000)(122)ELT516TriDel

**Appellant :** Ga

**Respondent :** Laboratory (P) Ltd

**Judgement :**

1. This appeal arises out of and is directed against the Order-in-original No. 68/97 dated 29-10-1997 passed by the Commissioner of Central Excise, New Delhi, wherein (i) benefit of Notification No.1/93-C.E. was denied for the period August, 1993 to January, 1994 and duties demanded, (ii) demand was confirmed in respect of COSMOS brand tooth paste for April, 1994 to October, 1994 and (iii) demand was confirmed in respect of AQUADENT Brand tooth paste for the period from April, 1994 to October, 1994.

2. The short point to be considered in this case is whether on assigning the Brand name, an assignee i.e. the appellants are entitled to the benefit of Small Scale exemption in terms of notification No.1/93, dated 1-4-1993 or not.

3. The appellants who are S.S.I, unit, manufacturing the goods of different brands. The Brand name 'COSMOS' was originally owned by M/s.

Hindustan Rimmer and S.S.I, unit was transferred under an agreement dated 1-4-1992 to use the same on tooth paste manufactured by the appellants. M/s.

Hindustan Rimmer were registered with Central Excise and filed classification lists claiming benefit of notification No. 1 /93-C.E. It was submitted on behalf of the appellant that they stopped manufacturing since 1-8-93 and surrendered registration. Brand name 'COSMOS' was assigned to the appellant effecting from 1-8-1993 and the appellants applied for and entered their name as Proprietor of the said Brand name effect from 1-8-1993. The Commissioner granted the benefit of Notification No. 1/93-C.E. upto 1-8-1993 on the ground that Hindustan Rimmer are eligible to avail benefit of Notification No.1/93-C.E. and, accordingly, dropped the proceedings. He confirmed the demand on 'COSMOS' tooth paste during 1993-94 (August 1993 onwards) and during the year 1994-95 (April, 1994 onwards) on the ground that brand name 'COSMOS' belongs to Hindustan Rimmer.

4. Shri Laxmi Kumaran appearing for the appellants submitted that the appellants were using the Brand name 'COSMOS' and 'AQUADENT' on the tooth paste manufactured and cleared by them. He submits that though a plea has been taken by the appellants with reference to the brand name 'AQUADENT' in the appeal memo, he is not pressing the issue with reference to the Brand name 'AQUADENT' since it is under litigation and at present, he is claiming benefit of brand name with reference to 'COSMOS' only. He said that the appellants are entitled to the benefit in terms of Notification No. 1/93 from the date of assignment relying upon the decision of the Tribunal in the case of Opus India v. Collector of Central Excise, 5. Shri K. Srivastava, learned SDR, appearing for the Revenue, submitted that assignment deed dated 1-8-1993 was registered before Trade Mark registry on 1-1-96 and the party, in fact, has applied for registration only on 19-10-95. He justified the action taken by the Commissioner holding that the benefit of Notification No. 1/93-C.E. was not available from the date of assignment but would be applicable and available only from the date of registration. In reply, Shri Laxmi Kumaran submits that the registration is not compulsory to avail benefit and, in fact, the notification is worded in such a way whether it is registered or not. Apart from the decision of Opus India , referred to above, he also referred to the following decisions in support of his contention:-C. C. E. v. Vikshara Trading and Investments P. Ltd., 1996 (87) E.L.T. 499.

6. We have carefully considered the matter. We find that the issue involved in this case has been considered by the Tribunal in the case of Opus India, referred to above. The observations made in that case is relevant in this context and the same is as under : "Since trade mark of 'Hotline' with reference to Gas Stoves stands in the name of the appellants with effect from 31-7-1987 as it was duly registered under the relevant statute, we fail to understand that assignment itself is not sufficient but something is more required to be produced as contended by the Departmental Representative. It is not even the case of the Department that M/s Fuse Base (India) Pvt. Ltd. are manufacturing these specified goods (Gas Stoves) under the trade name 'Hotline' even after assignment.

According to para 7 of the notification if a manufacturer affixes the brand/trade name of another person with reference to specified goods he is not entitled to claim exemption in respect of specified goods. In other words if the brand name or, trade name is of his own the benefit of exemption cannot be denied. Trade name of another person refers to Trade name belonging to another. "Of", as meaning belonging to as per the dictionary meaning as given in the Stroud's Judicial Dictionary. Since ownership is the criteria to determine the eligibility of exemption with reference to Para 7 of the Notification and in view of the fact that trade mark belongs to appellants M/s. Opus India, we do not find any justification to deny the benefit of exemption under Notification No. 175/86. In the view we have taken, all these appeals are allowed with consequential relief".

7. Relying upon the ratio of the aforesaid decision, we hold that the appellants are entitled to benefit of exemption in terms of Notification No. 1/93-CE in respect of the goods cleared under Brand name 'COSMOS' w.e.f. 1-8-1993.

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