

Sure India Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-04-2002

Reported in : (2002)(142)ELT647Tri(Mum.)bai

Judge : J Balasundaram, J T J.H.

Appellant : Sure India

Respondent : Commissioner of Central Excise,

Judgement :

1. On hearing both sides on the application for waiver of pre-deposit of duty of Rs. 2,91,100.00, we find that the appeal itself is capable of being decided. We therefore take up the appeal for disposal after granting waiver as prayed for.

2. The assesseees were operating under benefit of Notification Nos.

175/86 and of 1/93 from time to time. The demand of duty of the extent mentioned above was made on the ground that the assesseees were using a brand name of another person. The Deputy Commissioner, in adjudication dropped the demand, on the observation that the brand name belonged to a person resident abroad and that in India nobody had the right to claim exclusive use of that brand name. The Jurisdictional Commissioner passed orders in terms of Section 35E(2) of the Central Excise Act, 1944 directing the Deputy Commissioner to file an application before the Commissioner (Appeals) to ascertain the legality of the cited order. Commissioner (Appeals) in disposal relied upon certain case laws as to the use of

brand name owned by persons abroad and set aside the original order. Shri Patil submits that the Review Application was not maintainable before the Commissioner (Appeals) in as much as it is not filed by the authority who was empowered to do so. In this respect he cites certain judgments of the Tribunal. *Supreme Industries Ltd. v. CCE, Indore* [1999 (114) E.L.T. 1003] the Tribunal held as invalid an application filed by Deputy Commissioner where the impugned order was passed by the Additional Collector. In the judgment of *Malhotra Steel Products v. CCE, Mumbai-III* [2000 (38) RLT 480] also the Commissioner had directed the Assistant Commissioner to file an application where the order was passed by the Additional Commissioner. In both the judgments, the Tribunal held as invalid, the resultant orders. In the present case, we find that whereas the Commissioner had authorized the Deputy Commissioner, the application was filed by Assistant Commissioner with the averment that he had been directed to file the appeal. Shri Patil shows us the amendment made by the Finance Act, 1999 whereby the earlier reference to Assistant Commissioner could be termed as reference either to an Assistant Commissioner or to a Deputy Commissioner. However in terms of the amendment the reference made to a Deputy Commissioner, would thereafter relate to a Joint Commissioner.

This amendment brings out the impropriety and illegality of the Review application filed before the Commissioner. We therefore hold that the application made in pursuance of the order of the Commissioner is not maintainable and that the orders of the Commissioners (Appeals) in disposal thereof are equally unsustainable. The Appeal succeeds and is allowed with consequential relief if any.

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