

Samurai Software Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-30-2002

Reported in : (2002)(81)ECC790

Judge : S T G.R., P Bajaj

Appellant : Samurai Software Ltd.

Respondent : C.C.E.

Judgement :

1. Arguing the application for waiver of pre-deposit of duty and penalty Shri O.P. Agarwal, learned Chartered Accountant submits that the allegation against them was about the using of brand name of somebody else who was not eligible to exemption as a small scale industrial unit. He submits that the duty demand confirmed against them can be divided into two parts; that the demand of Rs. 1,82,580 pertains to the period from 13.4.95 to 2.8.95. He submits that during this period they were using the brand name 'Samurai cordless' on their products. Learned C.A. submits that Samurai cordless is not the brand name; that Samurai is a house mark. In support of this contention he cited and relied upon the decision of the Apex Court in the case of Astra Pharmaceutical Ltd. . learned C.A. also T.M. Pharmaceuticals Laboratories v. CCE paracetamol along with a house mark or otherwise by itself will not matter, or in other words, the combination of a common type of medicine and a house mark cannot convert it into a proprietary or branded medicine." He submitted that the combination of nouse mark 'samurai' with a functional name of a particular type of TV game would not make it a brand name.

2. Regarding demand of Rs. 4,09,114, the learned C.A. submits that this demand pertains to the period 1.4.96 to 12.8.96. Learned C.A. submits that trade mark 'samurai' was registered in the name of M/s. Samurai Electronic Pvt. Ltd.; that M/s. Samurai Electronics Pvt. Ltd. stopped functioning much before this period and had not got the trade name of samurai renewed in their name. Learned C.A. submitted that the Central Board of Excise & Customs while clarifying Notification No. 125/94-CE dated 31.8.94 in para 4 clarified as under: 4. From the abovementioned 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. Learned C.A. submitted that during the material period when the demands have been confirmed, 'Samurai' was not the trade mark in the name of Samurai Electronics Pvt. Ltd., therefore, any one could use it.

Chartered Accountant, therefore, submitted that the appellants have a good case on merits. He also submitted that in their classification list they had declared these things. There was no suppression or misstatement on their part and therefore, the extended period could not be invoked in their case. Therefore, the demands are hit by limitation.

Learned C.A. also submitted that financial condition of the applicant company was not good enough. He submitted that the applicant had also deposited a sum of Rs. 1.5 lac and therefore, prayed that pre-deposit of further amount may be waived.

3. Shri Hitesh Shah, learned DR appearing for Revenue submits that Samurai was the trade mark registered in the name of M/s. Samurai Electronics Pvt. Ltd. He submitted that it was a different company and therefore, it was their trade mark. He submitted that Clause 4 of Notification No. 1/93-CE specifically provided that small scale exemption will not be available to the manufacturer who uses the brand name of another manufacturer if such owner of the brand name is not entitled to small scale exemption. He therefore, submitted that this requirement of Notification No. 1/93 is squarely applicable to the facts of the present case and therefore, prays that the applicant may be directed to deposit the entire amount of

duty and penalty.

4. On careful consideration of the submissions made by both the sides we note that the issues regarding ownership or use of trade mark is in dispute which needs detailed examination. We, therefore, find that the applicants have not been able to make out a prima facie case for total waiver of pre-deposit of duty. Since an amount of Rs. 1.5 lac stands deposited in the instant case, the applicant is directed to deposit a further amount of Rs. 1.0 lac (rupees one lac) on or before 30th July, 2002. On deposit of this amount the deposit of the balance amount of duty and penalty shall be dispensed with and recovery thereof shall remain stayed during pendency of the appeal.

5. Failure to comply with the above directions shall lead to vacation of the stay and dismissal of the appeal without any further notice. The matter should be listed for reporting compliance and passing further orders on 5-8.2002.

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