Chopra Electricals Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-03-2002

Reported in : (2002)(103)LC837Tri(Delhi)

Judge : A T V.K., K Kumar, S T G.R.

Appellant : Chopra Electricals

Respondent : Cce

Judgement :
1. The appellants have been denied the benefit of Notification No.1/93-CE on the ground that they were using the brand name belonging to another person. By the impugned order the Commissioner of Central Excise demanded duty amounting to Rs. 8,38,899/- and imposed a penalty of Rs. 50,000/- on the appellants.

2. Learned Advocate, Shri M.P. Dev Nath appearing on behalf of the appellants has contended that on the dissolution of M/s. Chopra Electrical Sales Corporation, the brand name "BENTEX" came to be owned by 3 partners viz. S/Shri Krishan Lal Chopra, Roshan Lal Chopra and Kundan Lal Chopra as per the mutual agreement dated 21.12.1984. The brand name/trade name "BENTEX" was not owned by M/s. Chopra Electrical Sales Corporation but was registered in the name of the above 3 persons. M/s. Chopra Electrical Sales Corporation was dissolved with effect from 31.3.1984 and as such, the ownership of that firm was over on the brand name "BENTEX". The Chopra brothers have agreed between them that each one of them would make use of the brand name with certain identification.

The 3 existing partners of Chopra Electrical Sales Corporation set up their own units completely independent in all respects and started making use of the brand name "BENTEX". As such the unit was the appellants' unit and accordingly, the ownership of the brand name "BENTEX" vested with the appellants. The imposition of heavy penalty is bad in law as the appellants have not contravened any of the provisions of Central Excise Rules made thereunder.

3. Learned SDR, Shri R.D. Negi countering the arguments of the learned Advocate had supported the findings of the Commissioner as contained in the impugned order and has submitted that the appeals are liable to be dismissed.

4. It is seen from the Order-in-Appeal that the learned Commissioner has given the constitution of the appellants, a partnership concern consisting of the following four partners: 5. Thus a bare perusal of the above would show that the appellants are not a firm owned by any of the 3 Chopra Brothers and as such they are not entitled to the use of the brand name "BENTEX" as claimed by the appellants. The above composition of the appellants' firm has not been rebutted by the Advocate of the appellants in their memo of appeal or in their arguments.

6. In terms of Clause 4 of the Notification 1/93-CE, the appellants are not entitled to the benefit under this Notification.

7. After hearing the rival submissions and perusal of the records, we do not find any merits in these appeals. Therefore, the same are dismissed.(V.K. Agrawal) (Krishna Kumar) 8. I have gone through the Order as recorded by the learned Member (Judicial). I find myself unable to agree with the views with the decision taken in the order for the following reasons: 9. In learned Advocate for the appellants has relied upon the Final Order No. 497-504/2001-B dated 20.3.2001 wherein the present appellant was also one of the appellants. He submitted that the Tribunal vide said order allowed them the benefit of Small Scale exemption notification holding that the benefit of the Notification cannot be denied on the ground that they were affixing their goods with brand name of another person; that in that matter also the brand name in question was 'BENTEX' only.

10. It is observed from the perusal of the Adjudication Order No.117-123/98 dated 29.5.1998 that the Assistant Commissioner had relied upon the Adjudication Order No. 58 to 62/97 dated 29.5.1997 passed by the Commissioner, Central Excise, New Delhi for denying the benefit of small scale exemption. The appeal against the said order No. 58/97 was considered by the Tribunal and the same was allowed vide Final Order No. 497-504/2001-13 dated 23.10.2001. The learned SDR has referred to the constitution of the appellant firm to show that the appellant firm is not owned by any of the three Chopra brothers who were entitled to use the brand name BENTEX' after dissolution of the firm namely, Chopra Electrical Sales Corporation in 1984. As the Tribunal's final order was not before the lower authorities and the reliance was placed on the Adjudication Order which has been set aside I am of the view that the matter needs to be remanded to the Adjudicating Authority for afresh adjudication after considering the submissions from both the sides and after taking into consideration the Tribunal's Final Order dated 23.10.2001. I, thus, allow the appeal by way of remand.

Whether the appeal filed by M/s. Chopra Electricals is to be rejected as ordered by the learned Member (Judicial) or the matter is to be remanded to the Adjudicating Authority for re consideration in view of the Tribunal's Final Order No. 497-504/2001 B dated 20.3.2001 as ordered by Member (Technical).(Krishna Kumar) (V.K. Agrawal) 11. I have heard Shri B.L. Narasimhan, Id, Counsel for the appellant and Shri R.D. Negi, ld. DR for Revenue on the point of difference of opinion. The issue for determination in these appeals was whether exemption under Clause 7 of Notification No. 175/86 or Clause 4 under Notification No. 1/93 could be availed by the assessee.

12. The facts of the case have been narrated by the ld. Member (Judicial) therefore, they are not being repeated. The only question that arises for determination is whether the assessee in the instant case using the logo BENTEX is the owner of the trade mark or the trade mark is owned by some other person who was not eligible to the benefit of the exemption Notification No. 175/86 or 1/93. The fact of the case is that 'BENTEX' was the registered trade mark of M/s Chopra Electric Sales Corpn. M/s Chopra Electric Sales Corpn. was a partnership firm with four partners. It was dissolved on 31.8.1984. On dissolution of this

partnership firm an agreement was entered into among the partners that 'BENTEX' can be used as a Logo by each member of the partnership on any goods manufactured by them. However, these partners did not work independently as proprieters of proprietory firm. They formed partnership concerns and thus they lost their identity as individuals using the brand name BENTEX. For purpose of availing the benefit of Notification No. 1/93, Clause 4 of the Notification is necessary which inter alia says that the benefit of this notification shall not be available to an assessee who uses the brand name of another assessee who himself is not eligible to the benefit of Notification No. 1/93.

Therefore, the question is who is the owner of the logo 'BENTEX'? M/s Chopra Electric Sales Corpn. did not exist after 31.8.1984, the partners of M/s Chopra Electric Sales Corpn. who entered into agreement for using the logo 'BENTEX' individually as individuals or proprietors of proprietory concerns did not work. The individuals no doubt exist but they are working as partners in a partnership firm and therefore, they do not become the person as owners of the logo BENTEX. Thus I find that the requirement of Clause 4 is not satisfied in the instant case as the person who can be termed as owner of the logo BENTEX no longer exists. I further note that in the case of the same appellant the Tribunal earlier held that the appellant shall be eligible to the benefit of exemption under Notification No. 175/86 inasmuch as the owner of the logo BENTEX cannot be identified and the appeal of the assessee for the benefit of exemption Notification was allowed.

13. Having regard to the above discussions, I am inclined to agree with the learned Member (T) that the matter may be remanded to the adjudicating authority for reconsideration in view of the Tribunal's Final Order No. 497-54/2001-B dt. 20.3.2001.

14. The file should now be sent to the original Bench for recording the majority order.

15. As per majority, the matter is remanded to the Adjudicating Authority for reconsideration in view of the Tribunal's Final Order No.497-504/2001-B dt. 20.3.2001. The Appeal is allowed by way of remand.