

**S.P. Tools and Processors Pvt. Vs. Cce**

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

**Decided On :** Mar-18-2004

**Reported in :** (2004)(97)ECC492

**Judge :** A T V.K., M Bohra

**Appellant :** S.P. Tools and Processors Pvt.

**Respondent :** Cce

**Judgement :**

1. The issue involved in this appeal, filed by M/s. S.P. Tools & Processors Pvt. Ltd., is whether the goods manufactured by them are bearing the brand name belonging to another person and consequently making them ineligible for the benefit of Notification No. 175/86-CE dated 1.3.86.

2. Shri K.K. Anand, learned Advocate, submitted that the appellants manufacture excisable goods falling under Chapter Nos. 82 and 84 of the Schedule to the Central Excise Tariff Act; that the duty had been confirmed against them on the ground that they were affixing brand name/monogram "D" on their product, which belongs to M/s. Dewas Tools Pvt. Ltd. The learned Advocate, further, submitted that the appellant is one of the seven companies belonging to DEE TEE Group; that all these companies manufacture different products; that none of the companies of the group manufacture the products which are manufactured by the appellants; that with a view to give an identity to the group, it was decided to denote the name of the group by a monogram "D"; that this monogram belongs to

all the seven companies and not to any one company; that merely because M/s. Dewas Tools Pvt. Ltd. is the oldest company of the group, it does not mean that the monogram belongs to that company; that further use of the group name is neither a brand name nor a trade name of any specified product but it is a house mark; that it has been held by the Supreme Court in the case of Astra Pharmaceuticals Pvt. Ltd. v. CCE, Chandigarh, 1995 (49) ECC 24 (SC): 1995 (75) ELT 214 (SC) that house mark is an identification of the manufacturer and it is different from the brand name; that it has also been held by the Supreme Court that the monogram, which only identifies the manufacturer, would not make the medicine patent or proprietary.

Finally, the learned Advocate submitted that no statement has been recorded from any person to the effect that monogram does not belong to the appellants and belongs to someone-else; that as such there is no evidence to show that the monogram used by them on their products belongs to anyone-else; that the onus is on the Department to prove that the appellants are using the brand name/monogram belonging to another person. He relied upon the decision in the case of Collector of Customs v. K. Mohan & Co. Exports, 1989 (24) ECC 416 (SC); 1989 (43) ELT 811. The learned Advocate also mentioned that the extended period of limitation is not invocable for demanding the duty as the appellants did not have any mala fide intention to evade payment of duty. They were, under the bona fide belief that the monogram affixed by them on the goods manufactured by them belongs to them.

3. Countering the arguments, Shri Vikas Kumar, learned SDR submitted that it is not disputed that the monogram "D" is affixed by the appellants on the excisable goods manufactured by them; that a monogram cannot be a house mark; that as per the definition of brand name given in Notification No. 175/86, the brand name means a name or a make such as symbol, monogram, label, signature or inverted words or writing which is used in relation to such specified goods for the purpose of indicating a connection in the course of trade between such specified goods and some person using such name or mark; that the monogram used by them clearly indicates a connection the course of trade between the goods and the owner of the monogram i.e. M/s. Dewas Tools Pvt. Ltd.; that the Commissioner, in the

impugned order, has dealt with the issue of simultaneous use of the common monogram of the group company; that the Commissioner has given a specific finding that this contention of the appellants is not correct as it is clear from a bare perusal of Annexure F-I, H-I and H-II of documents, relied upon by the Department; that Annexure F-I is a correspondence dated 2.5.86 of M/s. Dewas Tools Pvt. Ltd. carrying monogram "D" whereas H-I and H-II are invoices and confirmation of order dated 23.8.86 and 14.7.86 respectively issued by the appellants and carrying the monogram; that it is, thus, evident that the monogram "D" was used by M/s. Dewas Tools Pvt. Ltd. first and the appellants have used it only subsequently; that the ratio of the decision in the case of Astra Pharmaceuticals Pvt. Ltd. (supra) is not applicable to the facts of the present matter as the said decision was made in the context of definition of patent and proprietary medicaments and not in respect of Notification No. 175/86. Finally, the learned SDR, submitted that the extended period of limitation is invocable for demanding the duty as the fact of affixing the excisable goods with the monogram of another person, was not disclosed by them to the Department.

4. We have considered the submissions of both the sides. It is not disputed by the appellants that they were affixing the monogram "D" on their excisable goods. As per the definition of brand name given under Notification No. 175/86, monogram is also a brand name as it indicates a connection between the specified goods and some person using the brand name. We observe, both in the show cause notice as well as in the impugned order, it has been clearly mentioned by the Revenue that, initially, the appellants were using a different monogram. This fact has also not been categorically denied by the appellants. In view of this, we hold that the appellants were using the monogram "D" belonging to M/s. Dewas Tools Pvt. Ltd. which make them ineligible for the benefit of Notification No. 175/86 in view of para 7 of the said Notification which provides that the benefit of notification will not be available if the specified goods are being affixed with a brand name of another person, which is not eligible for the grant of exemption under this Notification. It is not the case of the appellants that M/s. Dewas Tools Pvt. Ltd. were eligible for the benefit of exemption Notification in respect of the goods manufactured by them. The appellants have, merely, contended that the goods manufactured by them are not being manufactured by any other company belonging to DEE TEE Group, but

they have not mentioned as to what are the goods manufactured by other group of companies. In view of this, they have not succeeded in proving that the goods manufactured by all the Group of Companies are different and they are not belonging to the same categories, Further, para 7 of Notification No. 175/86 makes it very clear that the exemption will not apply if the goods bear a brand/trade name of another person. Once it is proved that the goods bear the brand name of another person, which is not eligible for exemption under the said Notification, the benefit of notification will not be available to the appellants. We also agree with the learned SDR that the fact of affixing the brand name belonging to another company was not disclosed by the appellants to the Department and as such the larger period of limitation for demanding the duty, is invocable. We, therefore, uphold the demand of duty imposed on the appellants. We, however, agree with the learned Advocate that the amount of penalty imposed is on very high side. In the interest of justice, we reduce the penalty to Rs. 10,000. The appeal is disposed of in these terms.

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