

Commissioner of Central Excise Vs. Pilot Products

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-18-2004

Reported in : (2005)(182)ELT59TriDel

Judge : S Kang, Vice-, A T V.K.

Appellant : Commissioner of Central Excise

Respondent : Pilot Products

Judgement :

1. The issue involved in these two appeals, filed by Revenue is whether M/s. Pilot Products were clearing the excisable goods manufactured by them bearing the brand name of another person.
2. Shri Vikas Kumar, learned S.D.R., submitted that M/s. Pilot Products, respondents, manufacture desert coolers under the brand name "PILOT" which belongs to M/s. Pilot (India); that Shri Kuldip Singh, proprietor of the respondents, has deposed in his statement dated 5-3-1997 that the brand name "PILOT" is not registered in his firm's name; that Shri Gurdial Singh, partner of M/s. Pilot (India) has deposed, in his statement dated 12-3-1997, that the brand name "PILOT" belongs to their unit and that they are using this brand name since 1968 from the commencement of their unit; that he has also deposed in his statement that they had applied for registration of this trade mark with the Registrar of Trade Mark; that the Commissioner (Appeals) has allowed the benefit of small scale exemption to the respondents on the ground that the same brand name can be used by the

different persons on different goods placing reliance on the decision of the Larger Bench of the Tribunal in the case of C.C.E. v. Fine Industries, 2002 (146) E.L.T. 53 (T-LB). The learned S.D.R. further, submitted that the decision of the Larger Bench of the Tribunal in the case of Fine Industries has been set aside by the Supreme Court in C.C.E. v. M/s.

Bhalla Enterprises, 2004 (173) E.L.T. 225 (S.C.) wherein it has been held by the Supreme Court that for the purpose of attracting the mischief of Para 4 of the small scale exemption notification (such as 1/93, 16/93), it is not necessary that the same goods should have been manufactured by both the brand name owners of the small scale industry.

We also heard Shri K.K. Anand, learned Advocate, who emphasised that the brand name "PILOT" appears in the name of the respondents and they are using only their name on the products manufactured by them.

Finally, he submitted that no penalty is imposable on the respondents as the issue involved relates to the interpretation of notification.

3. We have considered the submissions of both the sides. With a view to encourage the industries in the small-scale sector, the Government exempts the excisable goods manufactured by the small scale industry up to certain value limit. The exemption to small scale industry is available subject to fulfilment of various conditions specified in the notification. The benefit of this notification is not available to the small scale industry if the excisable goods manufactured by them are affixed with the brand name of another person. In the present matters, the respondents are manufacturing desert coolers bearing the brand name "PILOT" which as per the statement of Shri Gurdial Singh, partner of M/s. Pilot (India), belongs to Pilot (India) which is using it since 1968. The mischief of Para 4 of the SSI Exemption Notification which prohibits the use of brand name of another person is attracted even if the small scale industry is manufacturing products different from the products manufactured by the brand name owner. The decision of the Larger Bench of the Tribunal in the case of Fine Industry has been set aside recently by the Supreme Court in the case of C.C.E. v. Bhalla Enterprises (supra) wherein the Court has held that "Paragraph 4 read with Explanation IX of the

notification could not be construed in the manner as contended by the assessees, namely, to make it necessary for the owner of the trade mark/trade name to use the goods in respect of the specified goods manufactured by the assessee". The Supreme Court has, further, held that "there is no requirement for the owner of the trade mark using the name or mark with reference to any particular goods. The object of the exemption notification was neither to protect the owners of the trade mark, trade name nor the consumers from being misled..... The object of the notification is clearly to grant benefits only to those industries which otherwise do not have the advantage of a brand name." It has also been held by the Supreme Court that "the notification clearly indicates that the assessee will be debarred only if it uses on the goods in respect of which exemption is sought, the same/similar brand name with the intention of indicating a connection with the assessees' goods and such other person or uses the name in such a manner that it would indicate such connection." Thus, following the judgment of the Supreme Court we set aside the impugned Order and hold that the Central Excise duty demanded from the respondents is payable by the respondents. We, however, agree with the learned Advocate that no penalty in such a matter is imposable as the issue revolves around the interpretation of notification and there were different views expressed by judicial forums. Both the appeals are disposed of in these terms.

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