

**Bass Electronics Industries and Vs. Cce**

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

**Decided On :** Jan-13-2005

**Reported in :** (2005)(101)ECC299

**Judge :** P Bajaj, M T K.C.

**Appellant :** Bass Electronics Industries and

**Respondent :** Cce

**Judgement :**

1. These appeals have been directed by the appellants against the common impugned Order-in-Appeal vide which the Commissioner (Appeals) has affirmed the order of the adjudicating authority who confirmed the duty demand with equal amount of penalty against the firm appellant No.1 and imposed penalty on its partner appellant No. 2. The duty alongwith penalty has been confirmed against the firm appellant No. 1 by denying the benefit of SSI exemption Notification No 16/97-CE dated 1.4.97 for having indulged in the manufacture of branded goods during the period in dispute i.e. March 1996 to December 1997. Against appellant No. 2, penalty under Rule 209-A has been confirmed as he assisted the firm of which he was a partner during that period, in the clandestine removal of branded goods without payment of duty, 3. From the record, we find that the firm is engaged in the manufacture of domestic electronic appliances i.e. electrical toaster, emergency light, mixture grinder, juicer, etc. as detailed in the show cause notice. It has got manufacturing unit at Tilak Nagar and trading premises at Bhagirath Place, Delhi. On 5.12.97, both these premises were raided by the

Central Excise officers. At the factory premises, branded goods bearing brand name of another person valued at Rs. 81,735 were seized and panchnama was drawn. The details of the goods were recorded in the Annexures A and C and the record seized was detailed in the Annexure B prepared at the spot. Similarly, at the trading premises also, panchnama was drawn and Annexures A, B and C were prepared giving details of the goods found therein/The statement of appellant No. 2 partner of the firm was also recorded. During investigation, the statement of two persons namely Prakash Chand partner of M/s Friends Battery Store and Rakesh Kwatra, Partner of Kwality Electronics India were recorded who purchased the branded electrical appliances from the appellants.

4. The learned Counsel has contended that there is no material evidence on record to prove the manufacture of branded goods by the appellants during the period in question. He has further contended that the appellants are manufacturing the electrical appliances under their own brand name 'Sunrise' and they are also trading in the electrical appliances after purchasing from the market. He has referred to the copies of invoices vide which the goods were purchased from the market from various dealers. On the other hand, the learned SDR has reiterated the correctness of the impugned order.

5. We have considered the respective contentions of both the sides and in our view, the contention of the learned Counsel for the appellants deserves to be accepted. We find from the record that the appellants are engaged in the manufacture of electrical appliances as detailed in the impugned order, under their brand name Sunrise. These goods were also found lying in their factory premises and the same had been detailed in Annexure A appended to the panchnama prepared on the spot on 5.12.94 by the officers. The other goods found lying in the factory premises had been detailed in Annexure B which were found to be electrical appliances such as Anjali Mixture Grinder, Washing Machine, Kishan Roti Maker, National Roti Maker, Vacuum Cleaner, etc. but these goods were not lying in bulk but rather in pieces ranging between 1 to 10. There is no tangible evidence on record to prove the manufacture of these goods by the appellants in their factory. The appellants have produced copies of the invoices through which they purchased the branded goods from the market/other manufacturers/traders.

But none out of those persons who issued these invoices, were questioned by the officers during the course of investigation. The genuineness of all these invoices, therefore, stand un-questioned and has to be accepted.

The statement of Shri Anil Kumar Chopra partner of the firm appellant No. 1 was also recorded. He categorically stated that the firm was manufacturing the goods under its brand name 'Sunrise' and that only recently, the firm had started the manufacture of Roti Maker, Juice Mixture Grinder in the name of 'National'. He also stated that the firm was engaged in the trading business of electrical appliances.

6. The record seized from the factory premises which had been detailed in Annexure C to the panchnama, was ledger, purchase file, other challans, bill books, balance sheet etc. but none of the entries in these documents showed the manufacture and clandestine removal of electrical appliances by the appellants under the brand name of another person. In the trading premises of the appellants at Bhagirath Place also, the goods manufactured by the appellants under their own brand name 'Sunrise' were found lying which had been detailed in the Annexure A. The other goods found there had been detailed in Annexure B, and regarding the purchase of these goods, the appellants had produced the copies of invoices issued by the manufacturers/traders to them and correctness of the same as observed above, remains unchallenged on record. Appellant No. 2 in his statement had nowhere admitted the manufacture of the goods under the brand name of another person and clearance of the same in a clandestine manner by the firm, during the period in dispute.

7. We also find from the record that statements of only two witnesses were recorded by the officers. The first one is Pradeep Jain who is partner of M/s Friends Battery Store, Chandni Chowk. From his statement, it is clear that he had been purchasing the iron, emergency light, juicer from the appellants bearing the brand name 'Sunrise'. He has even referred to the invoices through which the goods were purchased by him. He has no doubt, stated that the mixy under the brand name 'Nova' was also purchased but we find that 'Nova' is not a brand used by the appellants but it is the name of the model of their mixy which is being

manufactured by them under the brand name Sunrise and this is evident from the copy of rate list, filed by the appellants.

Therefore, the testimony of this witness, in any manner, does not advance the case of the Revenue against the appellants. The second witness is Rakesh Kwatra who is looking after the business of M/s Kwaliti Electrical Co, Sadar Bazar, New Delhi. He has admitted in his statement that the appellants are manufacturing and supplying the goods under their own brand name Sunrise. He has no doubt also stated that his firm is holder of brand name Kwaliti. But his statement that his firm had been getting the goods manufactured from the appellants under that name does not find corroboration from any evidence. No inference from the fact that the goods bearing brand name other than 'Sunrise' were also found at the trading premises/factory premises of the appellants, could be drawn that they were also indulging in the manufacture of the same, specially when there is no tangible evidence to prove that they had the capacity to manufacture and that these goods were in the process of manufacture at the time of visit of the officers and that the invoices produced by them showing the purchase of these goods from the market for trading, were not genuine.

8. In the light of discussion made above, in our view, the allegations, against the appellants of having indulged in the manufacture and clandestine clearance of the branded goods and of having availed the benefit of SSI exemption wrongly, do not stand substantiated.

Therefore, the impugned order passed against the appellants cannot be sustained and is set aside. The appeals of the appellants are allowed with consequential relief as per law.

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