Venkateshwara Essence and Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Oct-06-2005

Reported in : (2007)8STR322

Judge : S Peeran, J T T.K.

Appellant : Venkateshwara Essence and

Respondent : C.C.E.

Judgement :

1. This appeal arises from Order-in-Original No. 9/2003, dated 7-3-2003 confirming demands against the appellant by denying the benefit of SSI notification No. 175/86. The allegation was that the appellant have taken on lease the premises of M/s. Kissan Products for manufacture of essence. The Revenue intended to deny the benefit of SSI notification on the ground that the appellant have used the brand's name of M/s.

Kissan Products. On this point, the Commissioner has noted that the assessee has taken the assignment of the brand's name in their favour and on that ground the SSI benefit cannot be denied. In this regard, he has also followed the ratio of Tribunal Ruling rendered in the case of Charkha Soap v. CCE . However, he has proceeded to deny the benefit on a different ground that in the previous year, M/s. Kissan Products from whom the assessee had taken the factory on lease had crossed the clearances figures of Rs. 1.50 crores. He has also proceeded to add marketing service charges collected by M/s. McDowell and Company in the assessments of the assessee lo hold that the clearance figures has crossed the SSI limit.

2. The learned SDR submits that in the previous proceedings, the Order-in-Original No. 3/89, dated 24-2-1989, a clear finding have been given that the assessee and M/s. McDowell were independent units and on that ground it had been held that the benefit of SSI notification cannot be denied.

3. The learned Counsel submits that this findings has not been challenged. Furthermore, the marketing service charges did not pertain to the goods manufactured by the assessee and had no relation to it.

Therefore, the same was not required to be added. Since the findings has already been in their favour in the earlier order and it has not been challenged, therefore, on remand a different finding cannot be arrived at. The learned Counsel relies on the judgment of Parle International Ltd. v. CCE, Mumbai reported in 1999 (111) E.L.T. 223 (Tri.-Bom.) which has held that cost of advertisement of downstream product is not liable to be included fully or partially in the assessable value of base material, even though it may indirectly enhance the sales of the base material also. She relied on the ruling of the Tribunal rendered in the case of CCE v. Products & Ideas wherein it has been held that the value of clearance of another branded person cannot be included with the assessees clearances. She submits that M/s. Kissan Products and assessee were independent unit and therefore, the manufacture and clearances made by assessee were independent and hence the previous clearance value of M/s. Kissan Product cannot be taken into consideration to deny the benefit of the notification. In this regard, she further relied on the judgment of the Tribunal rendered in the case of CCE v. Power and Control which has held that the value of clearances of another unit cannot be added with the assessees clearances.

5. On a careful consideration, we are agreeable with the points raised by the Counsel. The Commissioner in the impugned order has clearly held that the brand name has been assigned to the assessee and therefore they should be considered as an independent manufacturer. He has also held that on that account, the benefit of notification cannot be denied. However, he has proceeded

to deny the benefit, on the ground that M/s. Kissan Products had during their earlier period crossed the clearance value of Rs. 1.50 crores. The assessee is the independent manufacturer, although they had used the machinery of the M/s. Kissan Products, their clearances have to be independently taken into consideration. Merely because they have taken the premises from M/s.

Kissan Products under a separate agreement that by itself is no ground to proceed to hold that during the previous year M/s. Kissan Products had exceeded the SSI limitation and benefit to be denied. This issue is also covered by the judgment rendered in the case of CCE v. Products & Ideas (supra) and CCE v. Power and Control (supra). The earlier Order-in-Appeal No. 3/89, dated 24-2-89 clearly held that the assessee and McDowell are not related payments and hence the question of adding payments received by Mcdowell to the goods manufactured by the assessee does not arise. There is no flow back of funds and therefore, adding marketing charges is not proper and correct in the light of the cited judgment. The second ground to deny the benefit is that on including the marketing charges received by McDowell Co., the clearance figures would exceed the SSI unit. In this connection, it is seen that the marketing charges has not been paid for essences but for a different down stream product. In terms of Park International Limited Case (supra), the cost of advertisement of downstream product is not includable in the assessable value of base material, even though it may indirectly enhance the sales of the base material also. It is undisputed fact that the value of the clearances of the assessee was Rs. 36,61,150/-, after availing exemption for the first clearance of Rs. 30 lakhs. The assessee had paid the duty of Rs. 1,64,724/- for the balance clearances, hence there is no case made out for denying the benefit of the notification in question.

6. In view of the conclusions arrived by us the impugned order is not legal and proper and the same is set aside by allowing the appeal.

(Operative portion of this Order was pronounced in open Court on conclusion of hearing)