Commissioner of Central Excise Vs. Raviraj Plastics Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-12-2005

Judge : K Kumar, S T Chittaranjan

Appellant : Commissioner of Central Excise

Respondent : Raviraj Plastics Pvt. Ltd.

Judgement :
1. Heard both sides. This is a case where two units belonging to two brothers have used the same unregistered brand name and have independently claimed small scale exemption. The learned Advocate for the respondents relies on the Board's Circular 52/52/94-CX. dated 1-9-1994 and states that when the brand name is not owned by any particular person, another person using the same is entitled for availing the small scale exemption, 2. The learned SDR, on the other hand, argues that the Commissioner (Appeals) has come to the finding that one of the units is the owner of the brand name, though the same has not been registered. He further states that this finding of the lower appellate authority has not been challenged by the respondents either by filing an appeal or by filing a cross-objection. Hence, he argues that the second part of the lower appellate authority's order allowing the second unit to avail the small scale exemption is self contradictory and not legal.

3. We find force in the submissions made by the learned SDR. Since the lower appellate authority has held one of the units as the owner of the brand name, the second unit using the same brand name cannot be allowed small scale exemption. The learned Advocate for the respondents states that the demand is also hit by

limitation since the Range Officer was common for both the units and hence was aware that both units are using the same brand name. The learned SDR counters this argument stating that there is a clear misdeclaration by the units in the classification list that they are not using the brand name of another person. Hence, he claims that the demand is not hit by limitation. In view of the wrong misdeclaration made by the respondents to avail the small scale exemption, we are of the view that the demand cannot be assailed on the ground of time-bar and the extended period of time can be applied.

4. In view of our findings as above, we set aside that part of the impugned order under challenge before us and we remand the matter to the original authority to re-work out the duty and penalty based on our findings as above.