

Apex Traders Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-25-1996

Reported in : (1996)(84)ELT459TriDel

Appellant : Apex Traders

Respondent : Collector of Central Excise

Judgement :

1. These ten appeals are directed against common Order-in-Original No.71 /Commissioner/95, dated 18-12-1995.
2. The issue relates to admissibility or otherwise of exemption under Notification No. 175/86 as amended. Commissioner has held that the appellants are not entitled to this exemption since the brand name owners that is to say M/s. AMPL, LFFL themselves were not eligible to avail this exemption. The ownership of these brand names remained with PEL only which was not eligible to avail exemption. He also held that during the material time appellants, M/s. Apex Traders factory was being run as a dummy unit of the neighbouring unit of Coolade Beverages Ltd. and by clubbing the clearances of both Apex and Coolade, the turnover exceeded the SSI ceiling limit of Rs. 2 crores and therefore, Apex Traders became ineligible to avail SSI exemption. Hence, these appeals. Alongwith the appeals the appellants have also filed separate stay applications seeking waiver of pre-deposit of duty amounting to Rs. 63,05,609 and various penalties imposed upon them.

3. Arguing for the appellants the Ld. Consultant submits that the appellants firm was a SSI unit which manufactured club soda and Citra amongst other products with franchise and brand name of AMPL and LFFL.

These brand names were not at the material time owned by PEL. LFFL got the name Citra registered in their name and so far as Trade Mark "Bisleri" was concerned it was transferred by PEL to AMPL with effect from 17-12-1987. In spite of the documentary evidence produced before Commissioner to this effect he did not give any consideration to the evidence but converted allegations in the Show Cause Notice into findings. Drawing attention to page 160 of the Paper Book, which is a letter from the Trade Mark Registry, he submits that while indicating Bisleri as the Trade Mark the letter itself indicated that there was a Disclaimer of Club Soda attached to the product Bisleri Club Soda. This was also clarified in the letter at page 157 of the Paper Book which, in regard to Disclaimer, categorically stated that registration of this trade mark shall give no right to the exclusive use of the word 'Club Soda'. At page 55 of the paper book the Commissioner has recorded the submissions but has not elaborated on the significance of disclaimer attached to the word 'Club Soda'. The Commissioner also, as indicated by them in para 10 of the grounds of appeal, has passed order on something which did not appear in the Show Cause Notice. He has arrived at findings on the basis of Show Cause Notice issued by Ahmedabad Collectorate and this was never a ground disclosed to them for proceeding against them. He has referred to the statement given by various persons. Wholly depending on those statements he totally disregarded the evidence furnished to him in the form of price list, Chartered Accountant certificate, commercial agreement, etc. and relied on statements on the ground that these statements are admissible. The statements may be admissible but their value has to be assessed in the light of evidence produced. Commissioner has held that Apex Traders is dummy merely on assumptions and presumptions. In fact, the land was allotted to Apex Traders by U.P. State Industrial Development Corporation and small shed which happened to be on it was held against them. They were registered as a SSI unit and transactions entered into were on principal to principal basis. Commissioner has held that marketing arrangements were made with Coolade. Ld. Consultant contest this and submits that whatever transactions were effected were purely commercial

transactions on principal to principal basis. The machinery which Commissioner has recorded had been gifted to them on a nominal value was in fact old one and they have given full book value for this.

4. Even assuming while denying that PEL were the owners of the brand name, PEL themselves were held to be eligible for exemption in a separate order on the same set of facts and circumstances by the Collector. A copy of this order in fact was placed before the Commissioner but the Commissioner did not record any findings on these.

5. There is absolutely no conspiracy, fraud or violation involved.

Madras High Court in the case of Kali Aerated Water Works v. Union of India, 1995 (76) E.L.T. 265 (Madras) and 1994 (71) E.L.T. 443 have, in regard to validity of small scale exemption notification decided in favour of the Revenue. In contrary judgments, however, Calcutta High Court in 1994 (70) E.L.T. 181 and Allahabad High Court in 1994 (73) E.L.T. 19 have held in favour of the appellants holding that the condition in para 7 is ultra vires of Constitution.

6. Arguing for the Revenue, Ld. DR submits that disclaimer intimated in the letter of Trade Mark Registry at page 170 of the Paper Book would not mean that Bisleri Club Soda was not a trade mark of PEL. In fact, letter at page 157 of Assistant Registrar of Trade Marks only indicated that registration of Trade mark Bisleri Club Soda shall give no right to the exclusive use of the word Club Soda. This means the word Club Soda can be used by any manufacturer alongwith the club soda word to describe a particular commodity. In so far, however, as PEL was concerned Bisleri Club Soda was a trade mark. The only difference being the word club soda can be used by others also. He, however, concedes to a specific query from the Bench whether the Collector has given any findings in regard to status of PEL, that no such finding has been recorded as that issue was not in dispute.

7. We have heard both sides. We find that the significance of the word club soda to which disclaimer was attached has not been adequately dealt with by the Commissioner in its findings. Similarly, relying on a Show Cause Notice issued by Ahmedabad Collectorate when no such reliance was placed on such documents in

the Show Cause Notice would amount to infraction of natural justice. Commissioner appears to have heavily relied on statements of various persons. Ld. Consultant submitted that evidence in the form of commercial agreement, price list indicating the price at which the goods were sold, copies of contracts, etc. were placed before Collector to rebutt these statements. It is true that statements are admissible in evidence but the evidentiary value has to be gauged as held by the Tribunal in the case of Orient Enterprises, New Delhi v. Collector of Customs, Cochin, 1986 (23) E.L.T. 507. These statements are not comparable to confession recorded under Section 164 of the Cr. P.C. before Magistrate. Moreover, merely because a statement has been recorded under Section 108 of the Customs Act does not mean that it has to be ipso facto accepted as truthful. It is only a piece of evidence, which is relevant and admissible, but its value still requires to be gauged in conjunction with other evidence and attending circumstances to prove the facts in issue. The plea that PEL also entitled to exemption was taken up with Commissioner and since this was central to the issue a finding ought to have been recorded.

8. In view of this, we are of the opinion that the matter has to go back by way of remand. The Commissioner is directed to give definite findings in regard to each plea raised so that no miscarriage of justice may take place.

9. Considering that we are of the view that the matter would have to go back on remand we take up the appeals themselves at this stage and waive the requirement of pre-deposit of the duty and penalty amounts for the reasons mentioned herein before. The impugned order is set aside and the matter remanded to Commissioner of Central Excise having jurisdiction in the matter for de novo adjudication after recording the findings on each plea and giving reasonable opportunity to the appellants of being heard.

10. In the result, all these appeals are disposed of by way of remand.

All the stay applications also stand disposed of accordingly.

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