(2014) 12 MAD CK 0395

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 3041 of 2006

Ratna Industries APPELLANT

Vs

The Customs, Excise and Service Tax Appellate Tribunal RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11A(1)

Citation : (2015) 321 ELT 131

Hon'ble Judges : R. Sudhakar, J;R. Karuppiah, J

Bench : Division Bench

Judgement

R. Sudhakar, J.

1. This appeal is filed challenging the order dated 24.10.2005 made in Appeal No. E/307/1996 by the Central Excise and Service Tax Appellate Tribunal, Chennai and the same was admitted on the following questions of law:

(i) Whether the Tribunal was right in denying the benefit available to the appellant under para 7 of the Notification No. 175/1986 CE, dated 1.3.1986?

(ii) Whether the Tribunal was right in entertaining and passing orders on the Order-in-Original No. 72/1994, dated 9.12.1994, when the first respondent confirmed the finding of the second respondent?

(ii) Whether the Tribunal was right in holding that the appellant manufactured and cleared branded goods?

2. The controversy in this case could have been avoided if only the Tribunal has been little more clear in deciding the issue. Nevertheless, we are inclined to clarify the factual position a little more to resolve the controversy.

3.1. The facts in a nutshell are as under: The appellant is a manufacturer of (i) Silencers for Ambassadors and Maruti cars; (ii) Wheel Hub Cap for Contessa and Maruti Cars; (iii) Foot Board Pattis for Ambassador and Fiat Cars; and (iv) Shoe Pipes for Ambassador and Fiat Cars all made out of Stainless Steel Sheets falling under Sub- Heading 8708. They were availing the benefit of the exemption Notification No. 175/86, dated 1.3.1986, as a small scale industry.

3.2. The department was of the view that the appellant had wrongfully availed the benefit of the said notification in respect of goods cleared, as the brand names of other companies, who were ineligible for exemption under Notification No. 175/86, dated 1.3.1986, were found on the goods cleared. As a result, a show cause notice No. 54/93, dated 28.9.1993 was issued invoking proviso to Section 11A(1) of the Central Excise Act for alleged contravention of Rule 9(1) read with Rule 173F of the Central Excise Rules requiring the appellant to show cause as to why exemption granted under Notification No. 175/86, dated 1.3.1986 should not be denied.

3.3. The primary reason for issuance of the above show cause notice is that the goods cleared with the brand name of M/s.Maruti Udyog (P) Ltd. and M/s.Premier Automobiles Ltd. are ineligible for grant of exemption under Notification No. 175/86, dated 1.3.1986, as amended, and consequently, duty and penalty were sought to be imposed, apart from proposing confiscation of goods.

3.4.1. The Adjudicating Authority, after considering the statement of the appellant, the reply of the department and the legal contentions, and on comparing Hub Caps supplied by M/s.Premier Automobiles Ltd. to its dealers with the samples seized from the appellant, found that the symbol/brand name "PAL" embossed on the parts manufactured by M/s.Premier Automobiles Ltd are identical to the symbol/brand name affixed on the goods manufactured by the appellant and accordingly, denied exemption under Notification No. 175/86, dated 1.3.1986.

3.4.2. Similarly, the Hub Caps manufactured by the assessee affixed with the symbol/brand name "SUZUKI" were also compared by the Adjudicating Authority with the goods manufactured by M/s.Maruti Udyod (P) Ltd. and were found to be identical and, therefore, the invoking Explanation VIII to Paragraph (7) of the Notification No. 175/86, dated 1.3.1986, as amended, the exemption was denied.

3.4.3. Insofar as Hub Caps and Show Caps manufactured by the appellant with the brand name "MARUTI", the Adjudicating Authority compared the symbol/ brand name of goods manufactured by M/s.Maruti Udyog (P) Ltd. with that of the symbol/brand name of the goods manufactured by the appellant and found that while M/s.Maruti Udyog (P) Ltd. used the word "MARUTI" in Devanagari at the top and the word "MARUTI" in English at the bottom of their logo, the appellant''s symbol/brand name contained the word "COX" at the top and the word "MARUTI" at the bottom and, therefore, held that the symbols/brand names are not identical. Accordingly, the Adjudicating Authority granted the benefit of the exemption notification.

3.4.4. As a result, the Adjudicating Authority passed an order dated 9.12.1994 demanding duty on the goods manufactured and cleared with the brand names "PAL" and "SUZUKI" under Rule 9(2) of the Central Excise Rules, 1944, read with proviso to Section 11A(1) of the Central Excise and Salt Act, 1944. There were also other demands like fine and penalty, of which we are not concerned.

3.5. The appellant filed an appeal to the Tribunal in Appeal No. E/184/95 against that portion of the order of the Collector of Central Excise denying the benefit of exemption Notification No. 175/86, dated 1.3.1986 insofar as the brand names "PAL" and "SUZUKI". The Tribunal, by its order dated 9.12.1996, dismissed the appeal, upholding the order of the Collector of Central Excise.

3.6. The department, on its turn, filed an appeal against that portion of the order of the Collector of Central Excise granting the benefit of exemption notification in respect of the goods bearing the symbol/brand name "COX" at the top and "MARUTI" at the bottom. The appellant herein was respondent in that appeal. Despite service of notice, the appellant herein did not choose to appear. Left with no other option, the Tribunal decided the issue on merits and allowed the appeal filed by the department in Appeal No. E/307/96, by order dated 23.7.1997. The relevant portion of the said order reads as under:

"5. .... In our view the goods show a connection. In the course of trade between the goods in question and M/s.Maruti. The learned lower authority may be right that the registered brand name of M/s.Maruti carried also the words Maruti in Devanagari script. But that is not to say that in the absence of these words in the Devanagari script, the logo with the name of Maruti in English would be any the less a brand name of Maruti.

6. In view of the above, we hold that the learned lower authority was in error in not invoking the provisions of para 7 in respect of the items in question. We, therefore allow the appeal of the revenue by setting aside the order of the Learned Lower Authority in this regard."

3.7. Thereafter, an application was filed by the department stating that consequent to the allowing of the appeal filed by the department, the Tribunal has not quantified the demand. The Tribunal, by order dated 27.8.1998 made in Misc. Order No. 528 of 1998, allowed the said application by way of remand and directed the Original Authority to re-adjudicate the demands raised in the show cause notice in terms of the order of the Tribunal, of course after affording an opportunity of hearing to the assessee.

3.8. The appellant thereafter knocked the doors of this Court in W.P.No. 17834 of 1997 and a learned Single Judge of this Court, by order dated 8.3.2004, allowed the writ petition on the plea of violation of principles of natural justice and directed the Tribunal to rehear the matter.

3.9. The Tribunal, relying upon various decisions of the Supreme Court, more particularly (i) Commissioner of C. Ex., Trichy Vs. Rukmani Pakkwell Traders, ; (ii) Commissioner of Central Excise, Chandigarh-I Vs. Mahaan Dairies, ; and (iii) Commissioner of Central Excise, Trichy Vs. Grasim Industries Ltd., , passed the following order:

"4. The brand name in question, used by the respondents on their goods supplied to M/s.Maruti Udyog Ltd. during the period of dispute is as shown under:

The logo with the word ''MARUTI'' shown thereunder would create in anybody''s mind a connection between the goods and M/s.Maruti Udyog Ltd. The mere fact that the word ''MARUTI'' in Devanagiri was not shown on the label of the subject goods is not enough to dislodge this connection. Hence, as per the Supreme Court''s ruling, the subject clearances should be held to be hit by para 7 of Notification No. 175/86-CE. Accordingly, it is held that the respondents were not eligible for SSI benefit under the said notification in respect of the goods affixed with the above brand name, cleared to M/s.Maruti Udyog Ltd. during the period of dispute. The contra decision of the Collector of Central Excise is set aside."

3.10. Challenging the said order, the present appeal is filed on the questions of law, referred supra.

4. Mr.A.Thiyagarajan, learned Senior Counsel appearing for the appellant contended that the order passed by the Original Authority dated 9.12.1994 denying the exemption in respect of goods cleared under the brand names "PAL" and "SUZUKI" and granting the benefit in respect of goods cleared under the brand name "MARUTI" was confirmed by the Tribunal in appellant''s own case in Order No. 2578/96, dated 9.12.1996 and, therefore, there was no scope for the Tribunal to once again interfere with the order of the Original Authority. In other words, it is his plea that since the order of the Original Authority is upheld in relation to demand of duty, there cannot be a second adjudication and, therefore, the impugned order passed by the Tribunal is erroneous.

5. Per contra, Mr.Vikram Ramakrishnan, learned Standing Counsel appearing for the second respondent contended that the appeal of the appellant is in relation to the disputed portion, namely with regard to the goods cleared under the brand names of "PAL" and (10) "SUZUKI" and not in relation to the goods cleared under the brand name "MARUTI" and the appeal of the department is in relation to the appellant''s symbol/brand name containing the word "COX" at the top and the word "MARUTI" at the bottom and, therefore, the two issues cannot be clubbed together.

6. We have considered the submissions made on either side and perused the orders passed by the Tribunal and the authorities below.

7. As all the questions of law are intertwined, they are dealt with together.

8. The plea of the appellant does not merit consideration for the simple reason that the original order is composed of three components. The first two components are in relation to the use of the brand names "PAL" and "SUZUKI", against which an appeal was filed by the appellant and that challenge was dismissed by the Tribunal confirming the finding of the Collector of Central Excise. With regard to the third component, namely, goods cleared with the brand name containing the word "COX" at the top and the word "MARUTI" at the

bottom, the Revenue has chosen to file an appeal against that portion of the order of the Collector of Central Excise whereby benefit of exemption under Notification No. 175/86, dated 1.3.1986 was given to the appellant and that appeal of the Revenue was allowed and the Tribunal held that the appellant herein is ineligible for the benefit of exemption under Notification No. 175/86, dated 1.3.1986.

9. At this juncture, it is apposite to refer to Explanation VIII of Notification No. 175/86, dated 1.3.1986, which was inserted by Notification No. 223/87-CE, dated 22.9.1987. The said explanation reads as under:

"Explanation VIII - ''Brand name" or ''trade name'' shall mean a brand name or trade name, whether registered or not, that is to say a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person."

The key words in Explanation VIII are that the brand name or trade name ? registered or not, namely, name or mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identify of that person.

10. In the case on hand, the symbol/brand name, extracted above, shows that the word "MARUTI" has been used along with the word "COX". From a reading of the above explanation, what is required to be established is that by usage of such symbol/brand name, there should be a connection with the brand name of some other person. In the case on hand, the usage of the symbol/brand name of "MARUTI" is apparent. Mere absence of the letters "MARUTI" in Devanagari, as used by M/s.Maruti Udyog Ltd., does not make the case of the appellant any better as the explanation provides for such interpretation in respect of use of name or mark such as symbol, monogram, labels, etc., which show indication in respect of the specified goods, which we find is apparent in the case on hand. Therefore, the Tribunal was justified in upholding the department''s contention that the benefit of notification will not be available in respect of hub caps and show caps bearing the symbol/brand name "MARUTI".

For the foregoing reasons, this appeal is devoid of merits and the same is dismissed by answering the questions of law against the appellant and in favour of the Revenue. No costs. Consequently, M.P.Nos. 2 of 2006 and 1 of 2008 are closed.

