
(2023) 08 CESTAT CK 0035

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 12544, 12545 Of 2014

Sonic Chain Pvt Ltd And Others

APPELLANT

Vs

Commissioner Of C.E & S.T, Rohtak

RESPONDENT

Date of Decision : 24-08-2023

Acts Referred:

Central Excise (Removal Of Goods At Concessional Rate Of Duty For Manufacture Of Excisable Goods) Rules, 2001 — Rule 26

Citation : (2023) 08 CESTAT CK 0035

Hon'ble Judges : Ramesh Nair, Member (J); C.L. Mahar, Member (T)

Bench : Division Bench

Advocate : R.Subramanya, Ajay Kumar Samota

Final Decision : Dismissed/Allowed

Judgement

Ramesh Nair, Member (J)

1. The issue involved in the present case is that whether the appellant is eligible for SSI exemption Notification No. 08/2003- CE dated 01.03.2003. When they affixed the brand name on their goods i.e. bracelet for wrist watch of another person namely Timex, Titan and Sonata which belongs to M/S Timex Groups India Ltd. and M/S Titan Industries Ltd.

2. Shri R. Subramanya, learned counsel appearing on behalf of the appellant submits that even though the appellant are manufacturing the bracelet for wrist watches under the brand name of Timex, Titan and Sonata which belongs to other person but the bracelet manufactured and supplied by them is as a part of wrist watches to be used by the brand name owner. Therefore, in view of Para 4(a) of the said notification, the appellant is eligible for exemption. He placed reliance on the following judgments:-

o 2018 (2) TMI 825 SC-RDB Textiles Ltd vs CCE

o 2015 (4) TMI 353 SC - Vir Rubber Products P Ltd vs CCE

- o 2015 (10) TMI 2149 SC CCE vs Otto Bilz (India) Pvt Ltd
- o 2019 (365) ELT 570 (Tri-All) -Central Press Pvt Ltd vs CCE
- o 2018 (364) ELT 248 (Tri-Del) – R.A Somani & Jindal Sanitary Works vs CCE
- o 2010 (12) TMI 25 SC CCE vs Ace Auto Comp Ltd
- o 2009 (1) TMI 501 - Gujarat High Court CCE vs Jai Prakash Motwani

3 Shri Ajay Kumar Samota, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order. He submits that, firstly, the bracelet is not a component or part of any machinery or equipment or appliances and secondly, the appellant have not followed the procedure which is required for the purpose of clearance of branded component or parts of any machinery or equipment or appliances, therefore, the appellant is not entitled for the exemption in respect of branded goods as provided under Para 4(a) of Notification No.08/2003-CE. He submits that since the appellant's product was affixed admittedly with the brand name of other person i.e. Timex, Titan and Sonata, they are not eligible for SSI exemption.

4. We have carefully considered the submission made by both sides and perused the records. We find that the short issue to be decided is that whether the goods namely bracelet manufactured by the appellant bearing the brand name of customer i.e. Timex, Titan and Sonata is eligible for exemption Notification No 08/2003 –CE. The relevant para 3 and 4 of Notification is reproduced below:-

"3. For the purposes of determining the aggregate value of clearances for home consumption, the following clearances shall not be taken into account, namely : -

(a) clearances bearing the brand name or trade name of another person, which are ineligible for the grant of this exemption in terms of paragraph 4;

(b) clearances of the specified goods which are used as inputs for further manufacture of any specified goods within the factory of production of the specified goods;

(c) clearances of strips of plastics used within the factory of production for weaving of fabrics or for manufacture of sacks or bags made of polymers of ethylene or propylene.

4. The exemption contained in this notification shall not apply to specified goods bearing a brand name or trade name, whether registered or not, of another person, except in the following cases :-

(a) where the specified goods, being in the nature of components or parts of any machinery or equipment or appliances, are cleared for use as original equipment in the manufacture of the said machinery or equipment or appliances by following the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 :

Provided that manufacturers, whose aggregate value of clearances of the specified goods for use as original equipment does not exceed rupees one hundred lakhs in the financial year 2002-2003 as calculated in the manner specified in paragraph 1, may submit a declaration regarding such use instead of following the procedure laid down in the said Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001;

(b) where the specified goods bear a brand name or trade name of

(i) the Khadi and Village Industries Commission; or

(ii) a State Khadi and Village Industry Board; or

(iii) the National Small Industries Corporation; or

(iv) a State Small Industries Development Corporation; or

(v) a State Small Industries Corporation;

(c) where the specified goods are manufactured in a factory located in a rural area."

4.1 From the above Para 4 it can be seen that the exemption Notification shall not apply to specified goods bearing the brand name or trade name that were registered or not of another person. In the present case there is no dispute that the goods namely bracelet manufactured by the appellant bears the brand name namely Timex, Titan and Sonata which are owned by another person namely M/s. Timex Groups India Ltd and M/s. Titan Industry Limited, therefore, the appellant in terms of para 4 is not eligible for exemption Notification No. 08/2003-CE. However, there is an exception provided in the notification under clause (a) of para 4 according to which if the goods is in the nature of component or part of any machinery or equipment or appliances and the same is cleared as original equipment in manufacture of the said machinery or equipment or appliances by following the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 than even though the goods bears the brand name or trade name of another person, the same shall be eligible for exemption. As per the facts of the present case, in our view firstly the bracelet cannot be said to be a component or part of wrist watches to be used as original equipment in the manufacture of wrist watches. Secondly, it is an admitted fact that for supply of branded bracelets the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 has not been complied with. Hence, the condition for exception provided for branded goods for extending SSI exemption 08/2003-CE has not been complied with. Therefore, in our considered view, the appellant is not entitled for SSI exemption Notification No. 08/2003-CE.

4.2 We also note that as per para 4 (a) the exception for branded goods was provided consciously for those cases where the goods are manufactured as a

part and component of any machinery or equipment or appliances which are to be used only in the manufacture of said machinery or equipment or appliances. In other words those goods are not sold in the market as such under the brand name of another person. In the present case the bracelet of wrist watches are also sold as such. Therefore, in absence of following the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 it cannot be ascertained that the bracelet supplied by the appellant are used in the manufacture of wrist watches. Therefore in the peculiar facts of the present case the appellant are not eligible for exemption Notification No. 8/2003 – CE

4.3 As regard the judgments relied upon by the appellant, in the case of RDB Textile Ltd, it is a case of affixing the logo of the buyer on the jute bags which is a packaging material. However in the present case the goods bracelet itself is a finished product, therefore, the facts are different.

4.4 In the case of Vir Rubber Products Pvt Ltd the issue involved is altogether different from the issue of the present case. In the case of Vir Rubber the issue was whether the admittedly goods bearing brand name of automobile manufacturer cleared should be included in the aggregate value for the purpose of allowing the exemption notification to their branded goods i.e. VIR Rubber. In this case the goods manufactured bearing brand name such as HM, PAL, KH admittedly not eligible for SSI exemption and the value of the same should not be added in the aggregate clearances value which is the eligibility criteria for allowing the exemption, rather that case supports the contention of the revenue that the appellant manufacture brand name of another person are not eligible for SSI exemption. Therefore, the ratio of the Supreme Court decision in the case of Vir Rubber is not applicable in the facts of the present case.

4.5 In the case of Otto Bilz (India) Pvt Ltd, the goods bearing the brand name of a foreign company were extended benefit of SSI exemption on the ground that the foreign company has assigned the brand name BILZ in favour of the assessee. In that case once the brand name is assigned, the assignee becomes the owner, then it cannot be said that the assessee is using the brand name of another person. Therefore, the ratio of judgment in the Otto Bilz case is also not applicable. Similarly, all the other cases have different facts from the facts of the present case. The ratio of those judgments cannot be made applicable in the present case.

5. As per the discussion and finding given here in above, we are of the considered view that the appellant is not eligible for SSI exemption Notification No. 08/2003- CE.

6. As regard the penalty imposed on co- appellant Shri Arvindbhai M Limbasiya, We find that the issue is of pure interpretation of notification and the goods have been cleared under the cover of invoices to organized companies. Therefore, there is no mala fide intention of any individual. Accordingly, in the facts and

circumstances of the case, the penalty imposed on Shri Arvindbhai M Limbasiya under Rule 26 is not sustainable. Hence, penalty is set aside.

7. As a result, the appeal of Sonic Chain Pvt Ltd is dismissed and appeal filed by Shri Arvindbhai M Limbasiya is allowed.