IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 30.01.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE R.KARUPPIAH

C.M.A. NO. 3456 OF 2010

Commissioner of Central Excise
Puducherry Commissionerate
Goubert Avenue, Beach Road
Puducherry 605 001. .. Appellant

- Vs -

1. Customs, Excise & Service
Tax Appellate Tribunal
Chennai South Zonal Bench
Chennai 600 006.

2. M/s. S.V.Sivalinga Nadar & Sons
(444) 866, Pandit Jawaharlal Nehru Road
Villupuram 605 602. .. Respondents

Appeal filed under Section 35-G of the Central Excise Act, against the order dated 10.07.08 passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai, in Final Order No.696/08 against the order in Appeal No.7/2005 (R) (D) dated 31.3.2005 passed by the Commissioner of Central Excise (Appeals) Chennai against the order in original- original No.13/2004 dated 18.6.2004 passed by the Assistant Commissioner of Central Excise, Villupuram Division against the show cause notice No.2/2003 dated 18.12.2003 passed by the Commissioner of Central Excise, Villupuram Division, Villupuram.

For Appellant : No Appearance

For Respondents: Mr. V.Balasubramanian for R-2

JUDGMENT
(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order passed by the Tribunal in dismissing the appeal filed by it, the Department/appellant is before this Court by filing the present appeal.

2. The case was admitted by this Court on 16.12.10. However, no question of law appears to have been framed, but notice was issued. After hearing the learned standing counsel for the appellant and the learned counsel for the 2nd respondent, we find that the issue, which has been canvassed by the Revenue before this Court is primarily factual in nature challenging the finding of fact and there appears to be no substantial question of law arising for consideration.

3. The brief facts of the case are that the respondent assessee was clearing their goods, viz., refined groundnut oil, sunflower oil and palm oil using the logo "S.V.S. & SONS". The Assistant Commissioner was of the view that S.V.S. & Sons was a brand name and, accordingly, extended the benefit of Notification No.6/2002 dated 1.3.02 and the benefit of 'Nil' duty was extended. In this case, the company registered as brand name/trademark S, V & S in a rectangular box. On review, the Commissioner directed the Department to file an appeal and on the said appeal filed by the Department, the Commissioner (Appeals) affirmed the order of the original authority granting benefit of the notification and, accordingly, rejected the appeal. The Department, aggrieved, preferred further appeal to the Tribunal, which was also dismissed the appeal by recording a finding of fact. For better clarity, the relevant portion of the order is set out hereunder :-

> "2. In the present appeal, the Revenue has relied on the Apex Court's judgment in Commissioner of Central Excise, Trichy - Vs - Rukmani Pakkwell Traders - 2004-TIOL-51-SC-CX. In addition, the learned Jt. CDR has relied on Commissioner of Central Excise, Trichy - Vs - Grasim Industries Ltd. - 2005 (183) ELT 123 (SC). The cited decisions were on what could constitute a 'brand name' or 'trade name' for purposes of SSI exemption notifications. It is pointed out by the learned Jt. CDR that the definition of 'brand name' given at Sl. No.244 in the Table annexed to Notification No.6/2002-CE ibid is materially the same as the definition of brand name/trade name given in the SSI exemption notifications considered by the Apex Court in the cited cases. The learned consultant has argued in defence of the impugned order. He has also placed on record a copy of registration certificate issued by the Trade Marks Registry, which indicates that a combination of the alphabets S, V & S, each enclosed in a rectangular box, was registered as a trade mark for the respondents apparently with effect from July, 1987.
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> 3. After considering the submissions, we find that during the period of dispute, the respondents had been using the combination of the alphabets, S, V & S, - each enclosed in a rectangular box – as

their brand name/trade mark and this was got registered by the Trade Marks Registry. The superscription on the product label used by the respondents during the period of dispute was "S.V.S. & SONS" and not the above brand name/trade mark. The superscribed words simply represented the name of the respondents, viz., S.V.Sivalinga Nadar & Sons, and nothing else. The findings of the lower authorities that these markings on the product label did not constitute any brand name is perfectly justifiable."

Aggrieved by the order passed by the Tribunal, the Revenue is before this Court by filing the present appeal.

4. Though the matter is listed today, there is no representation on behalf of the appellant. Heard the learned counsel appearing for the 2nd respondent. This Court gave its careful consideration to the arguments of the learned counsel for the 2nd respondent and also perused the orders passed by the lower authorities as also the documents enclosed in the typed set of papers.

5. It is evident from the record that all the three authorities have uniformly taken the view that the goods cleared by the 2nd respondent/assessee bear a superscription "manufactured and packed by S.V.S. & Sons", which is not a brand name or trade name. There is a clear distinction between the brand name used and the superscription as found in the packaging. On this finding of fact, all the three authorities have held that the 2nd respondent/assessee is entitled to the benefit of Notification 06/02 dated 1.3.02. In the light of such a concurrent finding, this Court is of the considered view that said concurrent finding of fact does not need to be interfered with, as there is no error or infirmity in the finding arrived at by the lower authorities. Accordingly, this Court is not inclined to entertain the appeal as there is no question of law that arise for consideration.

6. In the result, the appeal fails and the same is dismissed confirming the order passed by the Appellate Tribunal. However, there shall be no order as to costs.

Sd/-
Asst.Registrar (Lok adalat)

/true copy/

Sub Asst. Registrar

GLN

To

1. The Commissioner of Central Excise
   Puducherry Commissionerate
   Goubert Avenue, Beach Road
   Puducherry 605 001.

2. Customs, Excise & Service
   Tax Appellate Tribunal
   Chennai South Zonal Bench
   Chennai 600 006.

3. The Commissioner of Central Excise
26/1 Mahatma Gandhi Road,
Chenai-34

4. The Assistant Commissioner
of Central Excise
Villupuram Division
Post Box No.40 9A Solai Nagar
Sudhakar Nagar, Poonthottam Village
Villupuram- 605 602

5. The Assistant Commissioner
of Central Excise
Villupuram Division
11/7 Subburayar Street
Villupuram 605 602

1 cc to Mr.V. Balasubramanian, Advocate, Sr. 4854

C.M.A. NO. 3456 OF 2010

GJ (CO)
kk 16/2