

***HON'BLE SRI JUSTICE G.CHANDRAIAH**
&
HON'BLE SRI JUSTICE CHALLA KODANDA RAM

+C.E.A. No. 36 of 2004

%24-06-2015

#The Commissioner, Customs & Central Excise
....Appellant

Vs.

\$ M/s.Voltarc India (P) Ltd.
Respondent

!Counsel for the Appellant: Standing Counsel for Customs and
Central

Excise

Counsel for the Respondent: Sri T. Vinod Kumar

<Gist :

>Head Note:

? Cases referred:

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JUDGMENT:- (per Hon'ble Sri Justice G. Chandraiah)

This Central Excise Appeal under Section 35(G) of the Central Excise Act, 1944 is filed at the instance of the Department against the Final Order dated 05.05.2004 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore (for short "CESTAT") by raising the following questions of law for adjudication.

- i) Whether the said House-mark as concluded by CESTAT, shall fall within the definition of brand-name as per Explanation IX of the Notification No.1/93 CE dt.28.02.1993 as amended under the given facts:
- ii) CESTAT concluded that the marks are not affixed on the goods and hence it cannot be said that other's brand-name has been affixed. As per the definition of brand-name under the Notification No.1/93 as amended it is suffice if the logo mark or trade name, etc. 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 indication of the identity of one person has been used by the assessee it can be said that the assessee has used the brand name of other person.

In the instant case, the name "VOLTARC" has been inscribed on the packets/cartons of the assessee (as per the observation made by the Officers as seen in page 2 line 14th of the SCN) whereas the words "VOLTARC" have been previously used by VEPL with little change. As such,

whether the conclusion drawn by CESTAT is correct in law or fact has to be determined.

The brief facts of the case are that the respondent – M/s.Voltarc India (P) Limited is a manufacturer of electrodes. They were issued a show cause notice. The Common Order in Original was passed on 10.12.1999 denying the benefits of exemption Notification Nos.1/93-CE, dated 22.08.1993, No.38/97-CE, dated 27.07.2000 and No.9/98, dated 02.06.1999 on the ground that the respondent was using the trade name belonging to another person namely M/s.Voltarc Electrodes Private Limited. The show cause notice also alleges suppression of facts and thus larger period of limitation was invoked. When the respondent challenged the Common Order-in-Original dated 10.12.1999 passed by the Commissioner before the CESTAT, the Tribunal, after consideration of the material, allowed the appeal of the respondent setting aside the Order-in-original. Being aggrieved by the order of the Tribunal, the Revenue is in appeal before this Court.

Heard the learned Standing Counsel for Customs & Central Excise appearing for the appellant and the learned counsel for the respondent and perused the material placed on record.

The facts are not in dispute. At the outset it may be noted that M/s.Voltarc Electrodes Private Limited and the respondent are two separate independent legal entities engaged in the manufacture of electrodes. The Tribunal

found that all through, the respondent was filing classification list from time to time and nowhere it is mentioned therein that the name of the company as their trade name. From time to time, the relevant records have been counter-signed by the Inspectors and there is also evidence on record that the Inspectors were visiting the factory periodically and had put their signatures and seal on the communications and letters received by them. Based on such facts, the Tribunal did not find that there was any justification in applying the extended period of limitation, and thus, the appeal came to be allowed accepting the plea of the respondent that the Order-in-Original is barred by limitation.

Further, the Tribunal also found that Voltarc symbol which was being used on the wrapper and packer was reflecting only the name of the company and not the trade mark of the product. The argument of the respondent that even in the classification list they were mentioning the same and the Voltarc was not a brand but a trade-mark was accepted. The Tribunal also came to the conclusion that the symbols that are used by both the companies are different and distinct in character. While the appellants used the symbol “V” with a dot with India written below the “V” in case of M/s.Voltarc Electrodes Private Limited, between two “Vs”, there is electricity sign below with the name Voltarc. It was also found that there was no mark on the product as such.

In the above factual background and in the absence of anything contrary brought before this Court, more particularly raising a specific ground of perversity of finding of fact, we do not find any infirmity in the order of the Tribunal much less any substantial question of law in this appeal. Even assuming for the sake of argument that there is a possibility of taking a different view on merits in view of the categorical finding arrived at in the Common Order-in-Original that the show cause notice came to be issued beyond the period of limitation, and as the same is not being challenged before us, this appeal cannot succeed.

Hence, the Central Excise Appeal is devoid of merits and dismissed. No order as to costs.

As a sequel to dismissal of the appeal, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

G. CHANDRAIAH, J

24.06.2015

CHALLA KODANDA

RAM,J

Note: L.R. Copy to be marked

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