Devendra

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 136 OF 2015

The Commissioner, Central Excise and
Service Tax, Kolhapur Commissionerate. ..Appellant

V/s.

M/s. Y. M. Krishna SSK Ltd. ..Respondent

Mr. Pradeep S. Jetley a/w Jitendra B. Mishra for the Appellant.

CORAM : A.S. OKA &
RIYAZ I. CHAGLA, JJ.

DATE : 8TH AUGUST, 2017

P.C.

1. Heard the learned counsel appearing for the Appellant. The Appellant has taken an exception to the judgment and order dated 15th January 2014 passed by the Customs, Excise and Service Tax Appellate Tribunal at Mumbai.

2. The Respondent is a Co-operative Sugar Factory which is engaged in manufacture of sugar and molasses and it is also having its distillery. In the said distillery, the Respondent is manufacturing country liquor

having brand name 'Pahili-Dhar'. The Respondent which was the Appellant before the Appellate Tribunal entered into two agreements styled as selling agency agreement. The first one was dated 10th April 2002 entered into with M/s. Talareja Trade, 885 Shaniwar Peth, Pune – Bangalore Road Malkapur (Karad) for a period of five years. The said agreement was replaced by another selling agency agreement dated 1st January 2006 with the same agents which was valid for five years. It is alleged that the Respondent was regularly filing Service Tax Returns.

3. A show cause notice was issued by the Revenue calling upon the Respondent to show cause as to why service tax amount towards Business Auxiliary Services and also towards Intellectual Property Services should not be demanded and recovered in terms of the agreement executed by and between the Respondent and M/s. Talareja Trade (HUF) alongwith interest and penalty. It is alleged that the Respondent has allowed M/s. Talareja Trade to use brand name Pahili-Dhar for marketing country liquor manufactured by the Respondent. The allegation is that the said activities are falling under the category of Intellectual Property Service.

4. The show cause notice was replied by the Respondent by contending that the agreements are only selling agency agreements. By the order which was impugned before the Appellate Tribunal, the demand

towards Business Auxiliary Services was dropped but the demand in the sum of Rs.38,39,187/- under the category of Intellectual Property Services was confirmed. Being aggrieved by the said order, the Respondent preferred an Appeal before Appellate Tribunal which has been allowed by the impugned order.

5. The learned Counsel appearing for the Appellant has taken us through impugned judgment as well as two agreements executed by the Respondent. His submission is that the Tribunal has committed an error by holding that the minimum guarantee of profit assured by the agent is a royalty. He invited our attention to some of the clauses in two agreements referred above. He also invited our attention to the finding recorded by the Appellate Tribunal that the agreements were to maximize the profit. He submits that the agreements indicate that the relationship as envisaged by the agreements is not a plain agent-principal relationship and infact the consideration is paid by the agent to the Respondent for using the brand name of the Respondent. He would therefore, submit that the findings recorded by the Tribunal are completely erroneous.

6. We have given careful consideration to the submissions. We have perused copies of both the agreements dated 10th April 2002 and 1st January 2006. We find from the impugned judgment and order that the

Tribunal applied its mind to all the relevant clauses in both the agreements and on appreciation of various clauses of the agreements alongwith other material on record, has recorded a finding of fact that no Intellectual Property Service has been rendered by the Respondent. Another finding of the fact is that the agreements between Respondent and M/s. Talareja Trade are for ensuring maximum Production and sale of country liquor so as to maximize profit for both the parties. We have perused the relevant clauses of both the agreements. The Respondent is holding CL-1 License for manufacturing country liquor and was desirous of obtaining higher returns on the investment made by it on its country liquor plant. The Respondent decided to appoint M/s.Talareja Trade as sole selling agent for the sell of country liquor produced by it. In fact it is noted that M/s. Talareja Trade has become "c" class members of the Respondent Co-operative Sugar Factory. After having perused of the relevant clauses of both the agreements, we find that the finding of the Appellate Tribunal that no Intellectual Property Service has been given by the Respondent cannot be said to be perverse. The finding is rendered after due consideration of all the relevant clauses of both the agreements. By the agreements, M/s.Talareja Trade were appointed as sole selling agents of the country liquor which was to be manufactured by the Respondent.

7. In view of the findings of the fact recorded on the basis of the documentary evidence, no substantial question of law arises in this Appeal. There is no merit in this Appeal and the same is accordingly dismissed.

(RIYAZ I CHAGLA J) **(A.S. OKA, J)**