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

CENTRAL EXCISE APPEAL NO. 271 OF 2016

The Principal Commissioner of Central Excise ...Appellant

Versus

M/s. Sams Machines Tools ...Respondent

ALONG WITH

CENTRAL EXCISE APPEAL NO. 272 OF 2016

The Principal Commissioner of Central Excise ...Appellant

Versus

M/s. Sams Techno Mech ...Respondent

Mr. M. Dwivedi, i/b Ms. Shalaka Gujar, for the Appellants in both the Appeals.

Ms. Manasi Patil, i/b Ms. Padmavati Patil, for the Respondent in both the Appeals.

CORAM : ABHAY S. OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 25 September 2017

ORAL JUDGMENT : ***[Per Riyaz I. Chagla J.]***

1. The Appellant by the present Appeals are

challenging the common order dated 2 November 2015 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench (for short "***Appellate Tribunal***"), by which the order of the Commissioner (Appeals) was upheld. For the sake of convenience, we are referring to the facts in Central Excise Appeal No. 271 of 2016.

2. The Respondent is engaged in the manufacture of excisable goods namely pharmaceutical machinery falling under Chapter 84 of the first schedule to the Central Excise Tariff Act, 1944. The Respondent is availing benefit under Notification No. 8/2002 dated 1 March 2002 (as amended), without availing facility of cenvat credit scheme under Cenvat Credit Rules, 2002. The officers of the Central Excise, Mumbai IV visited the premises of the Respondent and upon search of the premises and scrutiny of the records, it was found that the Respondent is engaged in the manufacture and clearance of pharmaceuticals machinery under the brand name "SAMS" and availing benefit of Notification 8/2003 dated 1 March 2003 for clearance value

upto Rs. One Crore. A Show Cause Notice dated 25 August 2004 was issued for denial of SSI exemption and demand of duty amounting to Rs. 32,58,325/- from the Respondent for the period from 12 August 2002 to 31 June 2004. It was stated in the Show Cause Notice that from the declarations submitted by the Respondent and the brand owner M/s. SAMS Machine Private Limited that both the Companies are engaged in the manufacture of the same excisable goods i.e. pharmaceutical machinery. It is also stated that the Respondent was using the brand name “SAMS” which was appearing on the front plate design of their product viz. Octagonal Blender and in which case the *prima facie* impression given is that of being SAMS brand of machinery. The Trade-Mark Registry, vide their Certificate No. 301080 dated 14 June 2004 has statutorily given the exclusive right to M/s. SAMS Machine Private Limited for the use of brand name “SAMS”. It was mentioned in the Show Cause Notice that the Respondent was using the brand name “SAMS” belonging to M/s. SAMS Machine Private Limited on its manufactured products. The Respondent was availing Notification No. 8/2002, despite the Notification providing that the benefits of SSI exemption could be availed subject to the condition mentioned in paragraph 4 of the Notification which reads as "the exemption contained in this Notification shall not apply to the specified goods bearing a brand name or trade name, whether registered or not, of another person". The Show Cause Notice therefore, called upon the Respondent to show cause why the duty amounting to Rs. 32,58,325/- should not be demanded from the Respondent for the period form 12 August 2002 to 31 June 2004 and the SSI explanation should not be denied to the Respondent. The Adjudicating Authority observed that the Respondent had suppressed the fact of using the brand name unregistered of another manufacturer from the Department, with an intention to evade duty. The Adjudicating Authority invoked the previsions of the first proviso of Section 11A(1) of the Central Excise Act, 1944 and confirmed the demand of Rs. 32,58,325/- vide order in original dated 22 December 2004 along with the penalty imposed under Section 11A(c) of the Central Excise Act, 1944, and interest due thereon.

3. The Respondent being aggrieved by the Order-in-Original dated 22 December 2004 preferred an Appeal before the Commissioner (Appeals). The Commissioner (Appeals) found in favour of the Respondent and set aside the Order-in-Original dated 22 December 2004. The Commissioner (Appeals) found that the Show Cause Notice was issued on 25 August 2004 for the period of 12 August 2002 to 31 July 2004 and hence, was time barred and the extended period was not applicable as there was no willful suppression of facts on the statement on the part of the Respondent.

4. An Appeal was preferred by the Appellant against the order of the Commissioner (Appeals) to the Appellate Tribunal. The Appellate Tribunal by order dated 2 November 2015 rejected the Appeal of the Appellant and upheld the order of the Commissioner (Appeals) dated 5 May 2005. Hence, the present Appeal.

5. The learned Counsel appearing for the Appellant has

submitted that the Appellate Tribunal had erroneously rejected the Appeals by accepting the submission of the Respondent that they were using their own name on the label of the machine which they were manufacturing and had no relation to the word "SAMS". The learned Counsel appearing for the Appellant has also contended that the Notification No. 8/2002 dated 1 March 2002, the benefit of which the Respondent had availed of, was subject to certain conditions and which included that the exemption in the Notification will not apply to the specified goods bearing a brand name or trade-name, whether registered or not, of another person. The learned Counsel appearing for the Appellant has submitted that the exemption in the Notification could not be availed of by the Respondent as they had used the brand name of another person viz. SAMS Machine Private Limited. He has also submitted that the Appellate Tribunal has incorrectly placed reliance upon the decision of the Apex Court, which was not applicable to the facts of the present case.

6. The learned Counsel appearing for the Respondent

has supported the impugned order of the Appellate Tribunal.

7. We have considered the submissions of both sides. Notification No. 8/2002 dated 1 March 2002 as amended by the Notification No. 8/2003 dated 1 March 2003 provides for SSI exemption for the manufacturer having clearance not exceeding Rs. 3.00 Crores and not availing cenvat scheme upto an aggregate value of the clearances of Rs. 1.00 Crore. The Notification is subject to the certain condition. The relevant condition is in paragraph 4 of the said Notification and which reads thus "the exemption contained in this Notification shall not be applied to the specified goods bearing a brand name or trade name, whether registered or not, of another person ...". Thus, the benefit of the Notification can be availed of by the Respondent provided it has not applied the brand name of another person on the label of its machine.

8. The learned Counsel appearing for the Respondents has produced the metal label which is affixed to each and every

machine. After inspecting the label, we have found that the label affixed on the machines contained the manufacturer i.e. the Respondents' own name and has no relation to the words "SAMS" which belongs to M/s. SAMS Machine Private Limited.

9. We are therefore, of the view that the Appellate Tribunal has arrived at a correct findings that the label on the machine clearly reveals that the machine is manufactured by the Respondents. We also of the view that the exemption from excise duty is admissible as the said Notification would be applicable in the facts of the present case. The Respondents are not using the branded name of another person and the name used on the label affixed on the machines was that of the Respondents themselves.

10. The decision of the Apex Court in case of ***Commissioner of Central Excise, Hyderabad-IV Vs. Stangen Immuno Diagnostics***[1] and in the case of ***Commissioner of***

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1 ***2015(318) ELT 585 (SC)***

Central Excise, Pune II Vs. Pethe Brake Motors (P) Ltd.[2] are referred to in the impugned order are clearly applicable in the present case.

11. In the case of ***Commissioner of Central Excise, Pune II*** (Supra), the Apex Court held thus :-

> *"This is not in dispute that the respondent is an SSI unit. However, it was denied exemption from Excise duty admissible under Notification No. 1/83-C.E., dated 28-2-1993 on the ground that it was using branded name of another person and therefore in terms of para 4 of the said Notification it was not entitled to the exemption.*
>
> *2. However, we find that finding of fact is recorded by the Tribunal in the impugned judgment that the respondent assessee was not using the*

2 ***2015 (319) ELT 575 (SC)***

branded name of another person and the name used was the surname of the Director of the assess, viz., 'PETHE'. This finding of fact which clearly means that the case does not fall within the mischief of para 4 of the aforesaid Notification No. 1/93.

3. The appeal is accordingly dismissed."

12. We are of the view that the above decision of the Apex Court wherein a similar view was taken, would clearly cover the present case.

13. We accordingly, find no merit in the two Appeals. Hence, both the Appeals are dismissed.

[RIYAZ I. CHAGLA J.] **[ABHAY S. OKA, J.]**