

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.07.2017
Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.18467 of 2004

M/s.Kali Aerated Water Works (Karaikudi)
Rep., by its Proprietor,
Mr.K.P.R. Nageswaran,
Ariyakudi Village,
Karaikudi Taluk, Sivaganga District. ...Petitioner

Vs.

The Joint Commissioner of Central Excise,
Officer of the Commissioner of Central Excise, Madurai,
Central Revenue Buildings,
Bibikulam, Madurai - 625 002. ...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, calling for the records pertaining to the Impugned Show Cause Notice No.17 of 2004 in C.No.V/22/15/29/2004-Adjn dated 21.06.2004, issued by the Respondent and quash the same.

For Petitioner : M/s..Rathina Asohan

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

O R D E R

Heard M/s. Rathina Asohan, the learned counsel appearing for the petitioner and Mr. A.P. Srinivas, learned Senior Standing Counsel for the respondent.

2. In this Writ Petition, the petitioner has challenged the show cause notice issued by the respondent, demanding payment of basic excise duty, alleging that the excisable goods were removed, without payment of duty.

3. The legal issue, which is involved in this case is, as to whether the petitioner is entitled for the exemption from payment of duty on goods bearing the brand name of another person cleared from their factory in terms of the relevant Notifications. The said issue has been finally decided in the

assessee's own case, in (Kali Aerated Water Works vs. Commissioner of C.Ex., Madurai) reported in 2015 (320) E.L.T. 692 (S.C.), wherein, the Appeal filed by the petitioner / assessee was allowed. The operative portion of the judgment is as follows:-

"4.It is clear from the above that the trade name 'Kalimark Aerated Water Works' and trade mark mentioned in the said agreement would remain vested in all the parties including the appellant and the appellant was also allowed to use the same. The agreement further provides that the user of this trade mark, therefore, shall not make any payment of royalty or remuneration to any other party. This very fact was correctly appreciated by the Commissioner who decided the appeal in favour of the appellant. The discussion in the order of the Commissioner, on this aspect, reads as under:

"23.During the personal hearing Shri Rathina Asohan drew my attention to the certificates issued by the Trade Mark Registry from the year 1948 to 1985 which were filed before the lower authority. I find the appellant's name also figures in the certificates issued in the year 1962 and 1970 when he became one of the partner of the erstwhile HUF Firm. The appellant have been marketing his products only within his own marketing area. It is not the case of the Revenue that any other person is using the same Brand names in the same area. Similarly the appellant is not selling his goods outside his marketing area. So far his business is concerned the appellant appears to be the only legal owner of the Trade Mark within his marketing area. This has been clearly brought out in the Mutual Agreement dated 12.03.1993 which has been duly presented on 12.03.1993 itself for registration whereas the impugned Notification No.59/94 came into

effect only from 01.04.1994 and hence no motive can be attributed against the appellant in respect of the Mutual Agreement. I have read the entire contents of Mutual Agreement. I find that Mr.K.P.R.Sakthivel is also a party to the said Mutual Agreement and no royalty is also payable to the said K.P.R.Sakthivel. Even Mr.K.P.R.Sakthivel has specifically agreed that he cannot use the brand name in the marketing area of the appellant. Thus there seems to be recognition of individual proprietary rights over the brand names within the respective specified marketing area. The nature of succession of the proprietary rights of the brand names have also been clearly dealt with. It clearly establishes that the appellant and the male descendants are alone are entitled to succeed over the ownership of the brand name within their marketing area. It is not the case of the Revenue that the appellant is marketing his products outside his marketing area.

24.I find that the appellant is the legal owner of the trade Marks used in his product in his own marketing area, the Trade Mark certificates produced before me clearly establish that the appellant had been having the right of ownership over the Brand names in the year 1962 itself when he became the coparcener in the HUF firm. The appellant has had his exclusive ownership rights even prior to the said impugned notification. Hence the subsequent notification cannot take away the ownership right of the appellant over the brand names 'KaliMark', 'Bovonto' and 'Frutang' and other brand names and applying the same to the specified goods

manufactured by the appellant and marketing the same within his own marketing area in exclusion of others. On perusing the trade mark certificates, Decree of the Civil Court, Mutual Agreement dated 12.03.1993 and also considering the above contentions, I find that the appellant is the legal owner of the brand names within his marketing area."

5.It is thus manifest that the appellant has been using his own brand name 'Kalimark' and it belongs to the appellant. In view thereof, the case of the appellant is squarely covered in its favour by the judgment of this Court in Civil Appeal No.9157 of 2003 titled CCE, Hyderabad-IV v. Stangen Immuno Diagnostics decided on 19.03.2015 [2015 (318) E.L.T. 585 (S.C.)]."

4. The above decision of the Hon'ble Supreme Court was followed by the CESTAT in the assessee's own case, in a batch of appeals, in Appeal No.R/518/2008 etc. dated 15.10.2015, and all the appeals have been allowed. The operative portion of the order reads as follows:-

"6.Since the Apex Court has settled the issue of using the brand name and trade name in the appellant's own case, by respectfully following the Apex Court's decision above, we hold that the appellants are using their own brand name and are eligible for SSI exemption under Notification No.8/03-CE dated 01.03.2003. Hence, penalties involved in all the appeals are not sustainable. Accordingly, all the impugned orders are set aside and all the appeals are allowed with consequential relief."

5. In the light of the above referred settled legal position, the impugned show cause notice cannot be sustained, and accordingly, the same is quashed and the Writ Petition is allowed. No costs.

Sd/-

Asst.Registrar (CS VIII)

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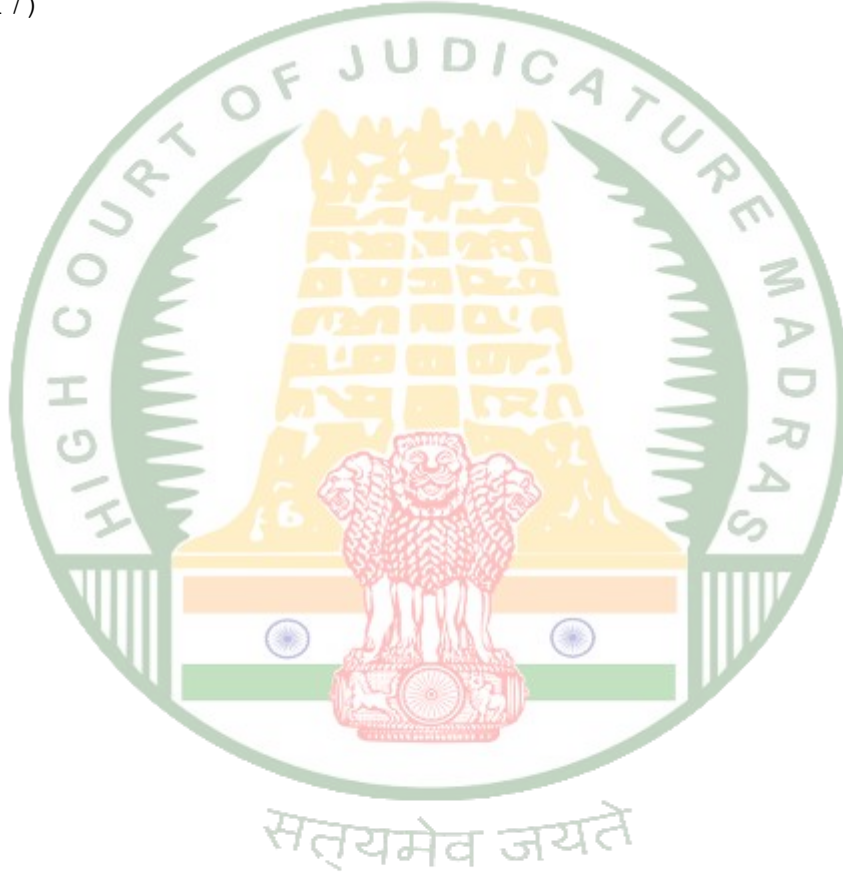
Sub Asst. Registrar

To

The Joint Commissioner of Central Excise,
Officer of the Commissioner of Central Excise, Madurai,
Central Revenue Buildings,
Bibikulam, Madurai - 625 002.

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