

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO.2534-2535 OF 2001

COMMNR. OF CENTRAL EXCISE, MUMBAI

Appellant(s)

VERSUS

M/S BIGEN INDUSTRIES LIMITED
)

Respondent(s)

(with office report)

Date: 12/04/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE DEVINDER KUMAR JAIN

For Appellant(s)

Mr. B.B.Singh, Adv.

Mr. Kumar Rajesh Singh, Adv.for

Mr. P.Parmeswaran, Adv.

For Respondent(s)

Mr. A.R.Madhav Rao, Adv.

Mr. Alok Yadav, Adv.

Mr. Karan Talwar, Adv. for

Mr. M.P.Devanath, Adv.

UPON hearing counsel the Court made the following

O R D E R

The Appeals are dismissed leaving the parties to bear their own costs.

(Parveen Kr. Chawla)

(Kanwal Singh)

Court Master

Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2534-2535 OF 2001

Commissioner of Central Excise, Mumbai

..Appellant(s)

VERSUS

M/S BIGEN INDUSTRIES LIMITED

.Respondent

O R D E R

These are statutory appeals filed under Section 35L(b) of the Central Excise Act, 1944 (for short 'the Act') against final Order No. C-II/3124-25/WZB/2000 dated 27th October, 2000 passed by the Customs, Excise & Gold (Control) Appellate Tribunal, West Regional Bench at Mumbai (hereinafter referred to as 'the Tribunal') in Appeal Nos. E/3691-R/98-Mum and E/254/2000-Mum. By the impugned order the Tribunal has allowed Appeal No. E/3691-R/98 filed by the respondent-assessee (for short "the assessee") and set aside the orders of the Commissioner (Appeals) and

the adjudicating authority, and consequently the assessee has been held to be entitled to the exemption under notification No. 140/83-CE. Tribunal has dismissed Appeal No. E/254-R/2000 filed by the Revenue.

The assessee is engaged in the manufacture of 'Bigen Liquid Hair Colour' falling under Chapter 33 of the Central Excise Tariff Act, 1985 (for short 'the Tariff Act'). The assessee had claimed SSI exemption under Notification No. 140/83-CE. The product was manufactured and cleared under the brand name "BIGEN" which was owned by M/s Hoyo Kabushiki Kaisha, a Japanese firm, carrying on business at Nagoya, Japan. By a Deed of Assignment dated 22nd September, 1988, the assessee was assigned the trade mark BIGEN for India with a device of a Japanese women for hair colour. This was registered with the Registrar of Trade Mark, Mumbai. The Trade Mark Registry sent a communication informing that registered Trade Mark No. 381047 in class 3 has been registered in the name of the assessee. The Trade Mark Registry in its communication stated that in view of the assignment dated 21st of September, 1988, the Japanese firm ceased to be the Proprietor of the registered trade mark and the assessee - Mrs. A.J. Merchant trading as Bigen Industries is the sole proprietor of the said registered trade mark.

For the period from 12th August, 1989 to 25th August, 1991, the adjudicating authority in its order in original dated 14th October, 1991 granted exemption to the assessee under Notification No. 140/83-CE. The said order was confirmed by

Collector (Appeals) of Central Excise, Mumbai in Order-in-Appeal No. GS/506/D-

II/93. Against the order of the Collector(Appeals), an appeal was filed by the Revenue in New Delhi Bench of the Tribunal which was dismissed vide its Order-in-appeal No.

3461/91-C dated 7th July, 1998 reported as Collector of Central Excise, Bombay vs.

Bigen Industries 1999 (107) ELT 213(T). The order of the Tribunal became final

between the parties as the Revenue did not challenge the said order by filing appeal

to this Court.

A search was conducted at the residence of the proprietor of the respondent-

company on 22.6.1992 and a box of files containing details of the correspondence

between M/s Hoyu Co. Ltd., Japan and the assessee was recovered. On the basis of

the said evidence, assessee was served with a show cause notice dated 28.10.1993

on the similar lines as had been issued on 19th January, 1990 which was the subject

matter of the decision of the Tribunal between the same parties in Bigen Industries

(supra).

Show cause notice dated 28th of October, 1993 required, inter alia, to

respond as to why the exemption under Notification No. 140/83-CE be not denied to

the assessee. In paragraph 19 of the said show cause notice, the authority accepted

the existence of the Deed of Assignment but denied the exemption on the ground that

Clause 6 of the Notification in question did not make any distinction between a "brand

name" or a "trade name" owned by a person in India or abroad. M/s Hoyu Company

Ltd., a Japanese firm, continued to be the proprietor for the brand made in India as it

had this trade mark for the world over. M/s. Hoyu Co. Ltd. was not eligible for the

benefit of exemption under the notification. The assessee filed its reply. The

adjudicating authority after hearing the parties confirmed the demand as per show

cause notice for the period from April 1988 to 11th of August, 1989 and for 26th of

August, 1991 to March 1993. The order excluded the period already covered by the

earlier order of the Tribunal in Bigen Industries (supra). The demand of duty

of Rs.12,75,877/- was confirmed. Penalty of Rs.12.05 lakhs as well as fine were also imposed.

The order of the adjudicating authority was confirmed in appeal by the

Commissioner. Assessee filed an appeal in respect of the period for which the

demand was confirmed i.e. April 1988 to 11th of August, 1989 and from 26th of August,

1991 to March, 1993. The Revenue preferred the appeal in respect of the excluded

period i.e. 12th of August, 1989 to 28th of August, 1991. Tribunal accepted the appeal

filed by the assessee and dismissed the appeal filed by the Revenue. The Revenue

has not filed further appeal against the order of the Tribunal in respect of the excluded

period, and therefore, the same has become final.

The Tribunal in the impugned order has held that the Trade Mark Registry,

which is the statutory authority, recognises the assessee as the sole proprietor of the

trade mark "Bigen" for the territory of India. Since the trade mark Bigen is registered

in the name of the assessee, it cannot be denied the benefit of the notification under

consideration. This apart, Tribunal observed that the decision in the assessee's own

case in the earlier proceedings which has become final, clinches the issue in favour

of the assessee.

Counsel for the parties have been heard.

The adjudicating authority as well as the Commissioner (Appeals) have proceeded on the basis as if the order passed by the Trade Mark Registry registering the trade mark in favour of the assessee is erroneous and of no consequence. The Tribunal is right in observing that once the trade mark has been registered in the name of the assessee by the statutory authority authorised to do so recognizing the assessee to be the sole proprietor of the trade mark for India, the adjudicating authority as well as the Commissioner (Appeals) erred in denying the benefit of the notification under consideration. This apart, the earlier decision of the Tribunal in Bigen Industries (supra) between the parties on the same facts for the period from 12th August, 1989 to 25th August, 1989 having attained finality, as the Revenue did not file any further appeal, the Revenue is precluded from taking a different stand in the present appeals as per law laid down by this Court in a catena of cases. [See Collector of Central Excise, Pune vs. Tata Engineering & Locomotives Co. Ltd. reported in (2003) 11 SCC 193; Berger Paints India Limited vs. Commissioner of Income Tax, Calcutta reported in (2004) 12 SCC 42; Birla Corporation Limited vs. Commissioner of Central Excise reported in (2005) 6 SCC 95 = 2005 (186) ELT 266 (SC); and Jayaswals Neco Limited vs. Commissioner of Central Excise, Nagpur reported in 2006(195) ELT 142(SC)].

In view of the position explained above, we find no infirmity in the impugned order and dismiss these appeals leaving the parties to bear their own costs.

.....J.

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[ASHOK BHAN]

NEW DELHI;

.....J.

APRIL 12, 2006.

[DEVINDER KUMAR JAIN]