

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2967 OF 2006

COMMISSIONER OF CENTRAL EXCISE, BANGALORE ... Appellant

VERSUS

M/S. OTTO BILZ (INDIA) PVT. LTD. ... Respondent

WITH

CIVIL APPEAL NO. OF 2015
(Diary No. 4219 of 2009)

O R D E R

The respondent herein is a small scale industry and fulfils all the conditions to avail the benefit of SSI Exemption Notification No. 1/93 dated 28.02.1993. However, there is dispute in respect of one condition. According to the Revenue, by virtue of paragraph 4 of the said Notification, the respondent would not be entitled to the benefit of the Exemption Notification. The relevant portion of paragraph 4 reads as under: -

"4. The exemption contained in this notification shall not apply to the specified goods, bearing a brand name or trade name (registered or not) of another person:

Provided that nothing contained in this paragraph shall be applicable to the specified goods which are component parts of any machinery or equipment or appliances and cleared from a factory for use as original equipment in the manufacture of the said machinery or equipment or appliances and -

(i) in a case where the clearances of such specified goods are within the first clearances upto an aggregate value not exceeding rupees thirty lakhs in a financial year, the manufacturer of the specified goods gives a declaration that the specified goods shall be used as mentioned above;

(ii) in any other case, the procedure set out in

chapter X of the said Rules is followed:

.....
....."

It is clear from the reading of the aforesaid paragraph that the exemption contained in the Notification is not to apply to specified goods bearing a brand name or trade name (registered or not) of another person.

As per the Revenue, the respondent is using brand name 'BILZ' of a foreign company which makes the respondent ineligible to seek exemption under the aforesaid Notification. However, it has come on record that the foreign company, viz., M/s. Otto Bilz Wekzugfabrik GMPH & Co., a German company, has assigned the trade mark 'BILZ' in favour of the assessee under Agreement dated 18.06.1996 with right to use the said trade mark in India exclusively. Because of the aforesaid assignment, the assessee is using the trade mark 'BILZ' in its own right as its own trade mark and therefore, it cannot be said that it is using the trade mark of 'another person'. We, thus, are in agreement with the view taken by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as 'CESTAT') that the assessee would be entitled to the aforesaid Exemption Notification.

It may also be pointed out that show cause notice dated 31.03.1999 which pertained to the period July, 1997,

to March, 1998, is held to be time barred by CESTAT and further holding that the Revenue could not avail the benefit of proviso to Section 11A of the Central Excise Act. Finding of the CESTAT on this issue is also without any blemish.

We, thus, do not find any merit in this appeal which is dismissed on both these grounds.

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Delay condoned.

The issue involved in this appeal is same as is discussed above in Civil Appeal Nos.2967 of 2006 . The appeal stands dismissed in terms of the aforesaid order.

....., J.
[A.K. SIKRI]

....., J.
[ROHINTON FALI NARIMAN]

New Delhi;
August 28, 2015.

