

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2967 OF 2006

COMMISSIONER OF CENTRAL EXCISE, BANGALORE

... Appel

lant

VERSUS

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

... Respo

ndent

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.

Accord

ing to

the Revenue, by virtue of paragraph 4 of th

e said

Notification, the respondent would not be entitled to the

benefit of the Exemption Notification. The relevant portio

n

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

Signature Not Verified

financial year, the manufacturer of the specified

Digitally signed by

Gulshan Kumar Arora

Date: 2015.09.11

goods gives a declaration that the specified goods

15:28:03 IST

Reason:

shall be used as mentioned above;

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

t in

C.A. No. 2967/2006 etc.

chapter X of the said Rules is followed:

.....
....."

It is clear from the reading of the afore
said 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 respon
dent ineligible to seek exemption under the afor
esaid 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 exclusi
vely.

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 'CES
TAT')
that the assessee would be entitled to the afore
said Exemption Notification.

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

C.A. No. 2967/2006 etc.

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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.

CIVIL APPEAL D 4219/2009

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.

C.A. No. 2967/2006 etc.
ITEM NO.106

COURT NO.14

SECTION III

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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. 2967/2006

COMMISSIONER OF CENTRAL EXCISE, BANGALORE
VERSUS

Appellant(s)

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

Respondent(s)

(With office report)

WITH

Civil Appeal D 4219/2009

Date : 28/08/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s) Mr. A. K. Panda, Sr. Adv.
Mr. P. K. Mullick, Adv.
Mr. Ajay Sharma, Adv.
Mr. B. Krishna Prasad, Adv.

For Respondent(s) Mr. V. Raghuraman, Adv.
Mr. C. R. Raghavendra, Adv.
Mr. Anand Sukumar, Adv.

Mr. Bhupesh Kumar Pathak, Adv.
Mr. K. Rajeev, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Civil Appeal No. 2967/2006

The appeal is dismissed in terms of the signed order.

Civil Appeal D 4219/2009

Delay condoned.

The appeal is dismissed in terms of the signed order.

(Nidhi Ahuja)
COURT MASTER

(Renu Diwan)
COURT MASTER

[Signed order is placed on the file.]

C.A. No. 2967/2006 etc.

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