

CASE NO.:
Appeal (civil) 4192-4224 of 2001

PETITIONER:
Commissioner of Central Excise, Chandigarh

RESPONDENT:
M/s Khanna Industries & Ors

DATE OF JUDGMENT: 28/11/2006

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T
WITH

(Civil Appeal No.4375 of 2006 and Civil Appeal Nos.7927-28 of 2001).

ARIJIT PASAYAT, J.

In these appeals, Revenue questions correctness of the judgment rendered by the Customs, Excise & Gold (Control) Appellant Tribunal, New Delhi, (in short 'CEGAT'). It was held by the impugned judgment that the respondents were eligible to avail benefit of the exemption notification No.175/86-CE and para 7 thereof will not be attracted in the present case. Appeals filed by the Revenue questioning correctness of the decision rendered by the Commissioner (Appeals), Central Excise & Customs, Chandigarh [in short 'Commissioner (Appeals)], were dismissed.

The background facts in a nutshell are as follows:

Respondents manufacture Brass Sanitary Bathroom fittings falling under Sub-heading 8481.80 and 8481.99 of the Schedule to the Central Excise Tariff Act, 1985 (in short 'Tariff Act'). The goods were packed in cardboard boxes on which stylised brand name "ARK" was printed and labels affixed on cardboard boxes also showed the brand name "ARK" in the stylised script; name and address of M/s. Arkson Pvt. Ltd., Chandigarh was also printed on the label; in addition "ARK" was put on the Sanitary fittings by pasting stickers and also by affixing tickli on the body of the fittings. All the respondents were availing exemption under Notification No.175/86-CE. Proceedings were started against them for demand of duty as brand name "ARK" in stylised script was brand name of M/s. Arkson Pvt. Ltd. Initially the matter was decided by the Collector, Central Excise who denied the exemption under Notification No.175/86-CE holding that the respondents were affixing specified goods with the brand name of another person not eligible for the grant of exemption and also there was suppression on the part of the respondents. On appeal filed by the Assessees, the CEGAT remanded the matter for de novo decision after arriving at a finding in regard to the eligibility to exemption of M/s. Arkson Pvt. Ltd. under Notification No.175/86-CE and to arrive at a definite finding in regard to other pleas of use of trade mark w.e.f. April, 1992 and other related matters concerning time bar. The CEGAT, however, gave specific finding that stylised

"ARK" is a trade name of M/s. Arkson within the meaning of relevant para of Notification No.175/86-CE.

On remand the matter has been decided by the Additional Commissioner who confirmed the demand of duty and imposed penalty on all the respondents holding that since M/s. Arkson Pvt. Ltd. was not eligible for the benefit of Notification No.175/86-CE since it was not holding any L-4 licence; the casting of pig iron manufactured in their proprietary concern M/s. Arkson Engg. Co. was exempted from payment of duty under Notification No.208/83 dated 1.8.1983 and no declaration as required to be filed under Rule 174 of the Central Excise Rules, 1944 (in short the 'Rules'), was filed by it; castings falling under Sub-heading 7325.10 of the Tariff were specified in the Annexure to the Notification. In addition the Additional Commissioner, relying upon decision in the case of Mentha & Allied Products vs. Union of India (1995 (77) ELT A-133(SC), concluded that aggregate sale figure of M/s. Arkson Pvt. Ltd. was more than Rs.2 crores during 1990-91 and 1991-92 and accordingly the benefit of Notification was also not available to it. The Additional Commissioner gave findings to the effect that the respondents had started affixing stylised brand name "ARK" w.e.f. September, 1991 and not from April, 1992 as contended and extended period of limitation was invocable as the fact regarding manufacture of the goods affixed with brand name another person was never brought to the knowledge the Department.

Respondents questioned correctness of the view expressed by the adjudicating authority before the before the Commissioner (Appeals). The said authority set aside the adjudication orders holding that eligibility of M/s. Arkson Pvt. Ltd. has to be considered in the light of the fact that Brass sanitary bathroom fittings are classified under sub-headings 8481.80 and 8481.99 which are specified in Annexure to Notification no.175/86-CE, Para 3 of Notification does not stipulate that value of the trading goods is to be taken into consideration for computing the aggregate value of clearance and M/s. Arkson Pvt. Ltd. being registered as SSI unit have made substantial compliance of conditions laid down in Notification no.175/86-CE. It was further held that non-fulfilment of requirement of Rule 174 was on account of the fact "ARK" in simple form was regarded as brand name of M/s. Khanna Industries who had complied with Rule 174 and it was the Tribunal's decision that separate identity of "ARK" and stylized "ARK" was established and, therefore, extended period of limitation was not applicable.

Revenue preferred appeals before the CEGAT which endorsed view of the Commissioner (Appeals), but did not record any finding on the question of extended period of limitation.

Stand of the appellant is that the goods were cleared by the respondents who are manufacturers and the brand owner is a trader. Even if the brand owner is a manufacturer he is required to be manufacturer of specified goods. CEGAT erred in holding that if the brand owner is a manufacturer; it is not required to be manufacturer of the specified goods. The small scale industry is not manufacturer of specified goods, and as such is not entitled to any exemption.

In response, learned counsel for the respondent submitted that CEGAT's view is correct. In any event it is

pleaded that the extended period of limitation is not applicable and that question has not been decided by the CEGAT.

In order to appreciate the rival submissions, the relevant notifications need to be noted. Notification No.175/86-C.E. dated 1.3.1986 reads as follows:

"EXEMPTION TO SMALL SCALE UNITS

In the exercise of the powers conferred by sub rule (1) of rule 8 of the Central Excise Rules, 1944 and in supersession of the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 85/85-Central Excises dated the 17th March, 1985 the Central Government hereby exempts the excisable goods of the description specified in annexure below and falling under the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the "specified goods"), and cleared for home consumption on or after the 1st day of April in any financial year, by a manufacturer from one or more factories.\027

xxx	xxx	xxx-
ANNEXURE		
Xxx	xxx	xxx

4. All other goods specified in the said Schedule other than the following, namely :-\027

(i) all goods falling under Chapters 9, 24, 31, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 71, 73 and 74;

(ii) all goods falling under heading Nos. 21.06, 25.04, 36.03, 40.11, 40.12, 40.13, 87.01, 87.02, 87.03, 81.04, 81.05, 87.06, 87.11, 91.01, 91.02 and 96.13;

(iii) all goods fallings under sub-heading Nos. 2101.10, 2101.20, 3304.00, 3305.90, 3307.00, 4005.00, 4006.10, 4008.21 and 9505.10 and

(iv) Sandalwood oil strips of plastic intended for weaving of fabric or sacks, polyurethane foam and articles of polyurethane loam broadcast television receiver sets refrigerating and air-conditioning appliances and machinery, and parts and accessories thereof.

The said notification was amended by Notification No.223/87-C.E. dated 22.9.1987. The amendment reads as follows:

"In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 175/86- Central Excise, dated the 1st March, 1986, namely:

In the said notification, \027

(I) after paragraph, 6, the following paragraph shall be inserted, namely:-

"7. The exemption contained in this notification shall not apply to the specified goods with a brand name where a manufacturer affixes the specified goods with a brand name or trade name (registered or not) of another person who is not eligible for the grant of exemption under this notification:

Provided that nothing contained in this paragraph shall be applicable in respect of the specified goods cleared for home consumption before the 1st day of October, 1987".

(ii) after Explanation VII, the following Explanation shall be inserted, namely :-

"Explanation VIII - "Brand name" or "trade name" shall mean a brand name or trade name, whether registered or not, that is to say a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person."

Clause 7 of the notification after amendment deals with exemption of specified goods and circumstances where the exemption is not available. Stand of the respondent is that if manufacturer need not be a manufacturer of specified goods, and brand name as used is entitled to exemption contained in the notification, it is really of no consequence whether he is manufacturer of goods. The stand is clearly untenable. The notification is 'goods specific'. What is required is that a person, who may be a manufacturer, must be eligible for exemption under the notification in respect of the specified goods. Any other interpretation would render the purpose for which the notification has been issued redundant.

As noted above, the notification is 'goods specific'. The emphasis is on 'specified goods'. That being so, the impugned judgment of the CEGAT is indefensible.

Undisputedly, M/s Arkson Pvt. Ltd. is different from M/s Arkson Engg. Co. In the present case, the issue relates to manufacture of "brass sanitary bathroom fittings". M/s Arkson Engg. Co. manufactures C.I. castings while M/s Arkson Pvt. Ltd. are the owners of the stylized brand name "ARK". However, the said company is engaged in trading of "brass sanitary fittings". Thus, they are traders. Assessee cannot take the benefit of the registration certificate of M/s Arkson Engg. Co. as both are separate legal entities. Therefore, when M/s Khanna Industries and others i.e. the assesses use the brand name/trade name of "ARK" in the context of "brass sanitary fittings" the assesses are not entitled to claim the benefit as the stylized brand name "ARK" belongs to M/s Arkson Pvt. Ltd. and not to M/s Arkson Engg. Co. However, as

noted above, M/s Arkson Pvt. Ltd. is a trader and not the manufacturer of "sanitary bath fittings". This is clearly accepted by Ms. Aarti Khanna, Executive Director of M/s Arkson Pvt. Ltd. in her statements on 22.1.1993 and 18.3.1993.

In the case of Namtech Systems Ltd. v. Commissioner of Central Excise, New Delhi (2000 (115) E.L.T. 238 (Tribunal), the larger Bench of CEGAT has held that affixation of specified good with a brand name of ineligible Indian manufacturer will entail disqualification from exemption. It is further held that the benefit of small scale exemption under Notification No.175/86-CE, as amended, is not available to the specified goods if they are affixed with the brand name or trade name of a trader who is not a manufacturer. The judgment of the larger Bench in Namtech Systems Ltd. (supra) has not been considered by the CEGAT in the present case. The intention is crystal clear that at the relevant time, the unit should be eligible for exemption under the Notification in respect of the 'specified goods'.

However, as rightly contended by learned counsel for the respondents, the plea relating to non-applicability of extended period of limitation has not been considered by the CEGAT. Therefore, the matter is remanded and the above issue alone will now be considered by the CEGAT.

The appeals are allowed to the aforesaid extent without any order as to costs.