

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO.III

Excise Appeal No.54681 of 2023

[Arising out of Order-in-Appeal No.27(AK)ST/JDR/2023 dated 25.01.2023 passed by the Commissioner (Appeals), Central Excise and Central Goods and Service Tax, Jodhpur]

M/s.Shreenathji Polyplast

Appellant

Opposite Bus Stand, N.H.8,
Village-Lal Madari, Tehsil,
Nathdwara, District-Rajsamand,
Rajasthan.

VERSUS

**Commissioner of Central Excise
and Central Goods & Service Tax**

Respondent

Commissionerate, G-105, New Industrial Area,
Opp. Diesel Shed, Basni, Jodhpur,
Rajasthan.

APPEARANCE:

Shri Pradeep Jain, Chartered Accountant for the appellant.
Shri Bhagwat Dayal, Authorised Representative for the respondent.

CORAM:

**HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER NO.58774/2024

**DATE OF HEARING:19.09.2024
DATE OF DECISION: 07.10.2024**

BINU TAMTA:

1. M/s.Shreenathji Polyplast ¹ has assailed the Order-in-Appeal No.27(AK)ST/JDR/2023 dated 25.01.2023, whereby the Commissioner (Appeals) affirmed the view of the Adjudicating

¹ The Appellant

Authority that the appellant is not entitled to SSI exemption in terms of Notification No.8/2003-CE dated 01.03.2003 ² and hence the excise duty is recoverable along with interest and penalty, invoking the larger period of limitation.

2. The appellant is engaged in the manufacture of "HDPE Pipes" and had declared the "Principal Place of Business" as By-pass Choraya, Bhuwana, Udaipur and Additional Place of Business as Village-Lal-Madari, Tehsil-Nathdwara, Distt-Rajsamand. It appears that the appellant manufactured the goods by using the brand name of "NOBLE" "FITWELL" and "ZINDAL" and cleared the same without payment of central excise duty by wrongly claiming the benefit of SSI exemption in terms of the notification (as amended) during the period December, 2016 to June, 2017 contravening the provisions of Central Excise Rules, 2002. On the basis of an intelligence, it was gathered that the appellant was engaged in clearing/selling of the goods without issuance of taxable invoices and thereby evaded the payment of GST. Search was conducted at the factory premises, the godown and the residential premises of one of the partners on 2.8.2018 by the GST Commissionerate. The stock of finished goods and the raw materials was found unaccounted/not recorded in their records, or in the books of accounts during the physical stock verification.

² The Notification

Statement of all the partners of the firm was also recorded under the provisions of the GST Act, 2017. Show cause notice dated 30.01.2019 was issued under the provisions of the GST Act, which was adjudicated vide order-in-original dated 05.03.2020 and the goods were confiscated.

3. During the examination of the documents recovered from the search operations and statements recorded, it revealed that the appellant had wrongly claimed the benefit of SSI exemption in contravention of the conditions mentioned in para-4 of the Notification, as they manufactured the pipes of the brand name of other company viz. M/s.Nootan Polymers, Rajkot during the period Jan., 2017 to June, 2017. Accordingly, show cause notice dated 21.12.2020 was issued demanding the central excise duty amounting to Rs.20,43,825/- under Section 11A(4) of the Act along with interest and penalty under Section 11A and 11AC of the Act. The Adjudicating Authority vide order-in-original dated 30.11.2021 confirmed the demand. Being aggrieved, the appellant preferred an appeal, which has been dismissed by the impugned order. The present appeal has been filed before this Tribunal.

4. Heard Shri Pradeep Jain, Chartered Accountant for the appellant and Shri Bhagwat Dayal, Authorised Representative for the respondent.

5. The main contention of the learned counsel for the appellant is that the SSI exemption is available to them even if the goods are manufactured under the brand name as they are manufactured in a rural area and, therefore, are covered under Para 4(c) of the Notification. According to him since their factory is situated in Village Lal-Madari, Tehsil-Nathdwara, District-Rajsamand, which is a rural area and in respect of which the Patwari had issued the lease, the same is eligible for SSI exemption, irrespective of the fact that the goods are bearing the brand name of another person. Learned counsel also emphasized that they have not manufactured the HDPE Pipes for M/s.Nootan Polymers, Rajkot under their brand name as the registered trade mark of M/s. Nootan Polymers is "NOBLE BRAND HDPE PIPES", whereas the appellant has cleared the "HDPE Pipes" to M/s. Nootan Polymers by merely mentioning "NOBLE", which is not their registered brand name, thus, the SSI exemption is admissible in their case. On the issue of invocation of extended period of limitation and imposition of interest and penalty, the submission is that there is no malafide intention and the issue involved interpretation of the notification.

6. The learned Authorised Representative for the Revenue submitted that the appellant had not disputed the fact of removal of the goods from their factory premises bearing the brand name of another person. Referring to the findings of the Commissioner (Appeals), it was submitted that the exemption of rural area claimed by the appellant is applicable only to the branded name or trade name mentioned in Para-4(b) of the notification. The clearance of the goods bearing the brand name or trade name of another person is ineligible for the grant of SSI exemption in terms of Para-4.

7. The basic question involved is whether the benefit of SSI exemption notification no.8/2003-CE dated 1.3.2003 is available to the appellant. As per the said notification, small scale industries are allowed exemption in certain circumstances enumerated therein. To appreciate the issue, it is necessary to quote the relevant provisions of the notification as under:-

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

(a) where the specified goods, being in the nature of components or parts of any machinery or equipment or appliances, are cleared for use as original equipment in the manufacture of the said machinery or equipment or appliances by following the

procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001:

Provided that manufacturers, whose aggregate value of clearances of the specified goods for use as original equipment does not exceed rupees one hundred lakhs in the financial year 2002-2003 as calculated in the manner specified in paragraph 1, may submit a declaration regarding such use instead of following the procedure laid down in the said Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001;

(b) where the specified goods bear a brand name or trade name of

(i) the Khadi and Village Industries Commission; or

(ii) a State Khadi and Village Industry Board; or

(iii) the National Small Industries Corporation; or

(iv) a State Small Industries Development Corporation; or

(v) a State Small Industries Corporation;

²(c) where the specified goods are manufactured in a factory located in a rural area;

(d) where the specified goods are account books, registers, writing pads and file folders falling under heading 4820 or 4821 of the said First Schedule.]

³(e) where the specified goods are in the nature of packing materials and are meant for use as packing material by or on behalf of the person whose brand name they bear.]

Explanation.- For the purposes of this notification,

(A) "brand name" or "trade name" means a brand name or a 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;

(B) where the specified goods manufactured by a manufacturer bear a brand name or trade name, whether registered or not, of another manufacturer or trader, such specified goods shall not, merely by reason of that fact, be deemed to have been manufactured by such other manufacturer or trader; “

8. The main ground for denying the benefit of the SSI exemption notification was that the appellant was using the brand names i.e. “NOBLE”, FITWELL” and “ZINDAL” of M/s. Nootan Polymers, Rajkot. The submission of the learned counsel is that their factory is situated in a rural area and, therefore, they are entitled to the exemption in terms of Para 4(c) of the notification.

9. Para-4 of the notification denies the exemption in respect of specified goods bearing a brand name or trade name, whether they are registered or not of another person and further sets out the exceptions. The sub-clauses (a) to (e) of Para-4 enumerates various exceptions in which case even if the goods are bearing the brand name or trade name would be entitled to the exemption under the notification. Each clause is an independent clause which provides for specific exemption and, therefore, has to be dealt within the terms of the expressions used therein. Here, we are basically concerned with clause (b) and (c) of Para-

4 as relied on by the Adjudicating Authority and the appellant respectively. Clause (b) of Para-4 qualifies the specified goods with the words, "brand name or trade name" of Khadi and Village Industry Board or National Small Industries Corporation or State Small Industries Development Corporation or State Small Industries Corporation, which implies that the goods even if they are bearing the brand name or trade name of these entities, they shall still be entitled to the exemption under the notification. The exception under Para-4(c) grants exemption to the specified goods if they are manufactured in a factory located in a rural area. The clause is clear and simple that if the goods are manufactured in a rural area, even if they are bearing the brand name or trade name shall be entitled to exemption. The distinction in the two clauses i.e. clause (b) and (c) is that the clause (b) restricts the applicability of the exception to the goods manufactured for the entities specified therein, whereas exception under clause(c) is area based i.e. goods manufactured in a factory located in 'rural area' only. The goods covered under clause (b) are not restricted to any particular area but only to the entities specified therein whereas clause (c) restricts the exception only to rural area and hence, the two operates in different spheres and cannot be clubbed together for the purpose of interpretation.

10. The findings of Authorities below that the requirement of manufacturing in a rural area has to be read with clause (b) is legally not sustainable as the expression used in clause(c) is clear and simple and there is no ambiguity, which has, therefore, to be read only with the substantive Para-4 i.e. the goods bearing the name or trade name shall not be eligible for the exemption but clarifies that the bar created therein shall not apply in the case of the exceptions and, therefore, clause (c) has to be read within the scope of the expression used therein. Accepting the findings of the Adjudicating Authority would amount to re-writing of the provisions of Para-4(c) so as to incorporate the words "brand name or trade name" after the words "specified goods", which is not permissible.

11. We find support from the decision of the Apex Court in **Commissioner of Central Excise, Trichy Vs. Rukmani Pakkwell Traders**³, where the findings of the Tribunal that the exemption can be denied only if trade name or brand name is used in respect of the same goods, for which the trade mark is registered, were rejected observing that the Tribunal has done something, which is not permissible to be done in law. The relevant para-6 of the aforementioned decision is as under:-

"It is settled law that Exemption Notifications have to be strictly construed. They must be interpreted on their own

³ 2004 (165) ELT 481 (SC)

wording. Wordings of some other Notification are of no benefit in construing a particular Notification. Clause 4 of this Notification and the explanation (set out hereinabove) make it clear that the exemption will not apply if the specified goods (i.e. scented supari) bears a brand or trade name of another person. **Neither in clause 4 of the Notification nor in Explanation IX is it provided that the specified goods must be the same or similar to the goods for which the brand name or trade name is registered. The Tribunal has in adopting the above reasoning effectively added to the Notification words to the effect "brand name or trade name in respect of the same goods". This is clearly impermissible.** It is to be seen that there may be an unregistered brand name or an unregistered trade name. These might not be in respect of any particular goods. Even if an unregistered brand name or trade name is used the exemption is lost. This makes it very clear that the exemption would be lost so long as the brand name or trade name is used irrespective of whether the use is on same goods as those for which the mark is registered."

12. Considering the different expression used in the clause (b) and (c) of para-4 of the Notification, the intention of the department in granting and restricting the exemption is evident and the law is settled that where the words used are simple and clear and there is no ambiguity, no further aid is required to interpret them. Secondly, the exemption notification has to be construed strictly within the four corners of the expression used in the notification. As discussed above, clause (b) of Para-4 explicitly uses the expression "specified goods with brand name or trade name" but clause (c) consciously do not use this expression. We, therefore, hold that the appellant is entitled to avail the SSI exemption benefit under the provisions of Para-4(c) as their factory is located in a rural area and the benefit cannot be denied

for the reason that they have been manufacturing the goods bearing the brand name i.e. "NOBLE", "FITWELL" and "ZINDAL", which belong to M/s.Nootan Polymers.

13. Having decided the issue on merits, we do not find it necessary to consider the other submissions raised by the appellant.

14. Having concluded that the appellant is entitled to avail the exemption under Para-4(c) of the notification, the impugned order deserves to be set aside. The appeal, is accordingly, allowed.

[Order pronounced on 07th October, 2024]

(BINU TAMTA)
Member (Judicial)

(P.V. SUBBA RAO)
Member (Technical)

Ckp.