

Customs, Excise and Gold Tribunal - Tamil Nadu

Continental Power Systems vs Commissioner Of Central Excise on 24 February, 2000

Equivalent citations: 2000 (69) ECC 553

Bench: S Peeran, A T V.K.

ORDER S.L. Peeran, Member (J)

1. Both these appeals of the party and by the department arise out of the Order-in-Original No. 44/97 dated 29.9.97 confirming duty demand by extending the provisions of Section 11A of the CE Act, 1944 and imposing penalty. The party has challenged the denial of the benefit of Exemption Notification 1/93 solely on the ground taken by the department that the appellant had used the brand name "celtronics" said to have been used by another Company at Ahmedabad having same name of that Company "Celtronics". The appellant is a Proprietrix (sic) concern manufacturing UPS systems. During the year 1991 they had also been using the name "Celtronics" in a different stylage. The department issued show cause notice alleging that the said name is also owned by M/s CELTRONICS and they are affixing the said brand name CELTRONICS which disentitle them to the benefit of the exemption Notification No. 1/93 as amended. The appellants had also contended that they had no connection whatsoever with the party at Ahmedabad and it was only a mere co-incidence that the name appears to be the same. The appellants have also contended that their clearances were below Rs. 30 lakhs and they were eligible to the benefit of the said exemption. It is their contention that there was no intention to evade payment of duty as there was no intention to evade payment of duty or they had any connection or any information to the existence of the said person at Ahmedabad having the said name and therefore the question of invoking the larger period on the ground that they had suppressed facts and hence they had intention to evade payment of duty, is not correct based on the evidence on record. They have also contended that in terms of explanation IX of the said Notification the Department has to establish that there was nexus between the brand name used in relation to such specified goods for the purpose of indicating or so as to indicate connection in the course of trade between the said specified goods and the same person using the said name or mark with or without any communication or identify of the person. The learned Counsel submits that the department has not established that the appellant's name or monogram or their product had any nexus in the course of trade between their product and the other product manufactured and used by the Ahmedabad party. It is contended that as the department has not taken any statement from the Ahmedabad party and no evidence on that side has been placed. Therefore, the Revenue has not established that there was any connection between the appellants' products with the other person using the same.

2. In this connection the learned Counsel arguing for the assessee submitted that in identical matter, in the case of Rukmani Packkwell Traders v. CCE as reported in 1999 (109) ELT 204, the Tribunal had set aside similar order wherein there was deceptively similar and not same trade mark of specified person used and marketed by different persons although the product was having same name ARR and the other product ARR Seeval. Further he relied upon the judgment in the case of AGI Switches (P) Ltd v. CCE as , wherein also there was slight difference in the shape or logo and name mentioned "AGI" and the colour scheme. The learned Counsel submitted that the Ahmedabad party used the word CELTRONICS' in capital letters and logo mark while in their case, the name was used in small letters viz. 'celtronics' and those letters in capital letters viz. "CELTRONICS" was the

brand name of the party at Ahmedabad. Therefore, there was no connection or nexus on each other's product. The trade also recognised product differently. The trade and the name also recognised differently. He submits that the department has not examined the party's case nor has taken statement and collected any evidence to show that there was nexus between the appellants and the party at Ahmedabad. Therefore the Explanation IX of the Notification No. 1/93 has not been satisfied and as such the appellants' claim for SSI benefit cannot be denied. He further submits that the appellants were totally unaware of the existence such a Company at Ahmedabad and the appellant was a propriatrix and very small unit having only local sales confined to Bangalore district. Therefore, there was no intention to evade payment of duty even prior to Notification 1/93. And they would come within the ambit of the said Notification. There was no desire on the part of the appellant to evade payment of duty and hence they had bona fide belief to the eligibility to the Notification and hence the longer period cannot be invoked in their case. He also referred to the Board's Circular No. 52/92/94 dated 1.9.94 wherein in para 5 a clarification has been given with regard to the case falling in the present category. He submits that this clarification would clearly apply to the facts of the present case in terms of the Supreme Court judgment in the case of Ranade Mycro as reported in 1986 (87) ELT19. He submits that the Circular has binding effect on the authorities.

3. Shri S. Kannan, the learned DR for the Revenue submits that the Commissioner has given detailed reasoning in his order. There is no dispute with regard to the name "celtronics" used by the parties and there was mutual use of the said brand name and hence the appellants' clearances come within the mischief of exclusion clause of the Notification. He submits that the appellants have not filed declaration and cleared the goods on payment of duty. Therefore, longer period of limitation would be applicable.

4. The department's appeal seeks enhancement of penalty and therefore, the penalty is required to be enhanced. He submits that similar issue was considered by the longer bench in the case of Namtek Systems v. CCE as reported in 2000 (36) RLT page 35.

5. On careful consideration of the submissions and on perusal of the records, and also the Notification No. in question including the mark used by the appellants with that of the party at Ahmedabad it is our considered opinion that the matter dealt with by the Larger Bench in the case of Namtek Systems (supra) pertains to use of brand name of foreign person or of non-manufacturing trader. This case is distinguishable insofar as the present facts are concerned inasmuch as we have to examine the Explanation IX appended to the Notification in question. In terms of the above explanation, there has to be nexus and connection between the names and the mark, signature or invented word of 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. In the present case, the Revenue has proceeded to deny the benefit of the Notification on the ground that another person at Ahmedabad is also using the same brand name and hence the appellants are not entitled to the benefit of the said Notification. The department has not proceeded to examine nor taken statement from the party at Ahmedabad to show a nexus between the name used by the appellants by the other person on the specified goods or the other person that is the party at Ahmedabad using the same name. Therefore,

the pleas raised by the learned Counsel on this aspect of the matter is well taken and is correct. Further, as to the appellants had known the other party using its deceptively similar name and they were trading in their own name has to be shown by the department. The department has also to show that there was deliberate intention to evade payment of duty as suppression implies that the assessee had knowledge of such use and they had connection with the use of the brand name of other person. For the purpose of extending the period Under Section 11A the Revenue has to show that the assessee had intention to evade payment of duty by affixing the brand name of another person by showing nexus and connection between the two parties in using the brand name. In this case, the Revenue has not brought the manner in which the appellants have utilised the brand name of other person at Ahmedabad. On perusal of the mark, trade name used by the appellants with that of the other party at Ahmedabad, there is a marked difference in the logo attached to the Ahmedabad party's trade name. The Tribunal in the case of AGI Switches v. CCE and in the case of Rnkmani Packkwell Traders (supra) have examined identical matter wherein the issue of deceptively similar and not similar name of the specified person using brand name, came up for consideration and the Tribunal came to a detailed conclusion that deceptive name in the matter shows that there was no common trade name between them. The Tribunal held that the benefit of the Notification cannot be denied. We are of the considered opinion that the matter raised by the learned Counsel have not been gone into by the Collector in his order and the matter is required to be sent back to the Collector for de novo consideration. Therefore, we set aside the impugned order and remand both the appeals for de novo consideration in the light of Board's circular and judgment in the case of AGI Switches (P) Ltd. (supra) and also in the case of Rukmani Packkwell Traders (supra). The Revenue has to clearly indicate as to how there was connection between the trade name of the other person and how they are identical and not deceptively similar as has been held in the two citations noted above. The appellants had no information about existence of said name of any other person with deliberate intention to withhold information to evade payment of duty. In the case of CCE v. HMM Ltd. as and in the case of TNHB-as reported in 1994 (74) ELT (9) (SC), the Apex Court has clearly laid down that the Revenue has to show that the assessee had intention to evade payment of duty by suppression of facts. In this case, appellants contended that they had no knowledge of the use of such name by another unit at Ahmedabad. Appellants' unit was a tiny unit run by a Proprietorship and their sale was confined to Bangalore district only. This aspect of the matter requires re-consideration for the purpose of invoking the longer period of limitation. The Collector shall go into these aspects of the matter and decide the case de novo after granting opportunity of hearing to the appellants and pass a speaking order. Ordered accordingly.