
Sri Sai Krishna Health Care Products Vs Commissioner Of Central Tax Medchal ½ GST

Excise Appeal No. 2993 Of 2011

Court: Customs, Excise And Service Tax Appellate, Hyderabad

Date of Decision: Dec. 4, 2023

Hon'ble Judges: Anil Choudhary, Member (J); A.K. Jyotishi, Member (T)

Bench: Division Bench

Advocate: P. Sai Makrandh, A.V.L.N. Chary

Final Decision: Dismissed

Judgement

A.K. Jyotishi, Member (T)

1. The Appellant "M/s Sri Sai Krishna Health Care Products (SSKHCP) is engaged in manufacture of mosquito coils falling under Chapter Sub-

heading No.3808.00 of the Central Excise Tariff. Based on investigation conducted by the Anti-Evasion Wing of Hyderabad-I Commissionerate, it

was noticed that the Appellants were engaged in manufacture and supply of mosquito coils to one "M/s Sree Ramcides Chemicals Pvt Ltd

(SRCPL) and M/s Farmax Health and Food Products Pvt Ltd (Farmax). These mosquito coils were being cleared under the name "STOP" for

SRCPL and under the name "TODAY" for Farmax.

2. It also appeared to the department that the exemption benefit under Notification No.08/2003-CE dt.01.03.2003, which was being claimed by the

Appellant, was not correct as they were not meeting the condition No.4 of the said notification. The condition No.4 of the said notification provided

that the exemption contained in the notification shall not apply to specified goods bearing a brand name or trade name, whether registered or not, of

another person. It also explained the meaning of the brand name or trade name for the purpose of notification as under:

"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 the person. "The

3. Therefore, SCN dt.19.11.2009 was issued covering the period 10.07.2007 to 26.09.2008, demanding excise duty of Rs.15,96,225/- and also

proposed for imposing penalty under Sec 11AC of the Act. On Adjudication by the Original Authority, the entire demand proposed was confirmed

along with interest and also imposed equal penalty on the Appellant, penalty of Rs.5,00,000/- on Mr. G.N.V. Satish " partner of the Appellant and

penalty of Rs.50,000/- on SRCPL. However, the Adjudicating Authority did not appropriate the advance deposit including demand of interest on the

same made by SRCPL and also did not impose any penalty on Mr. M. Malla Reddy, Director of Farmax. On Appeal, after going through the defense

submissions, Commissioner (Appeals) upheld the Order passed by the Original Authority by way of rejection of Appeal filed by the Appellant.

However, the Appeal filed by Mr. G.N.V. Satish " partner of the Appellant was allowed.

4. The Appellant is in Appeal against the Order passed by the Commissioner (Appeals). Since no one is appearing on behalf of the Appellant on many

occasions, the Bench appointed Mr. P. Sai Makrandh as amicus curie, on behalf of the Appellant.

5. Amicus curie has taken us through the genesis of the case and the issues involved. His main argument is that the denial of the exemption is possible

only when goods manufactured by the Appellant bearing a brand name or trade name, belongs to another person. Therefore, in order to deny the

benefit exemption notification, two conditions needs to be fulfilled, viz., that the brand name should not belong to someone else and secondly, that the

brand name should be used in the course of trade to indicate a connection between the goods (mosquito coils) and the person using the name

(SRCPL/Farmax). He has also relied on the observation of the Commissioner (Appeals), wherein, he has observed that M/s SRCPL and Farmax had

applied for trademark or the brand name and that they used the term "TM" on the packaging and that the Appellants have not brought any

evidence on record that SRCPL or Farmax are not the owners of the brand. However, mere filing of an application for the brand name does not

confirm the brand name to the applicant, viz., SRCPL/Farmax. He has also relied on certain amendments made in Notification No. 08/2003-CE vide

Notification No.47/2008 dt.01.09.2008, whereby, a exception was made in condition No.4 in Paragraph 4 of the Notification by way of "where

the specified goods are in the nature of packing materials and are meant for use as packing materials by or on behalf of the person whose brand name

they bear. However, he fairly concedes that barring period involved from 01.09.2008 to 26.09.2008, this condition would not be available in terms of

original notification. He has also not been able to explain whether this condition has retrospective effect or otherwise.

6. The Revenue, on the other hand, has reiterated the decisions of the Commissioner (Appeals) and has relied on case law CCE, Trichy vs Rukmani

Pakkwell Traders [2004 (165) ELT 481 (SC)], in support of their contention that in the given factual matrix of the case, where there is admittedly, a

owner of the registered trademark, the benefit is not available to the Appellants.

7. Heard the parties and perused the records.

8. The main issue which needs to be decided is whether the Appellants were clearing the goods under the brand name of another person or otherwise.

Admittedly, the Appellants were manufacturing mosquito coils, which were being cleared to two parties viz., SRCPL & Farmax, in terms of

Agreement entered between the Appellant and SRCPL/Farmax. It is not disputed that the goods were being manufactured by the Appellant and were

being cleared in packed form from the factory of the Appellants. It is also not disputed that on packing materials certain details like brand name/trade

name etc., of SRCPL/Farmax were imprinted. It is also not disputed that the names of SRCPL/Farmax were appearing as "marketed by" even

though the names of the Appellants were also appearing as "manufactured by". It is on the record that the department has recorded the

statements of both Appellants as well as SRCPL/Farmax, and has also relied on certain documents including advertisements, trademark application,

etc., to establish that the brands viz., "STOP" and "TODAY" were linked to SRCPL and Farmax respectively. The statements have clearly

linked that these companies were in the business of both manufacturing and trading and were using these brands in respect of variety of products. The

market was already aware of the identity of these brand names, even though they might be in relation to some other products. It is also an admitted

fact that Appellant has not brought any evidence on record that these brand names are either owned by them or by somebody else other than

SRCPL/Farmax.

9. Paragraph 4 of notification is unambiguous regarding definition of brand name/trade name, in as much as, it refers to any name or mark or symbol

or monogram, etc., whether registered or not, 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 would be brand name/trade name for the

purpose of this notification.

10. Thus, in the absence of the Appellant's providing any evidence that they were the brand name owners, irrespective of the fact that whether it

was registered in their name or not and the market's perception that brand name belonged to somebody else, it is not possible to consider that it

did not belong to others. In fact, in this case, sufficient evidence is on record by way of statements and other relied upon documents to the effect that

these brand names/trade names were belonging to SRCPL and Farmax.

11. The Commissioner (Appeals) has gone into details before coming to the conclusion that both the brand names belong to some other person. The

Appellants reliance on the case law cited is not relevant. In the case of CCE, Hyderabad vs Stangen Immuno Diagnostics [2015 (318) ELT 585 (SC)],

the issue in the said case was whether two different parties were using the same trademark and logo simultaneously in their own rights, which is not

the case here as it is clearly the case where the Appellant has failed to prove that they were the owners of the brand name/trade name of

“STOP” and “TODAY”. The Hon’ble Supreme Court observed that the Assessee, in this case, is using brand name as the owner

thereof itself, and was not using brand name as belonging to some other person. Further, with regard to condition No.4, the Hon’ble Supreme

Court made an observation, inter alia, that explanation (ix) gives a unique and particular definition to the term “brand name” or “trade name”,

in as much as, the definition of brand name or trade name contained therein is concerned with a particular name or mark which is used to indicate, in

the course of trade, a connection between such specified goods as satisfying the criterion provided in aforesaid condition No.4 and the manufacturer

which is using such name or mark with or without any indication of the identity of itself. The Hon’ble Supreme Court further observed that the

central idea contained in the aforesaid definition is that the mark is used with the purpose to show connection of the goods with some person who is

using the name or mark and therefore, in order to qualify as “brand name” or “trade name”, it has to be established that such mark,

symbol, design or name, etc., has acquired the reputation of the nature that one is able to associate the said mark with the manufacturer.

12. In this case, as rightly observed by the Commissioner (Appeals), there is sufficient evidence to clearly establish that brand name or trade name

belonged to other persons viz., SRCPL/Farmax and not to the Appellant. Further, there is nothing on record to establish that the Appellants were

perceived to be the brand name owner for “STOP” and “TODAY” in the market.

13. Therefore, the Order of Commissioner (Appeals) is based on correct appreciation of facts and legal provisions and therefore, the same need not

be interfered with and accordingly, we pass the following Order:

The Appeal filed by the Appellant is dismissed.