

(2015) 04 SC CK 0020

SUPREME COURT OF INDIA

Case No: Civil Appeal Nos. 5643-5645 of 2004

Commissioner of Central Excise

APPELLANT

Vs

Sanghi Threads

RESPONDENT

Date of Decision: April 13, 2015

Citation: (2015) 321 ELT 180 : (2015) 14 SCC 701

Hon'ble Judges: A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench: Division Bench

Advocate: S/Shri K. Radhakrishnan, Senior Advocate, B.V. Niren, Ritesh Kumar and B. Krishna Prasad, Advocates, for the Appellant; S/Shri V. Sridharan, Senior Advocates, M.P. Devanath, Vivek Sharma, Ms. L. Charanaya, Aditya Bhattacharya, R. Ramchandran, Hemant Bajaj, Ambarish Pandey, Rajesh Kumar and Anandh K., Advocates, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. The respondent is a manufacturer of vulcanized rubber thread, narrow woven fabric containing elastomeric yarn and was availing benefit of SSI exemption under Notification No. 16/97-C.E., dated 1-4-1997, 8/98-C.E., dated 2-6-1998 and 8/99, dated 28-2-1999, from 1-4-1999. The Revenue issued a show cause notice dated 30-9-1998 demanding Rs. 14,89,352/- denying the exemption alleging that the respondent is using symbol/monogram on packing material in which finished products are packed. The monogram used by all units of Sanghi Group of Industries is available on the letter pads of all these units which are not entitled to the benefit of SSI exemption. The Assistant Commissioner vide order dated 3-2-2000 confirmed the demand and imposed a penalty of Rs. 2,50,000/-. The Commissioner in appeals vide order dated 23-4-2001 set aside the above order holding that the monogram was only a house mark for identification of the Group and not a brand name for the identification of the product. He also stated that the symbol is followed by the name of the particular unit of the Sanghi Group, namely vulcanized rubber, thread and

elastic tape are not manufactured by any other company of Sanghi Group. He also relied on the Central Board of Excise and Customs" circular dated 30-12-1988 where it was clarified that if particular trade mark is registered in favour of two manufacturers, one is not eligible to benefit of exemption cannot be denied to the other manufacturer. Aggrieved, the Revenue approached Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "CESTAT"). The CESTAT vide its order dated 6-2-2004 [2004 (171) E.L.T. 112 (Tribunal)] upheld the Commissioner in appeals order dated 23-4-2001.

2. Challenging the order of the CESTAT, the present appeal is preferred. We find from the narration of the aforesaid facts that it is held that the monogram used by the respondent is nothing but its own house mark and is used for identification of the Group and not a brand name for the identification of the product. What is emphasised is that the monogram does not belong to any third party but that belongs to the Sanghi Group and is therefore, in-house monogram. On these facts, we are of the opinion that the case is squarely covered by the judgment of this court in **Civil Appeal No. 9157 of 2003 titled Commissioner of Central Excise, Hyderabad-IV v. M/s. Stangen Immuno Diagnostics decided on 19-3-2015 [2015 (318) E.L.T. 585 (S.C.)]**.

3. Mr. Radhakrishnan, learned senior counsel appearing for the Revenue, has submitted that the case of the Revenue is that in order to avail the benefit of the aforesaid Notification and to claim the SSI exemption, the Sanghi Group of Companies floated the respondent-company and allowed it to use the said mark/monogram. To put it otherwise, the submission is that it is a camouflage adopted by the respondent to wrongly avail the benefit. However, we find that no such case was set up in the show cause notice issued by the authorities and therefore, such a plea cannot be allowed to be used for the first time in the present appeal, more so, when it is a pure question of fact. Keeping in view the aforesaid, particularly going by the allegations made in the show cause notice, insofar as the present case is concerned, the Revenue cannot succeed. The appeals are, accordingly, dismissed.