

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. III

Excise Appeal No. 42303 of 2016

(Arising out of Order-in-Appeal No. 151/2016(CXA-I) dated 29.07.2016 passed by Commissioner of Central Excise (Appeals-I), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. Aashish Enterprises

No. 55, Gandhi Nagar Main Road,
Sethumanagar,
Chennai – 600 019.

...Appellant

Versus

Commissioner of GST and Central Excise

Chennai North Commissionerate,
No. 26/1, Mahatma Gandhi Marg,
Nungambakkam,
Chennai – 600 034.

...Respondent

APPEARANCE:

For the Appellant : Mr. G. Natarajan, Advocate

For the Respondent : Mr. M. Selvakumar, Authorised Representative

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 41210 / 2025

DATE OF HEARING : 09.06.2025

DATE OF DECISION : 30.10.2025

Per Mr. VASA SESHAGIRI RAO

This appeal is filed by M/s. Aashish Enterprises (hereinafter referred as " appellant") against Order-in-Appeal No. 151/2016 (CXA-I) dated 29.07.2016 whereby SSI Exemption under Notification No. 8/2003 CE was denied on

the grounds that the brand name of other persons was used on the final products i.e. electronic gas lighters.

2.1 The appellant is a proprietary concern engaged in the manufacture of Gas Lighters falling under 96138010 of the Central Excise Tariff Act. Being a small-scale Industrial unit, the appellant has not registered with the Central Excise Department. On investigation, in 2009, the department found that for the period 2005-06 to 2009-10, the Appellant manufactured and cleared gas lighters without payment of duty on which brand names 'National', 'Ganga" and 'Shinghvi' were affixed.

2.2 A Show Cause Notice dated 13.05.2010 was issued to the Appellant proposing to demand duty of Rs.12,35,906/- under proviso to Section 11A(1) of the CEA, 1944 along with appropriate interest on such goods cleared since SSI Notification No. 8/2003-CE is not eligible to them for having used others' brand name. Penal provisions were proposed under Section 11AC *ibid* apart from Rule 25 & 26 of the Central Excise Rules, 2002. The notice further proposed confiscation under Rule 25 of CER, 2002 of the Dies seized.

2.3 After due process of Law, the Respondent *vide* Order-in-Original No. 04/2011 dated 31.01.2011 confirmed

the duty demand along with interest and imposed equal penalty under Section 11AC of CEA, 1944. The Dies seized, being capital goods, were held to be not liable for confiscation.

2.4 Aggrieved by the order, the Appellant filed an Appeal before Commissioner (Appeals), Chennai and the Commissioner (Appeals) *vide* Order-in-Appeal No. 151/2016 (CXA-I) dated 29.07.2016 rejected the Appeal.

2.5 Once again being aggrieved, the Appellant has approached this Tribunal.

3. The Ld. Advocate Mr. G. Natarajan, appeared on behalf of the Appellant and the Ld. Authorized Representative Mr. M. Selvakumar, represented the Respondent/Department and made his submissions.

4. The Ld. Counsel Mr. G. Natarajan, for the Appellant submitted as follows: -

4.1 The demand of duty of excise has been confirmed on the ground that the appellant had manufactured "Gas Lighters" with brand names "Ganga", "National" and "Singhvi" but not obtained Central Excise Registration and not paid excise duty. As the goods are

bearing the brand names owned by other persons, the appellant is not entitled for small scale exemption and hence the duty demand has been confirmed.

4.2 The denial of the benefit of SSI exemption, on the ground that the appellant is not entitled for the same in as much as the goods have been affixed with brand name of other persons is not at all sustainable in law and hence the impugned order is liable to be set aside. Reliance is placed on CBIC's Circular No. 52/52/1994 dated 01.09.1994.

4.3 Reliance is placed on the decision of the Tribunal in the case of *Ample Industries Vs. CCE [2007 (218) ELT 456 Tri-Ahmd.]* wherein it has been held that SSI exemption cannot be denied if free flowing brand names not owned by any person are used by a manufacturer and the onus is on the department to prove that the brand name belongs to another person.

5. *Per contra*, the Ld. Departmental Representative Mr. M. Selvakumar reiterated the contentions made in Order-in-Appeal dated 29.07.2016. In fine, he submitted that there is no merit in the Appeal filed and made a plea to dismiss the Appeal on merits.

6. We have heard both the sides, perused the Appeal records, relevant circulars/ Notifications and the Case Laws placed before us.

7. The issue before us lies in a narrow compass as to: -

- i. Whether the use of the brand names GANGA, NATIONAL and SHINGHVI disentitles the appellant from SSI exemption under Para 4 of Notification No. 8/2003-CE, i.e., whether these brands can be said to be "brand name or trade name (whether registered or not) of another person" and,
- ii. Whether the extended period of limitation is invocable in this case and imposition of penalty is justified.

8. On careful consideration, we find that: -

8.1 Condition No 4 of Notification No. 8/2003-CE states that the SSI exemption is not applicable to specified goods with another person's brand name or trade name. However, there are exceptions where the exemption applies to branded goods. These include when the goods are components used as original equipment by another manufacturer, or when the goods are manufactured in a rural factory. Other exceptions apply to goods bearing brand names of specific government bodies, certain specific

products like account books, and packing materials for the brand owner. When calculating the turnover limit for eligibility (₹4 crore), the value of branded goods clearances on which excise duty was paid is excluded.

8.2 We also find that once a brand name is legally assigned or transferred, the SSI unit becomes the "owner" of the brand. Therefore, it is no longer the "brand name of another person," and the restriction in Condition No. 4 of Notification No. 8/2003-CE does not apply. Therefore, an assignment of brand/trademark can be: -

- Registered under the Trade Marks Act, 1999; or
- Unregistered but valid through a deed of assignment or affidavit.

We also note that the Tribunal have accepted notarized deeds and affidavits as valid proof of ownership / transfer for SSI exemption purpose.

The important requirement is

- The deed should clearly transfer ownership or exclusive usage rights.
- The assignment should predate or coincide with the period of manufacture.
- The brand owner's affidavit or no-objection letter strengthens the claim. Once such evidence exists, the

brand ceases to be that of "another person", and Condition No. 4 does not apply.

- 8.3 The appellant's stand is summarized as under:
- GANGA — The claim of ownership is unsubstantiated. Ganga is a common name and not owned by anyone.
- NATIONAL — G. Sampath. had applied for registration on 23.09.2003 which was not granted. The said G. Sampath, brother-in-law of the appellant had assigned the brand in favour of the appellant vide settlement deed Dt, 18.04.2005. On 08.09.2010, the application was sought to be amended by substituting Appellant's name as Applicant. In trade mark journal an advertisement was published on 13.09.2010. The above facts would go to prove that during the period of demand, the brand name was not registered in the name of Shri G. Sampath and in view of the settlement deed, the Appellant became the owner of the same. Since the brand name was not registered and amendment was sought in the application, by substituting the appellants name as applicant, the findings of the original authority are not sustainable.
- SHINGHVI — a common family/name used by the appellant; not owned by "Shinghvi Brothers" or any

third party and, in any event, no owner claims exclusive rights.

8.4 The Respondent on the other hand held that the brand names do not belong to the Appellant, and it belongs to other persons based on their statements and this disentitles the Appellant to avail SSI exemption for those brands.

- i. Ganga Brand: Respondent relied upon the Statement of Smt. Battula Satyavathi that the brand belongs to one Shri. Swatantra Kumar of Delhi and they have purchased this brand name but the papers in this regard are under process.
- ii. The National Brand name is owned by Shri G. Sampath and the transfer process of brand name is under process by the Trademarks Department has not been completed, as no evidence of Form TM 23 and TM-24 has been produced and therefore the brand does not belong to the Appellant .
- iii. In respect of Shingvi Brand, the Statement of Shri. Ajay Kumar, was relied upon, where he claimed that it is their family name, and this clinches the issue in favour of the department.

8.5.1 We have considered the rival contentions of both the sides. We have perused the deed of settlement dated 18.04.2005 whereby the settlor grants, assigns and transfer to the settlee (Appellant) the trade mark of National absolutely, in respect of assignment on his own free will. The Appellant also placed the deed of settlement before us. The moot point here is all this happened in April 2005 whereas the Investigation was taken up only in 2009. There cannot be any shred of doubt on the Bonafide nature of the deed of settlement by pre-dating it.

8.5.2 We have also perused the statements of Smt. Battula Satyavathi, Shri G. Sampath and Shri. Ajay Kumar of Shingvi Brothers. In respect of Ganga brand, we find that is an unregistered brand and the Respondent has not sought for evidence under TM 23 or TM 24. Smt. Battula Satyavathi in her statement deposed that the brand belongs to one Shri Swatantra Kumar of Delhi and that she has purchased the brand from him and the transfer of the brand is under process. Here we find that the Department has not obtained any statement from Shri Swatantra Kumar of Delhi to verify the above fact. The Department has not adduced any evidence as to under whose name the brand is registered for the present, nor any papers submitted to the trademark department for processing were abstracted as done in the

case of National. We are convinced by the Appellants submission that it is a common name and not a registered brand as it is not owned by anyone in this case.

8.5.3 In respect of SHINGVI BRAND, Statement of Shri. Ajay Kumar, where he claimed that it is their family name whereas the Appellant adverted that it is a common name and not owned by anyone. Here too we find that the Department has not gone beyond the statements which do not throw any light as to the ownership of the brand.

8.5.4 The Appellant relied upon the case of *Commnr. of Central Excise, Pune-II Versus M/s. Pethe Brake Motors Pvt. Ltd. [1995 (179) ELT 57 (Tribunal)]* in which it was held that the respondent assessee was not using the brand name of another person and the name used was the surname of the Director of the assessee, viz., 'PETHE'. This finding of fact which clearly means that the case does not fall within the mischief of para 4 of the aforesaid Notification No.1/93. – The appeal was decided against the Revenue.

We have perused the above decision. This decision was appealed against by the Department and the Apex Court in their order reported in 2015 (5) TMI 491 - SC dismissed the Appeal.

8.5.5 The Appellant also relied upon the following decisions of the Tribunal: -

- i. In the case of *Ample Industries Versus Commissioner of Central Excise, Rajkot [2007 (218) E.L.T. 456 (Tri. - Ahmd.)]* wherein it was held as follows: -

"3. As is clear from the above paragraph, the adjudicating authority has not come to a conclusion as to whom a particular brand name belongs to. It is well-settled that the onus to show that an assessee is using the brand name of another person to whom it belongs to, lies on the Revenue and is required to be proved before the benefit of small-scale exemption notification could be denied. In the instant proceedings, the Revenue has not established the owners of the brand name in question. As such, the definition of brand name as appearing in the small-scale exemption notification that such brand name or trade name must indicate a connection in the course of trade between such specified goods and person using such names or marks, does not get satisfied in as much there is no such person using such names so as to indicate a connection in the trade. We, further, note that it is recognized even by the Board that some of the brands floating in the marks did not belong to any particular manufacturer and any unit is free to use any name, specifically in the case of locks. The Board has clarified that such use thereof will not deprive any unit from the benefit of small-scale exemption notification. The above clarification issued by the Board is based upon the opinion of the Law Ministry. In as much as in the present case also, the brand names do not belong to any particular manufacturer and are free for any assessee to use as such, we are of the view that the benefit of notification can not be denied to the appellant on this ground."

A reference was also made to the Board's Circular No. 52/52/94-CXr dated 01.09.1994 which states that *"some of the brands floating in the market not belong to any particular manufacturer and any unit is free to use any name. The Board has clarified that such use thereof will not deprive any unit from the benefit of small-scale exemption notification."*

ii. In *Poonam Perfect Cannon Trade Link, Charms Creation, Ankit Apparels vs. Commissioner of Central Excise Mumbai -IV [2017-TIOL-527-CESTAT-MUM]* it was held that the Department has not made any attempts to even portray any advantage that the appellants derived from using these particular brands whether the owner of the brands has any market presence is not evinced from the records use of the brands by appellants cannot be considered to have intended to communicate a connection in the course of trade with the person who purportedly owns the brand name.

"13. It would have been impossible for the Central Government to devise sentences that would describe precisely what is enabled and what is disincentivised by this exclusion. The scope of the exemption notification cannot also be so construed as to become a rule for denial of exemption. It would appear that there can be no express ban on use of the same brand by different entities large or small. From the explanation supra, it would appear that the intent to take advantage of the recognition enjoyed by another brand is critical to invoking of the exception provision. Such intent can be established by facts unearthed on investigation. Failure to carry out such investigation to establish such intent cannot be supplemented and complemented by adjudication orders, let alone appellate proceedings. The notice issued to appellants has not ventured to bring such intent to light. Indeed, no attempt has been made to even portray any advantage that the appellants derived from using these particular brands. That the owner of the brands has any market presence at all is not evinced from the records.

14. In these circumstances, the use of the brands by appellants cannot be considered to have intended to communicate a connection in the course of trade with the person who purportedly owns the brand name. The impugned order is not sustainable and is set aside."

8.6.1 Burden of proof and intention: The Department must prove (a) that the brand belongs to another person, and (b) that the use by the assessee indicates a connection (i.e., intention to exploit another's goodwill). If the appellant shows documentary proof of ownership/assignment or shows lack of ownership/claim by any third party, the bar of Para 4 is not attracted

8.6.2 We also find that Para 4 of Notification No. 8/2003-CE excludes from exemption goods "bearing a brand name or trade name (whether registered or not) of another person" — unless an exception applies. The core question is whether the brand belongs to another person. The notification (and Explanation) must be read to ascertain whether a mark indicates a connection in the course of trade between the goods and some other person. The burden to establish that the brand actually belongs to "another person" and that the use indicates a connection, rests with the Department.

8.6.3 From the above, we find that the Supreme Court and Tribunals have consistently held: that If the appellant owns the brand (including by assignment) or the alleged owner denies/does not own the brand (i.e., there is no "other person"), the prohibition does not apply and the exemption

is available. The ratio of the above decisions is squarely applicable in this case, and following the principle of judicial discipline, we are inclined to follow the same.

8.6.4 The Supreme Court has repeatedly held that the mere use of a word which may have been used elsewhere does not automatically attract Para 4 unless such use indicates a connection with another person or the mark is demonstrably the brand of a third party. If the name is generic/common and there is no evidence of exclusive ownership or intention to indicate a connection, the appellant may still claim exemption.

8.6.5 On the facts (no contrary evidence produced by the Department, and appellant's evidences of long usage and absence of third-party ownership) from the above discussion, it becomes very clear , that the use of the brand names GANGA, NATIONAL and SHINGHVI will not disentitle the appellant from claiming SSI exemption under Para 4 of Notification No. 8/2003-CE, i.e., whether these brands can be said to be "brand name or trade name (whether registered or not) of another person".

8.7 Based on the above findings and the Case Laws cited, the use of brands by the Appellant cannot be

considered to communicate a connection in the course of trade with the person who purportedly owns the brand name and we have no hesitation to hold that the Appellant is eligible for the benefit of exemption notification and the entire demand is not sustainable and ordered to be set aside on merits.

8.8 Therefore, the question framed by us is decided in favour of the Appellant.

9. As the demand fails to survive on merits, we find that there is no requirement to go into the aspect of limitation and invocation of extended period.

10. Thus, the appeal is allowed with consequential reliefs, if any, as per the law.

(Order pronounced in open court on 30.10.2025)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

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