

## Brand name and Small-Scale Units

Section 5A of the Central Excise Act empowers the Central Government to provide exemption in public interest. Notification No. 8/2003 dated 1.3.2003 provides for exemption to Small-Scale Units. The first one crore of goods removed in a financial year shall not be charged excise duty, provided that the manufacturer does not claim Cenvat credit.

However, the exemption contained in this notification shall not apply to 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 Rules, 2001 (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods).

(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

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- Industry Board; or
- (iii) the National Small Industries Corporation; or
- (iv) a State Small Industries Development Corporation; or
- (v) a State Small Industries Corporation;
- (c) where the specified goods are manufactured in a factory located in a rural area.

### Meaning of Brand Name

'Brand name' or 'Trade name', whether registered or not, is a name or a mark, such as a symbol, a monogram, a label, a signature or an 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.

Hence, brand name or trade name should be associated with the product. Brand name does

not refer to the name of the manufacturer. Rather, it refers to the product known by that name.

### Object of SSI exemption

In C.C.Cx Vs. Bhalla Enterprises (2004) 173 ELT 225, the apex court has held that the object of the exemption notification is neither to protect the owners of the trademark/trade name nor the customers from being misled. These are considerations that are relevant in cases relating to disputes arising out of infringement under the Trade Marks Act. The object of the notification is clearly to grant benefits only to those industries, which otherwise do not have the advantage of a brand name.

In C.C.Ex. Vs. Fine Industries (146 ELT 53) the CEGAT held that SSI exemption is designed to enable small manufacturer to survive in the market and compete with a manufacturer having an established brand name. If he identifies his products with the brand name of another person (who is not eligible for SSI exemption), his goods become the same as those of the ineligible manufacturer. Such a manufacturer should not be given the benefit of SSI exemption.

### House mark Vs. Trademark

In Voltarc India Pvt. Ltd. Vs. C.C.Ex. (Tribunal – 2004) 172 ELT 221, two companies were having the same name

– Voltarc India Pvt. Ltd. and Voltarc Electrode Pvt. Ltd. They were using the name 'VOLTARC' with a symbol. The symbol was different in case of each company.

It was held that 'VOLTARC' was only a house mark and not a trademark. Turnover of the two companies cannot be clubbed.

Use of own name on the product where such name is registered as a brand name in the name of another company: In Vetcare Organics Pvt. Ltd. Vs. C.C.Ex. (Tribunal – 2004) 174 ELT 337, the assessee used the name 'VETCARE' in its products and the name 'VETCARE' was owned by M/s. Tetragon Chemie Pvt. Ltd., Bangalore. Central Excise Department sought to deny SSI exemption.

The Tribunal held that the appellant is a company registered under the Companies Act with the name Vetcare. Under the same name, the appellant's company has also been registered with the Government of Karnataka. It was, therefore, held that the appellant has every right to use the company's name on its products.

In C.C.Ex. Vs. Pilot Products (2005) 182 ELT 59, the Delhi Tribunal has held that SSI exemption is not available to a unit manufacturing products bearing brand name owned by another unit, even if the goods are different from the goods manufactured by the

brand name owner.

Printing the name of buyers does not amount to using another's brand name: In C.C.Ex. Vs. Best Foods (Tribunal – 2004) 173 ELT 476, the assessee had only used the name of the shops and customers viz. Best Backers, Best Bakery, The Oven, Padma Junction, etc. and had not used the brand name of any of the customers on the cartons in which the cakes had been packed.

The Tribunal held that a trade and brand name, whether registered or not, has to be used and the goods should be identified by those names. If the assessee has used only a house mark then the appellants are not disentitled from eligibility to SSI exemption. The name of the customer cannot be considered as a trade name or brand name.

The Tribunal earlier held in Voltarc India Pvt. Ltd. Vs. C.C.Ex. (2004) 172 ELT 221 that there has to be a trade and brand name to be used, registered or not, and the goods should be identified by those names. If a company has used only a house mark then the appellants are not disentitled from eligibility to SSI exemption.

In DCI Pharmaceuticals Pvt. Ltd. Vs. Supdt. of Central Excise (2000) 115 ELT 45, it was held that if the small-scale unit manufacturer's goods under its own brand name, it will

be entitled for SSI exemption even if the distributor's name and logo are printed on the cartons, unless it is shown that the distributor also manufactures the same goods, under the same brand name.

Use of own brand name and customer's brand name – exemption not available: In C.C.Ex. Vs. Emkay Investments Pvt. Ltd. (SC – 2004) 174 ELT 298, the assessee was using the logo 'MERINO' along with their own brand name 'PELICAN' on plywoods manufactured by them. It has been held that the benefit of SSI exemption is not available even though the product also contains the brand name/trade name/logo of the manufacturer. Exception or exemption provision in a taxing statute should be construed strictly.

SSI exemption not deniable for joint ownership of brand name: In C.C.Ex. Vs. Mamma Products (Tribunal – 2004) 172 ELT 192, it has been held that SSI exemption is not deniable when the brand name is jointly owned by the assessee and another person and they manufacture and trade in different territories. The Tribunal had clearly held in Elex Knitting Machinery Co. Vs. C.C.Ex. (2003) 158 ELT 499 that when the brand name is used by co-owners then the benefit of Notification No. 1/93-C.E. cannot be denied.



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The apex court has held in C.C.Ex. Vs. Bhalla Enterprises (2004) 173 ELT 225 that SSI exemption under Notification No. 9/2003 is not deniable where the assessee uses a brand name that someone else is also equally entitled to use.

Additional words with another's brand name – does not make any difference: The apex court held in C.C.Ex. Vs. Mahaan Diaries (2004) 166 ELT 23 that where the registered trade name of another company, namely 'Mahaan', was printed on pickle packs sold by the respondents with additional words 'taste maker', SSI exemption is not available.

Similarly the apex court held in C.C.Ex. Vs. Rukmani Pakkwell Traders (2004) 165 ELT 481 that SSI exemption is not available when a part of the brand name of another person is used, indicating a connection in the course of trade. It was further held that once a trade name or brand name is used, then mere use of additional words would not enable the party to claim the benefit of the Notification.

Where goods manufactured are not traded in that form, SSI exemption cannot be denied: The assessee was engaged in the manufacture of 'Narrow Woven Fabrics – Elastic Tapes' classifiable under Heading 5806.20 of Central Excise Tariff Act, 1985 under the brand name of their buyers. The buyers used the said Elastic Tapes

for the manufacture of Jangia under their brand name. The buyers had placed on record an affidavit showing that Elastic Tapes are being consumed by them for further manufacture of their final products carrying their brand name. The department could not produce any evidence that the goods were being traded in open market. Based on these facts, the Tribunal in C.C.Ex. Vs. Mehra Traders (Tribunal – 2004) 172 ELT 195 held that SSI exemption is not deniable.

Where brand name is not affixed on goods but shown in invoice, SSI exemption is undeniable:

In C.C.Ex. Vs. Superex Industries (SC – 2004) 174 ELT 4, the assessee manufactured diesel generating sets. In the process of the manufacture of diesel generating sets, they use certain components manufactured by Kirloskar. The diesel generating sets, manufactured by the assessee, do not bear the name Kirloskar. However, in the invoices issued to purchasers, the generating sets are described as 'Kirloskar Generating Sets'. It was held that SSI exemption is not deniable.

Trade name is in respect to a particular product – using trade name for other products is eligible: The apex court held in C.C.Ex. Vs. Vikshara Trading and Investment Pvt. Ltd. (SC – 2003) 157 ELT 4 that trade name need not necessarily be in respect to all goods, unless

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the registration so requires and it has been further held that it is permissible in law to have the same brand name for a different class of goods owned by a different person.

Brand name used under permission of Drugs Controller – SSI exemption not available: In Sarpin Pharmacal Vs. C.C.Ex. (2004) 167 ELT 472, the Tribunal held that where brand name owned by another person was used by the assessee on medicines manufactured by it, SSI exemption cannot be allowed. Any permission by Drugs Control Authorities to the assessee to produce the medicines had nothing to do with ownership and/or use of brand names.

It was further held that clearance of medicines under the brand name owned by the buyer who were not eligible for SSI exemption has the effect of clearing such goods with the intention of evading the payment of duty. Buyer's ownership of brand name was not disclosed to the department and the latter found those facts only through investigation. Held that larger period limitation under section 11A i.e. five years is invocable.

Manufacture with identity of buyers but where buyer

is not trading in that product - SSI exemption is undeniable: In Model Soap Company Vs. C.C.Ex. (CEGAT – 1998) 98 ELT 622 the assessee, a small-scale unit, was manufacturing soaps for hotels and airline companies. The soaps were bearing the brand name of the buyers. The Tribunal held that the hotels and airline companies were not the holder of brand name in respect of soaps. They were not trading in soaps but were only using them for keeping in hotel rooms, aircrafts, etc. In such cases, the provisions of branded goods is not applicable and SSI exemption is not deniable.

Use of Foreign Brand Name – eligibility to SSI exemption: If the assessee uses a brand name registered outside India, which is owned by a foreign company or a non-resident, even then he is not entitled to SSI exemption since, factually, the position does not change.

In Rajdoot Paints Ltd. Vs. C.C.Ex. (2001) 134 ELT 281, the trade name was originally owned by a foreign collaborator but later on it was registered in the name of the SSI unit. The Tribunal held that SSI exemption cannot be denied. It was further held that the statement on the container of the product, giving the name of the collaborator from whom the manufacturer got technical know-how would amount to use of name of the collaborator as 'house mark' and not 'trademark'.

More than one person can

use common brand name: In Laxmi Plastics Ltd. Vs. C.C.Ex. (2005) 182 ELT 356, the Bangalore Tribunal held that each member of a family is entitled to use a common brand name 'KUMAR' and the agreement also provides that each member will produce different goods so that there is no occasion for two members to use the same name on identical goods, SSI exemption is not deniable.

Even the use of monogram of another person will be enough to disentitle the assessee from the benefits of SSI exemption: In C.C.Ex. Vs. Alamgir Chemicals Pvt. Ltd. (2005) 182 ELT 97, the Delhi Tribunal held that even the use of monogram of another person will disentitle the user from the benefit of SSI exemption. Where the assessee changes brand name but uses the monogram of another company, SSI exemption is not available.

Where name of another company is used for identifying a connection in the course of trade, SSI exemption is not available: In C.C.Ex. Vs. Grasim Industries Ltd. (2005) 183 ELT 123, the Supreme Court has held that where the name of holding company was indicated on the product and the holding company was also a manufacturer of cement, the trade name of some other company has been used with the purpose of indicating a connection in the course of trade between the product and that person.

It has been further held that the terms 'brand name' or 'trade name' qualified by the words 'that is to say a name or a mark' implies that even an ordinary name or an ordinary mark is sufficient. Even if the name of some other company, is used for indicating a connection between the product and that company, it would be sufficient to deny SSI exemption. The name or writing need not be a brand name or trade name in the sense that it is normally understood. The notification being under the Excise Act, connection must be of such a nature that it reflects an aspect of manufacture and deal with quality of the products.

#### Conclusion

Therefore, a small-scale unit should ensure that it is not using the brand name of any other person in its product. However, distinction should be made between house mark and trademark. Using the name of the buyer does not disentitle the manufacturer from SSI exemption. However, if the name of another person is used for the purpose of establishing a connection between the products manufactured and that other person, the benefits of SSI exemption shall not be available. The eligibility to exemption notification should be construed strictly and even the use of another's brand name in part would disentitle the manufacturer from SSI exemption. □