IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (CENTRAL EXCISE)
ORIGINAL SIDE

Present:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Aryak Dutt

CEXA 12 OF 2010

M/s. Kanchan Oil Industries Limited
Versus
The Commissioner of Central Excise, Haldia Commissionerate

For the appellant	:	Mr. N. K. Chowdhury, Mr. Arijit Chakrabarti, Mr. Nilotpal Chowdhury,
For the respondent/ Central Excise	:	Mr. Bhaskar Prosad Banerjee, Mr. Anurag Roy,
Heard on	:	25.08.2026
Reserved on	:	25.08.2026
Judgment on	:	14.09.2026

Aryak Dutt .J:-

1. This appeal under Section 35G of the Central Excise Act, 1944 is directed against an order dated 24th February, 2010 passed by the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata in Excise Appeal No. 281 of 2005 with Cross-Objection No. 109 of 2005. By the impugned order, the appellant has been denied the benefit of exemption under Notification No. 6/2003-CE dated 1st March, 2003. The appellant is aggrieved thereby.

2. The relevant entry of the notification, so far as it is material for the present purpose, reads as follows:

> *"All goods (other than (a) partially or wholly hydrogenated vegetable fats and oils and 'Vanaspati', and (b) bakery shortening, bearing a brand name and put up in unit containers for retail sale) — Nil.*
>
> *Explanation.— For the purposes of this exemption, 'brand name' means a brand name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented words or any other writing which is used in relation to a product for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product*

and some person using such name or mark with or without any indication of the identity of that person."

3. The appeal was admitted by an order dated 6th October, 2010 on the following substantial questions of law:

(i) "Whether, under the facts and circumstances of the case, the Tribunal was correct in holding that the branded goods were manufactured and cleared without payment of duty though there is no evidence that the goods manufactured after 1.3.2003 were sold using any brand name?"

(ii) "Whether the CESTAT was legally right in upholding the imposition of penalty when the matter relates to interpretation of a Notification/statutory provision and in the absence of circumstances to invoke Section 11AC of the Central Excise Act, 1944?"

4. A Show Cause Notice dated 7th April, 2004 was served upon the appellant. It was alleged therein that, acting upon intelligence, the Anti-Evasion Unit of the Midnapur Division, headed by the Assistant Commissioner of Central Excise, Midnapur Division, paid a surprise visit on 23rd April, 2003 to the factory premises of the appellant at Jhargram, District Paschim Medinipur, West

Bengal. It was alleged that the appellant had surreptitiously removed from its factory premises assorted varieties of the final product '*Vanaspati*' bearing the brand name and in the style of '*Shiva*', falling under sub-heading No. 1504.00 of the Schedule to the Central Excise Tariff Act, 1985, aggregating to a value of Rs. 28,34,752/-. On further scrutiny it was alleged to have been revealed that the appellant had cleared 116.052 M.T. of branded '*Vanaspati*' packed in unit containers for retail sale falling under heading No. 1504.00 of the Central Excise Tariff Act, 1985. The appellant was called upon to produce, at the time of showing cause, the evidence upon which it proposed to rely in support of its defence.

5. The appellant duly replied to the Show Cause Notice. An order-in-original was thereafter passed on 17th February, 2005 by the Commissioner of Central Excise, Haldia Commissionerate, Kolkata. By the said order-in-original the Commissioner confirmed a demand of duty of Rs. 37,80,246/- under Section 11A(1) of the Act of 1944, imposed an equivalent penalty of Rs. 37,80,246/- under Section 11AC of the Act of 1944 and charged interest at the rate of 15% on Rs. 37,80,246/- under Section 11AB of the Act of 1944 for delayed payment.

6. The appellant carried the order-in-original dated 17th February, 2005 in appeal before the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata, being Excise Appeal No. 281 of 2005. That appeal has been dismissed by the impugned order.

7. Learned counsel for the appellant submitted that the condition upon which the exemption under Notification No. 6/2003-CE turns is the affixation of a brand name upon goods put up in unit containers, and not the description under which the goods happen to be invoiced. The entire case of the Revenue, he urged, rests upon the statements of purchasers that the invoices carried the word *'SHIVA'*. No container was seized, no packing material, label, printing order or stationery was examined, and not a single customer said that the goods themselves bore a brand name. On the contrary, the purchasers furnished certificates that the goods received by them carried no brand name, and those certificates were brushed aside without reason.

8. Learned advocate for the appellant has further stated before us that the goods manufactured and cleared by the appellant after 1st March, 2003 did not bear any brand name whatsoever. The word '*Shiva*' appeared only upon the sale invoices under cover of which the goods travelled, and not upon the goods or the containers in which the goods were packed. That being the position, the exclusion carved out of Notification No. 6/2003-CE dated 1st March, 2003 is not attracted, and the respondent authorities have wrongly denied the appellant a benefit to which it is otherwise entitled. It has been further submitted that the show cause notice and the order-in-original were both signed by the same person, who was then the Commissioner of Central Excise, Haldia Commissionerate.

9. Learned advocate appearing for the respondent has submitted that, prior to the levy of duty with effect from 1st March, 2003, the appellant was manufacturing and clearing branded goods. It cannot, therefore, be said that, immediately upon the introduction of the levy, the appellant ceased to manufacture branded goods. He has submitted that enquiries were conducted by the revenue with several customers of the appellant, and that such customers stated that the vegetable oil manufactured by the appellant was received by them under invoices upon which the '*shiva*' brand was mentioned. He has further submitted that the eleven letters obtained from the agents/distributors of the appellant are couched in identical language and that, consequently, no reliance can be placed upon them.

10. The appellant has placed reliance upon ***Collector of C. Ex., Hyderabad v. Vazir Sultan Tobacco Co. Ltd.*** reported at ***1996 (83) E.L.T. 3 (S.C.)***. There, the Supreme Court held that the expression "in such manner as may be prescribed" qualifies the word "collected" and not the word "levied"; that the levy is created by Section 3 itself, while the collection of duty is left to be regulated by the rules made under the Act; and that the expression "prescribed", as defined in clause (g) of Section 2, means prescribed by rules made under the Act. The decision is relied upon for the proposition that the charge must be tested with reference to the goods as they stood at the point of manufacture.

11. The appellant has also placed reliance upon ***Commissioner of Central Excise, Jamshedpur v. Superex Industries*** reported at ***2004 (174) E.L.T. 4 (S.C.)***. There, the Supreme Court held that the benefit of the notification would be lost only if the manufacturer affixes upon the specified goods the brand name or trade name of another who is not eligible for the exemption under the notification. It was noticed that it could not be denied that the name '*Kirloskar*' was not affixed to the generating sets, and that the Tribunal had held that merely because, in the invoices, the set was passed off as a Kirloskar generating set, the benefit of the notification would not be lost. The Supreme Court found no infirmity in that reasoning and declined to interfere.

12. The appellant has cited the aforesaid decision for the purpose of demonstrating that, although the goods did not bear the '*shiva*' brand, the invoices bore the same, and that therefore the benefit of the notification cannot be taken away from the appellant.

13. Upon a plain reading of Notification No. 6/2003-CE dated 1st March, 2003, the exclusion from exemption operates only where the goods, being partially or wholly hydrogenated vegetable fats and oils and '*Vanaspati*' or bakery shortening, bear a brand name and are put up in unit containers for retail sale. The two conditions are cumulative. The Explanation defines a brand name to mean a name or mark used *in relation to a product* for the purpose of indicating a connection in the course of trade between the product and some person using such name or mark. The enquiry, therefore, is whether the goods removed by the appellant after 1st March, 2003 bore a brand name. The burden of establishing that they did, lies upon the revenue, which seeks to bring the appellant within the exclusion and to fasten a liability upon it.

14. It is pertinent to notice that, while conducting the enquiry in the matter, the revenue itself relied upon the statements of various agents/distributors of the '*Vanaspati*' supplied by the appellant. In all such letters the deponents confirmed that, although the sale invoices were marked with '*shiva*', the goods received by them bore no marking of '*shiva*' upon the container. Copies of eleven such letters from the agents/distributors have been relied upon by the revenue. The material gathered by the revenue therefore establishes the very fact contended for by the appellant, namely, that the brand name appeared upon the invoices alone and not upon the goods.

15. The revenue cannot be permitted to rely upon this material to the extent that it assists the revenue and to discard the very same material to the extent that it does not. Having chosen to build its case upon the statements of the agents/distributors, it is not open to the revenue to impeach those statements upon the solitary ground that they are couched in similar language, particularly when the deponents were not confronted with any such objection and no other material has been brought on record to displace what they have stated. The similarity of language, without more, furnishes no ground for rejecting the substance of what eleven independent persons have deposed to.

16. The contention of the revenue that the appellant was manufacturing and clearing branded goods prior to 1st March, 2003, and that it could not have ceased to do so immediately upon the introduction of the levy, rests upon surmise. Conduct anterior to the levy may give rise to suspicion; it cannot, by itself, discharge the burden of proving that the goods actually removed after 1st March, 2003 bore a brand name. Suspicion, however strong, cannot take the place of proof.

17. The case of ***Commissioner of Central Excise, Jamshedpur*** (*supra*) squarely covers the case of the appellant. Once it is found that the goods removed by the appellant did not have the word '*shiva*' affixed upon them, and that the brand name found mention only in the sale invoices, the exclusion contained in the notification is not attracted. The mention of a brand name in an invoice is not the use of a brand name upon the goods, and the appellant cannot, on that footing, be deprived of the benefit of the exemption under Notification No. 6/2003-CE dated 1st March, 2003.

18. In view of the conclusion reached above on the merits, it is not necessary to express any opinion upon the contention of the appellant founded upon the Show Cause Notice and the order-in-original having been signed by the same person, and we express none.

19. So far as the demand of duty has been found to be unsustainable, the penalty imposed under Section 11AC of the Act of 1944, which is referable to and dependent upon such demand, cannot survive. In any event, the dispute in the present case turned upon the true construction of an exemption notification. No material has been brought on record to establish fraud, collusion, wilful misstatement or suppression of facts with intent to evade payment of duty, which is a condition precedent for the invocation of Section 11AC of the Act of 1944. The imposition of penalty is, therefore, unsustainable.

20. The first substantial question of law, as to whether the Tribunal was correct in holding that the branded goods were manufactured and cleared without payment of duty, in the absence of any evidence that the goods manufactured after 1st March, 2003 were sold using any brand name, is answered in favour of the assessee and against the revenue.

21. The second substantial question of law, as to the legality of upholding the imposition of penalty and the invocation of Section 11AC of the Act of 1944, is also answered in favour of the assessee and against the revenue.

22. Accordingly**, CEXA 12 of 2010** is **allowed**. The order dated 24th February, 2010 passed by the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata in Excise Appeal No. 281 of 2005 with Cross-Objection No. 109 of 2005, and the order-in-original dated 17th February, 2005 passed by the Commissioner of Central Excise, Haldia Commissionerate, are set aside. The demand of duty, the penalty and the interest confirmed thereby stand quashed.

23. There will be no order as to costs.

(Aryak Dutt, J.)

24. I agree.

(Debangsu Basak, J.)