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C.A.No. 2240 OF 1997

ITEM No.102

Court No.2

SECTION-III

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO.2240/1997

Collector of Central Excise,Ahmedabad

Appellant(s)

VERSUS

M/s Vikshara Trading & Invest P. Ltd. & Anr.  
(With office report)  
With C.A.no.870/2000(with office report)

Respondent(s)

Date : 27.8.2003.:This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU  
HON'BLE MR. JUSTICE G.P. MATHUR

For Appellant (s)Ms. Nisha Bagchi, Adv.  
Mr.K.C. Kaushik, Adv.  
Mr. B. Krishna Prasad, Adv.

For Respondent (s) Mr. Alok Yadav, Adv.  
Mr. V. Balachandran, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Learned counsel for the parties made their submissions from 12.05 p. to 12.30 p.m

Civil appeal No.2240/1997

The appeal is allowed in respect of respondent No.2 in terms of the signed order.  
The appeal is dismissed in terms of the respondent No.1 in terms of the signed order.  
C.A.No.870/2000  
The appeal is dismissed in terms of the signed order.

( Meenu Sethi )  
Court Master

( Om Prakash )  
Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2240 OF 1997

Collector of Central Excise, Ahmedabad

...  
Appellant

VERSUS

M/s Vikshara Trading & Invest. P.Ltd. & Anr.

...  
RESPONDENTS

With  
Civil Appeal No.870/2000

O R D E R

Civil Appeal No.2240/1997

There are two respondents in this appeal. Insofar as respondent No.1- M/s Vikshara Trading & Investment Pvt. Ltd. is concerned the tribunal has fully discussed the matter and decided the case. Insofar as respondent No.2- M/s Dhanvi Trading & Investments Pvt. Ltd. is concerned there is hardly any reference to the facts of the case in the course of the order of the tribunal. Therefore, the order made by the tribunal cannot be made applicable to M/s Dhanvi Trading & Investments Pvt. Ltd. at all. In that view of the matter the order made by the tribunal insofar as M/s Dhanvi Trading & Investments Pvt. Ltd. is concerned is set aside and the matter

shall stand remitted to the tribunal for fresh consideration in accordance with law. The appeal is allowed in respect of respondent No.2.

So far as M/s Vikshara Trading & Investment Pvt. Ltd. is concerned the only question raised before us is that originally the trade mark had been registered by one Shri Shantilal P. Jain and Subodh S. Shah of Calcutta in respect of certain detergent and they had assigned the same in favour of M/s CMC(India) Pvt. Ltd. Subsequently the same was re-assigned to M/s Vikshara Trading & Invest. P. Ltd.

The contention put forth before the tribunal as well as before us is that no document has been shown that the subsequent assignment in favour of M/s Vikshara Trading & Invest. P. Ltd. was registered as contemplated under the Trade and Merchandise Marks Act, 1958. This aspect was taken note of by the tribunal that the trade mark need not necessarily be in respect of all goods unless registration has been so acquired and it is therefore, permissible in law to have same brand name for different classes of goods owned by different person, and in that background found in favour of the respondent and held that the Notification No.223/87-C.E. dated 22.9.1987 was applicable. When as a matter of fact it is held that there was an assignment in favour of the first respondent and that fact was not in serious dispute the mere fact that the assignment

was not registered could not alter the position. Therefore, we decline to interfere with the order made by the tribunal and to that extent the appeal is dismissed in respect of respondent No.1.

CIVIL APPEAL NO.870/2000

The facts of this case are identical to those in M/s Vikshara Trading & Invest. P. Ltd.- respondent No.1 in C.A. No.2240/1997. Following the said decision and for the reasons stated therein, this appeal is also dismissed.

.....J.

( S. RAJENDRA BABU )

.....J.

( G.P. MATHUR )

New Delhi,  
August 27, 2003.