

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2779 OF 2005

CCE, BANGALORE ... Appellant

VERSUS

M/S. VETCARE ORGANICS P. LTD. ... Respondent

O R D E R

No one appears for the respondent inspite of the fact that the notice of admission of appeal has been duly served upon the respondent. In these circumstances, we have no option but to hear this appeal ex-parte.

The issue relates to using of the brand name 'VETCARE' by the respondent which, otherwise stands registered in the name of M/s Tetragon Chemie (P) Ltd., Bangalore. The respondent claims itself to be a Small Scale Industrial Unit (SSI) and is manufacturing organic chemicals, disinfectants and other products. It claimed the benefit of Notification No. 175/86 dated 01.03.1986 and 1/93 dated 01.03.1993 as amended from time to time which provides for exemption from payment of excise duty to the SSI unit. However, Notification dated 01.03.1993 as amended also contains a provision that in case the said SSI unit is using brand name which belongs to other company the benefit of Notification dated 01.03.1986 shall not be available to such a SSI unit.

The Collector of Central Excise, Bangalore, had passed order-in-original on the aforesaid ground, viz., the respondent was using brand name VETCARE of M/s. Tetragon Chemie (P) Ltd., Bangalore. This order was passed after issuing show cause notice to the respondent and giving the respondent an opportunity of being heard. The respondent filed appeal before the Tribunal. The said appeal resulted in the remand order passed by the Tribunal directing the adjudicating authority to carry out *de novo* adjudication after remand. The Commissioner passed orders dated 22.11.2001 confirming its earlier order. Against that order, the respondent filed the appeal before the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as 'CESTAT') which has been allowed setting aside the decision of the Commissioner, holding that the brand name VETCARE belongs to the respondent and since it is a user of its own brand name, the case shall not come within the expression mentioned in the Notification dated 01.03.1993.

We find from the record, through which we were taken with the assistance of Mr. K. Radhakrishnan, learned senior counsel appearing for the Revenue, that the aforesaid conclusion of the CESTAT to the effect that the respondent is using its own brand name is contrary to the records and on erroneous approach adopted by it. In this behalf, we may

like to produce the following findings arrived at by the

Commissioner: -

"As I have held that the subject goods are classifiable under Chapter Heading 23.02 of the Central Excise Tariff Act, 1985 and eligible for exemption from duty, I am not inclined to discuss whether the said goods are branded or not. However, as regards the products Halquinol and Chlorotech/Sanitech, there is no dispute about their classification, the findings on the limitation holds good and no duty needs to be payable upto 31.10.1994 as there is no suppression or misdeclaration. Further to this, the whole exercise of demanding duty by the investigation is based on the fact that the subject goods in the show cause notice are branded and affixed with the logo of M/s. Tetragon Chemicals, who are not eligible for the SSI exemption. The assessee have argued that the brand name of Tetragon Chemicals have been registered only for Animal Feed Supplements and as such any person can use the brand name/ logo on their products other than Animal Feed Supplements. In view of the above, they are eligible for the SSI exemption inasmuch as they have used the said brand name in respect of their goods falling under Chapter 29 and 38. I find that their argument cannot be accepted after the amendment of Notification No. 1/93 with effect from 1.4.1994 and for easy reference, I reproduce the brand name clause: -

"The exemption contained in this Notification shall not apply to the specified goods bearing a brand name (registered or not) of another person."

In the face of the aforesaid findings which were arrived at on the basis of record, we fail to understand as to how the CESTAT could still hold that the brand name VETCARE and the logo which were owned by M/s. Tetragon Chemie (P) Ltd., Bangalore registered in their name, belongs to the respondent. The CESTAT has merely gone by the assertion of the respondent that M/s. Tetragon Chemie (P)

Ltd., Bangalore has permitted them to use this name. That permission shall not make the respondent owner of the brand name. It is thus, clear that the brand name belongs to M/s. Tetragon Chemie (P) Ltd., Bangalore, which brand name is allowed to be used by the respondent and in these circumstances, following Explanation 8 to the Notification No. 175/86 dated 1.3.1986 would clearly become applicable. This explanation defines brand name and reads as under: -

"Explanation VIII - "Brand name" or "trade name" shall mean a brand name or trade name, whether registered or not, that is to say a name or a mark, such as symbol, monogram, label, signature or 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."

On the basis of the aforesaid provision, this Court in a recent judgment dated 19.03.2015 passed in Civil Appeal No. 9157 of 2003 titled as '*Commissioner of Central Excise, Hyderabad IV v. M/s. Stangen Immuno Diagnostics* held as under: -

"6. Explanation VIII defines that brand name or trade name. As per this explanation, it would be a name or a mark, such as symbol, monogram, label, signature or 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 the trade between such specified goods and some person using such name or mark with or without any indication of the identity of the person. Therefore, what follows from the reading of

this Explanation is that if the brand name issued in relation to the specified goods indicating a connection in the course of the trade between such specified goods and some other person using the name, it would fit the description and the matter would be covered by the mischief of Explanation VIII. It is nowhere stated that brand name which is the name of other person and is being used by the SSI which is claiming benefit has to be in relation to same goods. Therefore, that could not have been reason to drop the proceedings and the CEGAT was not justified in dismissing the appeal of the Department on this ground.

7. The aforesaid principle of law is no more res integra and has been decided by this Court authoritatively in couple of judgments. In Commissioner of Central Excise, Chandigarh-I Vs. Mahaan Dairies (2004) 11 SCC 798 this Court while interpreting the similar nature of definition of brand name or trade name, held as under:

"We have today delivered a judgment in CCE v. Rukmani Pakkwell Traders wherein we have held in respect of another notification containing identical words that it makes no difference whether the goods on which the trade name or mark is used are the same in respect of which the trade mark is registered. Even if the goods are different, so long as the trade name or brand name of some other company is used the benefit of the notification would not be available. Further, in our view, 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."

8. It is clear from the above that the Court was of the view that even if the goods are different, so long as brand name or trade name of some other Company is used, the benefit of Notification would not be available. To the same effect is the judgment of this Court in the case of Commissioner of Central Excise, Chandigarh-II vs. Bhalla Enterprises (2005 (8) SCC 308) wherein aforesaid judgment in Mahaan Dairies was followed by reiterating the same principle."

The offshoot of the aforesaid discussion is to hold that the order of the CESTAT is erroneous and warrants to be set aside. We, accordingly, allow this appeal and set aside the order of the CESTAT.

....., J.
[A.K. SIKRI]

....., J.
[ROHINTON FALI NARIMAN]

New Delhi;
May 08, 2015.

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(s). 2779/2005

CCE, BANGALORE

Appellant(s)

VERSUS

M/S. VETCARE ORGANICS P. LTD.

Respondent(s)

(with appln. (s) for exemption from filing O.T. and office report)

Date : 08/05/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)

Mr. K. Radhakrishnan, Sr. Adv.

Ms. Sunita Rani Singh, Adv.

Mr. Ritesh Kumar, Adv.

Mr. K. Subba Rao, Adv.

Mr. B. Krishna Prasad, Adv.

For Respondent(s)

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

The appeal is allowed in terms of the signed order.

(Nidhi Ahuja)
COURT MASTER(Suman Jain)
COURT MASTER

[Signed order is placed on the file.]