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C.A.No. 3227-3228 OF 1998
ITEM No.101(Part-heard) No.8 SECTION III

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal Nos.3227-3228 of 1998.

COMMISSIONER OF CENTRAL EXCISE, TRICHYAppellant (s)

VERSUS

RUKMANI PAKKWELL TRADERSRespondent (s)

WITH
CA Nos.7473-7474/2001

(With applns.for stay & with office report)

Date : 17/02/2004 These appeals were called on for hearing today.

CORAM :

HON'BLE MR.JUSTICE S.N. VARIAVA
HON'BLE MR.JUSTICE H.K. SEMA

For Appellant (s)Ms.Binu Tamta,Adv.
Mr.BK Prasad,Adv.

For Respondent (s)M/s AR Madhav Rao,Vishwanath Shukla,
Alok Yadav,V.Balachandran,Advs.

Mr.Himanshu Shekhar,Adv.

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

Mr.AR Madhav Rao, learned counsel for the respondents in CA Nos.3227-28/98 resumed his argumen ts in the morning and concluded at 11.10 a.m. followed by a short reply of Ms.Binu Tamta, lear ned counsel for the appellants. The Court dictated the order in allowing C.A.Nos.3227-28/98 w ith no order as to costs.

Thereafter, Ms.Binu Tamta, learned counsel for the appellants in CA Nos.7473-74/01, commenced and concluded her arguments at 12.00 noon followed by a short reply of Mr.Himanshu Shekhar. T he appeals are disposed of in terms of the signed order. No order as to costs.

[Naresh Kumar] [Jasbir Singh]
AR-cum-PS Court Master

[Two separate signed orders are placed on the file.]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.3227-3228 OF 1998

COMMISSIONER OF CENTRAL EXCISE, TRICHY
...
APPELLANT (S)

VERSUS

RUKMANI PAKKWELL TRADERS
...
RESPONDENT (S)

O R D E R

These appeals are against the judgment of the Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT) dated 26th February, 1998. Briefly stated the facts are as follows:
The Respondents are traders in scented supari. They purchase scented supari in bulk from M/s ARR Nutcon Products. Earlier they used to purchase from M/s ARR Enterprise. The scented supari is marketed under the brand "ARR" with a photograph of Shri AR Ramaswamy, the founder of ARR group of Companies. The Respondents claimed benefit of Notification No.1/93-CE dated 28.2.1993. The said Notification grants exemption, amongst others, to scented supari. However Clause 4 of the Notification provides that the exemption contained in the Notification shall not apply to specified goods bearing a brand name or trade name (registered or not) of another person. Explanation IX to this Notification reads as follows:
"Explanation IX:-- "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, code number, design number, drawing number, 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."

The Respondents were issued show-cause notice that their goods are not exempted under the said Notification. They filed the reply. However the Assistant Collector confirmed the demand on the ground that they were not eligible to get exemption under the Notification. The Appeal filed by the Respondents was dismissed by the Commissioner (Appeals). However, the Tribunal has, by the impugned Judgment, allowed the Appeal of the Respondents.
The Tribunal has relied upon a Circular issued by the Central Board of Central Excise bearing no.213/41/88-CX6 dated 30.12.1988 which, inter alia, purports to clarify as follows:
"2. The facts of the case are that a small scale unit "A" are the owners of the trade mark "HOTLINE" with respect to the commodity gas stoves. The same trade mark "HOTLINE" is also owned by another company "B" but for the commodity television. The company "B" was however not eligible for exemption under Notification 175/86 dated 1.3.1986. The position thus was that the trade mark "HOTLINE" was simultaneously owned by two manufactures, one eligible for exemption under Notification No.175/86 dated 1.3.1986 but not the other. The Assistant Collector denied the company "A" exemption under notification No.175/86 dated 1.3.1986 on the ground that the trade mark/brand name belonged to the company "B" which was not eligible for the said exemption. For this the Assistant Collector relied on the amendment carried out to Notification No.175/86 dated 1.3.1986 by Notification No.223/87 dated 22.9.1987 inserting paragraph 7 in the former notification.

3.The matter has been examined by the Board. It is observed that as per section 8 of the Trade and Merchandise Marks Act, 1958, a trade mark can be registered in respect of any or all goods. In other words, a trademark need not necessarily be in respect of all goods unless the registration has been so acquired. It is, therefore, quite possible and permissible to have the same trade mark/brand name for different classes of goods owned by different persons. In the instant case, the company "A" are the legal registered owners of the trade mark "HOTLINE" in respect of gas stoves whereas the company "B" are the registered owners of the same trade mark but for the commodity television. In that view, Notification No.223/87 dated 22.9.1987 cannot be relied upon to deny the exemption to company "A" in respect of gas stoves manufactured under their own trade name/brand name "HOTLINE". Therefore before denying a company benefit of SSI exemption by relying on Notification No.223/87 dated 22.9.1987, full facts regarding the ownership of the brand name/trade name should be first ascertained."

In our view this Circular has no application to the facts of the present case. What the Circu

lar clarifies is that if there are more than one registered owners in respect of the same trad e mark then merely because the other person has the same registered mark in some other goods w ould not preclude the owner of the trade mark from getting the benefits of the circular. In t his case admittedly the Respondents are not owners of the trade mark "ARR". They do not claim to have any rights in the photograph of the founder of the group. Therefore, reliance by the Tribunal on this circular is entirely erroneous.

The Tribunal then proceeds on the basis that the exemption can be denied only if trade mark or brand name is used in respect of the same goods for which the trade mark is registered. In coming to this conclusion we are afraid that the Tribunal has done something which is not perm issible to be done in law. It is settled law that Exemption Notifications have to be strictl y construed. They must be interpreted on their own wording. Wordings of some other Notificati on are of no benefit in construing a particular Notification. Clause 4 of this Notification a nd the explanation (set out hereinabove) make it clear that the exemption will not apply if th e specified goods (i.e. scented supari) bears a brand or trade name of another person. Neithe r in clause 4 of the Notification nor in Explanation IX is it provided that the specified good s must be the same or similar to the goods for which the brand name or trade name is registere d. The Tribunal has in adopting the above reasoning effectively added to the Notification wor ds to the effect "brand name or trade name in respect of the same goods". This is clearly imp ermissible. It is to be seen that there may be an unregistered brand name or an unregistered trade name. These might not be in respect of any particular good. Even if an unregistered bra nd name or trade name is used the exemption is lost. This makes it very clear that the exempt ion would be lost so long as the brand name or trade name is used irrespective of whether the use is on same goods as those for which the mark is registered.

The Tribunal had also held that under the Notification the use must be of "such brand name". The Tribunal has held that the words "such brand name" shows that the very same brand name or trade name must be used. The Tribunal has held that if there are any differences then the exem ption would not be lost. We are afraid that in coming to this conclusion the Tribunal has ign ored Explanation IX. Explanation IX makes it clear that the brand name or trade name shall me an a brand name or trade name (whether registered or not) that is to say a name or a mark, cod e number, design number, drawing number, symbol, monogram, label, signature or invented word o r writing. This makes it very clear that even a use of part of a brand name or trade name, so long as it indicates a connection in the course of trade would be sufficient to disentitle th e person from getting exemption under the Notification. In this case admittedly the brand nam e or trade name is the words "ARR" with the photograph of the founder of the group. Merely be cause the registered trade mark is not entirely reproduced does not take the Respondents out of Clause 4 and make them eligible to the benefit of the Notification.

Reliance was also placed upon the Circular No.52/52/94 CX dated 1.9.1994 wherein the Board has clarified that if names or marks which are not owned by any particular person are used then t he use of such names or marks would not disentitle those persons from the benefit of the Notif ication. In our view this Circular has no relevance at all to the facts of this case. In thi s case admittedly there is an owner of the registered Trade Mark. Once the Respondents use tha t Trade Mark or a part thereof they get covered by Clause-4.

Reliance was also placed upon the authorities of this Court in the cases of Vishnu Das Tradin g as Vishnudas Kishandas v. Vazir Sultan Tobacco Co.Ltd. Hyderabad & Anr. [1997(4) SCC 201 and Roche & Co.P.Ltd. v. Geoffrey Manner & Co.P.Ltd. [AIR 1970 SC 2062]. These are cases dealing with alleged infringment of Trade Marks. The principles laid down therein have no applicatio n while considering whether a person is entitled to the benefits of the Notification or not. T o be entitled to the benefits of a Notification a person has to strictly comply with the condi tions of that Notification. If on a plain reading of the Notification the benefit is not avail able then merely on basis of principles applied in infringement cases benefit cannot be claime d.

In our view the impugned judgment of the Tribunal is clearly erroneous and unsustainable. It is accordingly set aside and that of the lower authorities restored.

The Appeals are accordingly allowed with no order as to costs.

.....J.
(S.N. VARIAVA)

.....J.
(H.K. SEMA)

New Delhi,
February 17, 2004.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.7473-7474 OF 2001

COMMISSIONER OF CENTRAL EXCISE, CHANDIGARH-I
...
APPELLANT (S)

VERSUS

M/S MAHAAN DAIRIES
...
RESPONDENT (S)

O R D E R

This appeal is against the judgment of the Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT) dated 30th April, 2001. The question before the Tribunal was whether the respondents are entitled to exemption of Notification No.8/98-CE dated 2nd June, 1998. Under this Notification certain goods were exempted from payment of excise duty. However, the exemption was not available if the goods bore a brand name or trade name (whether registered or not) of another person. Explanation to the Notification defines the brand name as follows:-

"Explanation. For the purposes of this notification--

(A) "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 a symbol, monogram, label, signature or invented word or writing which issued 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."

It is an admitted position that the Respondents are part of a group of Companies which are (a) M/s Mahaan Foods Ltd. (b) M/s Mahaan Proteins Ltd. and (c) M/s Mahaan Dairies Ltd. Of course it is claimed that they are all independent companies having different Board of Directors and different shareholders. That may be, but the question is whether or not the Respondents have used the brand name or trade name of some other Company.

It is admitted that the word "Mahaan" written in a distinctive style is a registered trade mark of M/s Mahaan Foods Ltd. The Respondents manufacture pickle which is sold in packs bearing the name of "Mahaan" in exactly the same style as the registered trade mark of the other company. However, the words "Taste Maker" is added. Respondents also sell pickle in pouches wherein only the name of their own company namely M/s Mahaan Dairies Ltd. is printed.

All the authorities below have held that when the Respondents sell pickle in pouches using only the name of their own company they would not be disentitled from claiming the benefit of the Notification. We see no reason to take a different view on this aspect.

However the respondents also sell pickle with the name "Mahaan" written in exactly the same style as a registered trade mark of other Company. The question would be whether by adding the words "Taste Maker" the Respondents could get the benefit of the Notification.

We have today delivered a Judgment in Commissioner of Central Excise, Trichy v. Rukmani Pakkwell Traders (Civil Appeal Nos.3227-3228/1998) 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.

Such a view has been taken by the Tribunal in the case of Festo Controls (P) Ltd. v. Collector of Central Excise, Bangalore [1994(72) ELT 919]. We approve that decision.

It is settled law that in order to claim benefit of a Notification a party must strictly comply with the terms of the Notification. If on wordings of the Notification the benefit is not available then by stretching the words of the Notification or by adding words to the Notificati

on benefit cannot be conferred. The Tribunal has based its decision on a decision delivered by it in Rukmani Pakkwell Traders v. Commissioner of Central Excise, Trichy [1999(109) ELT 204]. We have already overruled the decision in that case. In this case also we hold the decision of the Tribunal is unsustainable. It is accordingly set aside.

It was, however, urged that the Respondents have applied for registration of the mark "Mahaan Taste Maker". We clarify that if and when they get their mark registered then they would become entitle to the benefit of the Notification in accordance with Board's Circular No.88/88 dated 13/12/1988.

The Appeals shall stand disposed of accordingly. No order as to costs.

.....J.
(S.N. VARIAVA)

.....J.
(H.K. SEMA)

New Delhi,
February 17, 2004.