

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

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 7137-7139 OF 2000

M/S. PRINCE VALVES INDUSTRY

Appellant (s)

VERSUS

COMMNR. OF CENTRAL EXCISE, CHANDIGARH

Respondent(s)

(With office report)

WITH Civil Appeal NO. 3076 of 2004

(With office report)

Civil Appeal NO. 4505 of 2003

(With application for ex-parte stay and with office report)

Date: 15/02/2006 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE S.H. KAPADIA

For Appellant(s)

Mr. A.R.Madhav Rao, Adv.

Mr. Karan Talwar, Adv.

Mr.M.P.Devanath,Adv.

For Respondent(s)

Mr. A.N. Haksar, Sr. Adv.

Mr. Rupesh Kumar, Adv.

Mr. P. Parmeswaran,Adv.

UPON hearing counsel the Court made the following

O R D E R

The Civil Appeal Nos.7137-7139 of 2000 and Civil Appeal No. 4505 of 2003 are

dismissed. No
order as to costs.

The Civil Appeal No. 3076 of 2004 is allowed. The impugned order of the Tribunal is set aside and the case is remitted back to the Tribunal in so far as the unregistered products namely,

Amigen, Sorgen and Sigum are concerned, for a fresh decision in accordance with law. All contentions

are left open in respect of the aforesaid three unregistered products. There shall be no order as to costs.

(Kanwal Singh) (Parveen Kr. Chawla)

Court Master
Court Master

[Two Signed Orders are placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7137-7139 OF 2000

M/s Prince Valves Industry

..Appellant

Versus

Commissioner of Central Excise, Chandigarh

..Respondent

WITH

CIVIL APPEAL NO. 4505 OF 2003

O R D E R

This order shall dispose of these appeals as the point involved in these

appeals is the same. For the sake of convenience, the facts are taken from Civil

Appeal No. 4505 of 2003.

This is a statutory appeal under Section 35L(b) of the Central Excise Act, 1944 (for short 'the Act') against the Final Order No. 469/02-B dated 8.11.2002 whereby the Customs Excise Gold Control Appellate Tribunal, New Delhi (for short 'the Tribunal') has rejected the appeal filed by the appellant.

The short question involved in these appeals is 'as to whether the appellants are eligible for the small scale exemption under Notification No. 1/93-CE dated 28.2.1993 as amended in respect of the 'SANT' brand 'non-ISI/non-IBR grade cocks and valves' manufactured and sold by them'.

Para 4 of the Notification provides that the exemption will not be available in respect of specified goods bearing the brand name of another person. The same reads:

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

Ram Prakash Sikka was one of the seven partners of M/s Sant Brass Metal Works. The Partnership was dissolved in the year 1986 and Ram Parkash Sikka withdrew himself from the Partnership. In the Dissolution Deed, it was provided that

"It is also mutually agreed that the retiring partner shall be at liberty to manufacture and sell only non-ISI items under the 'SANT' Reg. Trade Mark as detailed in the Price List No.

109/7-85 with Sl. No.101 to 175 forming Annexure-IV to this Deed. This part of the agreement shall be strictly adhered to by the retiring partner and the continuing partners shall be competent to resort to any legal courses in case of violation of this clause."

the Ram Parkash Sikka thereafter set up M/s. Prince Valves Industry, appellant herein, with 11 partners and started producing 'non-ISI/non-IBR grade valves and cocks' in the brand name of 'SANT'.

Appellant was served with a Show Cause Notice dated 14.9.1965 f or the period April, 1995 to July, 1995 stating therein that the appellant had manufactured and cleared goods valued at Rs.61,87,472/- during the period April, 1995 to July, 1995 by affixing brand name 'SANT' after discharging slab wise rate of duty at the rate of 5% and 10% ad valorem under small scale exemption whereas such branded goods were liable to duty at the rate of 15% ad valorem. That the benefit of exemption of Notification No. 1/93-CE dated 28.2.1993, as amended, was not available to the specified goods bearing a brand name or trade name (registered or not) of another person.

Appellant filed its reply to the Show cause notice.

The Assessing Authority rejected the objections raised by the appellant and confirmed the demand, aggrieved against which the appellant filed appeal before the Commissioner(Appeals) which was dismissed. Still not satisfied, the appellant filed the appeal before the Tribunal which has been disposed of by the impugned

Judgment.

The Tribunal has held that the brand name 'SANT' continues to be registered in the name of M/s Sant Brass Metral Works and, therefore, the appellant will not be entitled to the exemption under Notification No. 1/93-CE. This is so because the appellant has only the limited right to use the brand name under the registered trade mark. The ownership of the trade mark had not been transferred to the appellant.

We find no infirmity in the judgment passed by the Tribunal and dismiss the appeals with no order as to costs.

.....J

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[ASHOK BHAN]

NEW DELHI;
.....J.

.....
[S.H.KAPADIA]

FEBRUARY 15, 2006.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3076 OF 2004

M/s. General Pharmaceuticals Pvt. Ltd.

Appellant (s)

Versus

Commissioner of Central Excise, Pune-I.

Respondent (s)

O R D E R

This is a statutory appeal filed under Section 35L(b) of the Central

Excise Act, 1944 (for short "the Act") against the impugned Final Order No. C-

III/1224/03-WZB/2003 dated 2nd of September, 2003 passed by the Customs,

Excise & Service Tax Appellate Tribunal, West Zonal Bench at Mumbai, (for

short "the Tribunal") in Appeal No. E/705/02 dismissing the appeal filed by the

appellant. The Tribunal held that the assessee-company was not eligible for the

benefit of Notification No. 1/93-CE dated 1st March, 1993. The said Notification

prescribes concessional rate of duty for the goods manufactured by a Small Scale

Industry (SSI). Paragraph 4 of the Notification, which reads thus:

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

M/s. General Pharmaceuticals Pvt. Ltd. (the appellant herein) are, inter

alia, engaged in the manufacture of textile chemicals, namely, (a) Amigen ;

Amigen-R; Amigen Conc.50; Amigen Conc.; Amigen 60; Amigen A; Amigen NF;

(b) Daikanal AMH; Daikanal AMH Spl., (c) Sorgen 80; Sorgen 85; Sorgen RP, (d)

Noigen Pean, (e) Sigum F and (f) Daikamine DHV. The assessee-company is

manufacturing the goods mentioned above at Sl.Nos. (a), (b), (c) and (d) from the

year 1986 onwards while those mentioned at Sl. Nos. (e) and (f) from 1990 and

1989 onwards respectively.

The assessee-company being an SSI Unit claimed the benefit under the

above Notification in respect of the above goods manufactured and cleared by

them. The assessee was served with a show cause notice denying the benefit of

the Notification on the allegation that it was manufacturing the goods, namely, Amigen, Daikanol, Sorgen, Noigen and Sigum and cleared the said goods which were bearing the brand names and trade marks of M/s. Dai Ichi Karkaria Ltd. on the presumption that the names of the said products belong to M/s Dai Ichi Karkaria Ltd. Thus, duty was sought to be recovered from and penalty imposed on the assessee-company.

In response to the show cause notice, the assessee-company filed its reply on 14th August, 2000 stating therein that the aforesaid products, namely, Amigen, Daikanol, Sorgen, Noigen and Sigum are product names only and any manufacturer thereof will call them by the said names throughout the country. It was submitted that under the circumstances, it could not be alleged and proved that these are trade names belonging to M/s. Dai Ichi Karkaria Ltd.. It was further submitted that M/s. Dai Ichi Karkaria Ltd. had stopped producing the above goods and was not using the said trade names for the last fifteen years and it was the assessee-company which was using the said trade mark for the last fifteen years and therefore it was entitled to exemption under the aforesaid Notification.

Out of the six products named above, Daikanol, Diakamin and Noigen are registered trade marks of M/s. Dai Ichi Karkaria Ltd. The remaining three products, i.e., Amigen, Sorgen and Sigum are not registered trade marks. The assessee denied that it was manufacturing the goods with trade name of any other person/company.

The notification in question provides that the exemption contained

therein shall not apply to the specified goods bearing a brand name or trade mark registered or not of any other person.

Having heard the counsel appearing for the parties at length and having scrutinized the Notification and the materials placed on record, we are of the opinion that since Diakanol, Diakamin and Noigen are the registered trade marks of M/s. Dai Ichi Karkaria Ltd., the assessee-company would not be entitled to the benefit of Notification No. 1/93-CE in respect of the above three registered trade marks. The order of the Tribunal with respect to these products, which are registered trade marks, is affirmed.

However, Amigen, Sorgen and Sigum are not the registered trade marks and there is no finding recorded by any of the authorities below or by the Tribunal on the assertion made by the assessee-company in its reply to the show cause notice that these are the product names only and any manufacturer producing the said goods will call them by the same names throughout the country. The primary contention of the assessee-company in the reply to the show cause notice and even before us is that there is a difference between the brand/product name and the trade name. The determination of this question is crucial for deciding the eligibility of the assessee-company to get the benefit of the Notification in question for the aforesaid three unregistered trade marks. In the absence of such decision on the point agitated by the assessee-company, we deem it appropriate to set aside the impugned order of the Tribunal and remit the case back to the

Tribunal insofar as the unregistered products, namely, Amigen, Sorgen and Sigum are concerned, for a fresh decision in accordance with law. Ordered accordingly.

All contentions are left open in respect of the aforesaid three unregistered products.

The appeal stands allowed to the extent indicated above. There shall be no order as to costs.

.....J.

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(ASHOK BHAN)

New Delhi;
.....J.
February 15, 2006

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(S.H. KAPADIA)