

## **Commissioner Of C. Ex., Trichy vs Rukmani Pakkwell Traders on 17 February, 2004**

**Equivalent citations: 2004(93)ECC540, 2004(165)ELT481(SC), (2004)11SCC801, AIR 2004 SUPREME COURT 4906, 2004 (11) SCC 801, 2004 AIR SCW 4099, 2005 (5) SCALE 315, 2004 (2) COPYTR 268, 2005 (6) SLT 420, (2004) 113 ECR 712, (2004) 165 ELT 481, (2005) 5 SCALE 315**

**Bench: S.N. Variava, H.K. Sema**

### **ORDER**

1. 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 :

2. 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 A.R. Ramaswamy, the founder of ARR group of Companies. The Respondents claimed benefit of Notification No. 1/93-C.E., 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."

3. 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.

4. The Tribunal has relied upon a Circular issued by the Central Board of Central Excise bearing No. 213/41/88-CX.6, 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."

5. In our view this Circular has no application to the facts of the present case. What the Circular clarifies is that if there are more than one registered owners in respect of the same trade mark then merely because the other person has the same registered mark in some other goods would not preclude the owner of the trade mark from getting the benefits of the circular. In this 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.

6. 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 permissible to be done in law. It is settled law that Exemption Notifications have to be strictly construed. They must be interpreted on their own wording. Wordings of some other Notification are of no benefit in construing a particular Notification. Clause 4 of this Notification and the explanation (set out hereinabove) make it clear that the exemption will not apply if the specified goods (i.e. scented supari) bears a brand or trade name of another person. Neither in Clause 4 of the Notification nor in Explanation IX is it provided that the specified goods must be the same or similar to the goods for

which the brand name or trade name is registered. The Tribunal has in adopting the above reasoning effectively added to the Notification words to the effect "brand name or trade name in respect of the same goods". This is clearly impermissible. 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 goods. Even if an unregistered brand name or trade name is used the exemption is lost. This makes it very clear that the exemption 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.

7. 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 exemption would not be lost. We are afraid that in coming to this conclusion the Tribunal has ignored Explanation IX. Explanation IX makes it clear that the 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. 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 the person from getting exemption under the Notification. In this case admittedly the brand name or trade name is the words "ARR" with the photograph of the founder of the group. Merely because 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.

8. 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 the use of such names or marks would not disentitle those persons from the benefit of the Notification. In our view this Circular has no relevance at all to the facts of this case. In this case admittedly there is an owner of the registered Trade Mark. Once the Respondents use that Trade Mark or a part thereof they get covered by Clause 4.

9. Reliance was also placed upon the authorities of this Court in the cases of Vishnu Das Trading as Vishnudas Kishandas v. Vazir Sultan Tobacco Co. Ltd. Hyderabad and Anr. and Roche & Co. P. Ltd. v. Geoffrey Manner & Co. P. Ltd. . These are cases dealing with alleged infringement of Trade Marks. The principles laid down therein have no application while considering whether a person is entitled to the benefits of the Notification or not. To be entitled to the benefits of a Notification a person has to strictly comply with the conditions of that Notification. If on a plain reading of the Notification the benefit is not available then merely on basis of principles applied in infringement cases benefit cannot be claimed.

10. 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.

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