

COMMNR., CENTRAL EXCISE , BANGALORE v. 795.
MEYER HEALTH CARE PVT. LTD. & ORS.

Case law reference:

2003(58) RLT 604(SC) referred to Para 2

2007 (210) ELT 161 (SC) referred to Para 2

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4052-4054 of 2003.

From the Judgment & Order dated 22.11.2002 of the Customs, Central Excise and Gold (Control) Appellate Tribunal, South Zonal Bench, Bangalore in Appeal No. E/1873/99, E/1874/99, E/1875/99.

Arijit Prasad, Arti Singh, D.D. Kamat, B.K. Prasad, Anil Katiyar for the Appellant.

Alok Yadav, Pavan Agarwal, Rajesh Kumar for the Respondents.

The following Order of the Court was delivered

ORDER

1. These appeals are directed against the judgment and order of the Custom, Excise and Gold (Control) Appellate Tribunal (CEGAT), South Zone Bench allowing the appeal filed by the Appellant before the Tribunal and holding that since there is an Assignment Deed in favour of the respondent in the present case, therefore, the respondent shall be entitled to the benefit of the Exemption Notification. The aforesaid findings of the Tribunal are under challenge in this appeal on which we have heard the learned counsel appearing for the parties.

2. Counsel appearing for the appellant has submitted that on the date when the case was registered against the respondent, there was no Assignment Deed executed in favour of the respondent and, therefore, the respondent is not entitled to take benefit of the aforesaid Assignment Deed to avail benefit under the exemption notificaton. The counsel appearing

A for the respondent, however, refutes the aforesaid submission
contending, *inter alia*, that so far the brand name is concerned,
the owner of the brand name has assigned the trade mark in
favour of the respondent and, therefore, in view of the decision
of the Supreme Court in *CCE, Ahmedabad Vs. Vikshara*
B *Trading & Invest P. Ltd. & Anr.* Reported in 2003(58) RLT
604(SC) the respondent is entitled to avail the benefit of the
Exemption Notification. However, our attention is drawn to
another decision of this Court by the counsel appearing for the
appellant in *Meghraj Biscuits Industries Ltd. Vs.*
C *Commissioner of C. Ex., U.P.* Reported in 2007 (210) ELT 161
(SC) wherein almost a similar issue came to be considered
by this Court and while dealing with the same, this Court
observed thus:

D “On reading the above quoted paragraphs from the above
judgment, with which we agree, it is clear that the effect of
making the registration certificate applicable from
retrospective date is based on the principle of deemed
equivalence to public user of such mark. This deeming
fiction cannot be extended to the Excise Law. It is confined
E to the provisions of the Trade Marks Act. In a given case
like the present case where there is evidence with the
Department of the trade mark being owned by M/s. Kay
Aar Biscuits (P) Ltd. and where there is evidence of the
appellants trading on the reputation of M/s. Kay Aar
F Biscuits (P) Ltd. which is not rebutted by the appellants
(assessee), issuance of registration certificate with
retrospective effect cannot confer the benefit of exemption
notification to the assessee. In the present case, issuance
of registration certificate with retrospective effect from 30-
G 9-91 will not tantamount to conferment of exemption benefit
under the Excise Law once it is found that the appellants
had wrongly used the trade mark of M/s. Kay Aar Biscuits
(P) Ltd.”

H 3. According to the provisions of the Trade Marks Act, for

getting registration of a trade mark, an application is required to be filed in accordance with the provisions incorporated in the said Act. Such an application is required to be advertised and a detailed procedure is required to be followed before grant of a registration in favour of a claimant. Since a variety of procedural steps are required to be taken like issuing an advertisement, hearing objections, if any filed, it becomes a lengthy procedure and, therefore, time consuming for grant of a registration in matters of trade mark. But once registration is granted in respect of a particular trade mark in terms of the application according to the provisions of the Trade Marks Act, the registration dates and relates back to the date of application. However, the position appears to be different as has been held by this Court so far excise law is concerned. This Court has already held in the aforementioned decision that effect of making the registration certificate applicable from retrospective date under the trade mark law is based on the principle of deemed equivalence to public user of such mark whereas such deeming fiction cannot be extended to the excise law and that the same is only confined to the provisions of the Trade Marks Act.

4. Admittedly, in the present case, the assignment of the trade mark in question granted in terms of the agreement entered into between the parties was on 6.10.1998, which is subsequent to the date of registration of the case by the Department, which was done on 19.9.1998. As to whether or not the effect and in fact, the aforesaid Assignment Deed which is granted in favour of the respondent would relate back prior to a date of 19.9.1998 and consequence thereof is a matter which is not decided by the Tribunal. Since the same is an issue which is relevant and relates to determination of the factual aspects, it would be appropriate to have a decision of the Tribunal on the said issue.

5. We consider that it may not be proper for us to decide such a disputed question of fact by ourselves. We, therefore,

- A remit back this matter to the Tribunal for consideration of the aforesaid issue as to whether or not the Assignment Deed which was entered into between the respondent and the owner of the trade mark on 6.10.1998 would also be applicable to the case in hand and would date back prior to a period of 1998 to
- B be considered and decided by the Tribunal by recording an effective and reasoned decision. Therefore, we set aside the order of the Tribunal to the aforesaid extent and remit back the matter to the Tribunal for *de novo* consideration of the aforesaid issue as expeditiously as possible, preferably within
- C a period of six months.

6. The appeal is allowed to the aforesaid extent.

7. In view of the aforesaid order, IAs are also disposed of. We make it clear that this order is confined only to the
- D aforesaid issue and nothing more at this stage.

D.G.

Appeal allowed.