A COMMISSIONER OF CENTRAL EXCISE, HYDERABAD IV

v.

M/S. STANGEN IMMUNO DIAGNOSTICS

(Civil Appeal No. 9157 of 2003)

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MARCH 19, 2015.

[A.K. SIKRI AND R. F. NARIMAN, JJ.]

C *Central Excise Act, 1944 – Excise duty – Benefit of exemption/concessional rate of duty under the Notification No.175/86-CE dated 1.3.1986 – Assessee-Small scale industrial unit (SSI) using the brand name 'Stangen' on the goods manufactured by it – Assessee granted benefit* D *of exemption/concessional rate of excise duty under the Notification – Subsequently, issuance of notice to assessee that benefit of Notification was claimed wrongly as the use of brand name 'Stangen' and also logo belonged to DRL Company-manufacturer of bulk drug and* E *under the Notification, exemption is denied in cases where the manufacturer (SSI) affixes the specified goods with a brand name or trade name registered or not, of another person who is not eligible for grant of exemption under the Notification – Proceedings dropped by the Adjudicating* F *Authority on the ground that the goods were different – Tribunal also dismissed appeal filed by the department holding that the goods manufactured by the assessee were different from the goods manufactured by DRL – On appeal, held: Authorities below did not examine the matter* G *in the right perspective – Factual aspects can be established before the Adjudicating Authority – Thus, matter remitted back to the Commissioner, Central Excise*

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to hear the respondent de novo on the said notice and decide the matter afresh after taking into consideration the law laid down – Notification No.175/86-CE dated 1.3.1986.

Commissioner of Central Excise, Chandigarh-I vs. Mahaan Dairies **(2004) 11 SCC 798;** *Commissioner of Central Excise, Chandigarh-II vs. Bhalla Enterprises* **2005 (8) SCC 308;** *Tarai Food Ltd. v. CCE* **(2007) 12 SCC 721;** *CCE vs. Grasim Industries Ltd.* **2005 (3) SCR 466: (2005) 4 SCC 194;** *Nirlex Spares (P) Ltd. vs. Commissioner of Central Excise* **2008 (1) SCR 117: (2008) 2 SCC 628 – referred to.**

Case Law Reference

(2004) 11 SCC 798	**Referred to.**	**Para 7**
2005 (8) SCC 308	**Referred to.**	**Para 8**
(2007) 12 SCC 721	**Referred to.**	**Para 11**
2005 (3) SCR 466	**Referred to.**	**Para 12**
2008 (1) SCR 117	**Referred to.**	**Para 14**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9157 of 2003.

From the Judgment and Order dated 31.12.2002 of the Customs Excise and Gold (Control) Appellate Tribunal South Zonal Bench, Bangalore in Appeal No. E/66/1999.

A. K. Sanghi, Nisha Bagchi, Ritesh Kumar, B. Krishna Prasad for the Appellant.

Neelima Tripathi, S. Majuvdan (For Dr. Kailash Chand) for the Respondent.

A The Judgment of the Court was delivered by

A.K. SIKRI, J. 1. The respondent herein is the manufacturers of composite diagnostics or laboratory regents and pharmaceutical goods. It is registered as a B small scale industrial unit (SSI unit). The respondent was using the brand name 'Stangen' on the goods manufactured by it. It is an admitted case that this brand name 'Stangen' was affixed on the packing of the goods and even on the goods manufactured. The respondent started availing the C benefit of exemption/concessional rate of duty under Notification No.175/86-CE dated 1.3.1986 which grants exemption or concessional rate of excise duty to the SSI units.

D 2. However, in the year 1997 a show cause notice was issued to the respondent by the appellant/ Excise Department stating that the respondent is wrongly claiming the benefit of the aforesaid Notification inasmuch as use of the brand name 'Stangen' and also the logo E belonged to Dr.K.Anji Reddy, Chairman of Dr.Reddy's Laboratories (DRL). It was stated that DRL is the manufacturer of bulk drugs falling under Chapter 30 of the Central Excise Tariff Act, 1985, and the trade mark 'Stangen' and related logo are used on the printed labels F foils of the P & P medicine manufactured by DRL and also appear on the classification list filed by the DRL. On this basis in the show cause notice it was mentioned that the respondent was not entitled to the benefit of concessional rate of duty under the aforesaid Notification inasmuch as G para 7 of the said Notification denied exemption in those cases where the manufacturer (SSI) affixes the specified goods with a brand name or trade name, registered or not, of another person who is not eligible for grant of exemption under this Notification. Explanation VIII to the said H

Notification which defines brand name 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.

3. The respondent replied to the aforesaid show cause notices in which it was admitted that Dr.K.Angi Reddy is the Chairman of Dr. Reddy Group of Industries which includes the respondent Company as well as DRL. The defence, however, was that Dr. K.Angi Reddy had not assigned the trade mark either to the respondent firm or any other manufacturer. It was also mentioned that the respondent as well as the DRL are Public Limited Companies having separate legal entities of their own with their own independent spheres of activities. In this behalf the contention was that DRL manufactured altogether different products than the products mentioned by the respondent Company. A plea was also raised that Dr. K.Angi Reddy in his individual capacity was not a manufacturer within the meaning of said expression as defined in the Central Excise Act. By raising the aforesaid submissions request was made to drop the proceedings. The aforesaid argument raised by the respondent persuaded the Adjudicating Authority who dropped the proceedings.

4. Challenging the said order, the Department filed an appeal before the Customs, Excise and Gold (Control)

A Appellate Tribunal (CEGAT). The contention of the Department was that dropping of the proceedings by the Commissioner only on the ground that the goods manufactured by the respondent are different from the goods manufactured by DRL was untenable as it is not a B relevant factor at all. However, this plea of the Department did not even prevail with the CEGAT which has, vide impugned judgment dated 31.12.2003, dismissed the appeal observing that the goods manufactured by the assessee were different from the goods manufactured by C DRL and as per the settled law the use of brand of another would attract only when that the Commissioner had reached an erroneous finding with regard to the goods being different. This order of the CEGAT is assailed in the present proceedings. D

5. We have already taken note of para 7 of Notification No.175/86-CE as well as definition of brand name appearing in Explanation VIII contained in the said Notification. As far as para 7 is concerned, it states that the E benefit of exemption would not apply to the specified goods where a manufacturer affixes the specified goods with brand name or trade name (registered or not) of another person who is not eligible for grant of exemption under this Notification. As per this, in order to deny the exemption F under this Notification, the Department has to show that on the goods which are manufactured by the manufacturer i.e. the SSI, the brand under or trade name of another person is affixed and that another person is not eligible for grant of exemption in this Notification. G In other words, when that other person whose brand name or trade name is used by the SSI is not itself a SSI, then the user is not entitled to exemption under the said Notification.

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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 is used 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 no where 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

A 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
B 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
C 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
D same principle.

9. At this stage, Mrs. Neelima Tripathi, learned counsel appearing for the respondent, had made a plea before us to the effect that on the facts of this case the respondent
E would still be entitled to exemption. Her case in this behalf was that the respondent had been using the aforesaid name and logo since 1986, and the show cause notice pertained to the year 1988. On the other hand the said trade name and logo was being registered in favour of Dr.
F K.Angi Reddy only in the year 1989. Her submission, thus, was that in its own independent right the respondent had been using the said trade name and logo as an owner thereof and therefore, would be entitled to exemption even if the same was used by the DRL and it is a case where
G both the parties were using the same trade mark and logo simultaneously in there own rights. What is argued is that the respondent was not using the trade mark/logo or brand name of DRL but it was its own and therefore would not
H come within the mischief of para 4 of the Notification.

10. We would like to observe that if the aforesaid contention of the respondent is factually correct, viz. The respondent used the brand name as the owner thereof itself, and was not using the brand name as belonging to DRL and authorized by DRL, then the submission of Ms. Tripathi is legally tenable.

11. Condition No.4, as already noted above, stipulates that the exemption contained in this Notification would not be given to a person in respect of goods where 'brand name' or 'trade name' of another person is used i.e. the goods bearing the 'brand name' or 'trade name' which belongs to some other person. It is immaterial whether such 'brand name' or 'trade name' is registered or not. However, Explanation IX gives a unique and particular definition to the term 'brand name' or 'trade name'. It is clear from the reading of the said explanation that the definition of 'brand name' or 'trade name' contained therein is concerned with a particular name or mark which is used to indicate, in the course of trade, a connection between such specified goods as satisfying the criterion provided in aforesaid condition 4 and the manufacturer which is using such name or mark with or without any indication of the identity of itself. The central idea contained in the aforesaid definition is that the mark is used with the purpose to show connection of the said goods with some person who is using the name or mark. Therefore, in order to qualify as 'brand name' or 'trade name' it has to be established that such a mark, symbol, design or name, etc. has acquired the reputation of the nature that one is able to associate the said mark, etc. with the manufacturer. We are supported in this view by series of judgments of this CourtIn Tarai Food Ltd. v. CCE, (2007) 12 SCC 721, the expression "brand name" was explained in the following terms:

A "7. The words brand name connotes such a mark, symbol, design or name which is unique to the particular manufacture which when used on a particular product would establish a connection between the product and the B manufacturer.

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9. Furthermore the definition of the words 'brand C name' shows that it has to be a name or a mark or a monogram, etc. which is used in relation to a particular product and which establishes a connection between the product and the person. This name or mark, etc. cannot, therefore, be the identity of a D person itself. It has to be something else which is appended to the product and which established the link."

12. Thus, what is necessary is that the said mark is of E the nature that it establishes connection between the product and the person. To the same effect is the judgment of Supreme Court in CCE Vs. Grasim Industries ltd., (2005) 4 SCC 194 wherein this Court observed as under:

F "15.....In our view, the Tribunal has completely misdirected itself. The term "brand name or trade name" is qualified by the words "that is to say". Thus, even though under normal circumstances a brand name or a trade name may have the G meaning as suggested by the Tribunal, for the purposes of such a Notification the terms "brand name or trade name" get qualified by the words which follow. The words which follow are "a name or a mark". Thus even an ordinary name or an H ordinary mark is sufficient. It is then elaborated that

the "name or mark" such as a "symbol" or a "monogram" or a "label" or even a "signature of invented word" is a brand name or trade name. However, the contention is that they must be used in relation to the product and for the purposes of indicating a connection with the other person. This is further made clear by the words "any writing". These words are wide enough to include the name of a company. The reasoning given by the Tribunal based on a dictionary meaning of the words "write" and "writing" is clearly erroneous. Even the name of some other company, if it is used for the purposes of indicating a connection between the product and that company, would be sufficient. It is not necessary that the name or the writing must always be a brand name or a trade name in the sense that it is normally understood. The exemption is only to such parties who do not associate their products with some other person. Of course this being a Notification under the Excise Act, the connection must be of such a nature that it reflects on the aspect of manufacture and deal with quality of the products. No hard and fast rule can be laid down however it is possible that words which merely indicate the party who is marketing the product may not be sufficient. As we are not dealing with such a case we do not express any opinion on this aspect.

16. This Court has, in the case of Royal Hatcheries Pvt. Ltd. v. State of A.P., 1994 Supp (1) SCC 429, already held that words to the effect "that is to say" qualify the words which precede them. In this case also the words "that is to say" qualify the words "brand name or trade name" by indicating that these terms must therefore be understood in the context of the words which follow. The words which follow are of

A wide amplitude and include any word, mark, symbol, monogram or label. Even a signature of an invented word or any writing would be sufficient if it is used in relation to the product for purpose of indicating a connection between the product and the other person/ B company."

13. Likewise, in CCE Vs. Bhalla Enterprises, (2005) 8 SCC 308 this Court was eloquent in observing that as per the aforesaid Notification, the assessee will be debarred C only if it uses on the goods, in respect of which exemption is sought, the same/similar brand name with the intention of indicating a connection with the assessees goods and such other person or uses the name in such a manner that it would indicate such connection.

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14. All these judgments were taken note by this Court in a recent case in Nirlex Spares (P) Ltd. Vs. Commissioner of Central Excise, (2008) 2 SCC 628. On the facts of that case, the Supreme Court was of the E opinion that the assessee had not offended condition no.4. In that case, the goods were manufactured by the assessee and the Marketing Company which was its marketing agent. On the packing of goods, brand names of the assessee "INTATEX" and "INTACO" were clearly and F prominently printed. In between these two brand names, a hexagonal shape/design, which was claimed by the Department to be the brand of the Marketing Company, was also printed. In this backdrop, the question was as to whether the assessee company was using the said G hexagonal shape/design of other person. On the facts of that case, the Court found that there was nothing on record to show that the said hexagonal shape/design belonged to or was owned by the Marketing Company and thus they had permitted the assessee to use the same on the H

corrugated boxes. The Court also found that the hexagonal design/shape could not be said to be descriptive enough to serve as an indicator of nexus between the goods of the assessee and the Marketing Company. On this basis, it was concluded that the alleged monogram could not be the brand name or trade name of the Marketing Company.

15. We would also like to reproduce the following observation from Commissioner of Central Excise, Chandigarh II Vs. Bhalla Enterprises, (2005) 8 SCC 308:-

> "The apprehension of the assessees that they may be denied the exemption merely because some other traders even in a remote area of the country had used the trade mark earlier is unfounded.
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> The notification clearly indicates that the assessee will be debarred only if it is uses on the goods in respect of which exemption is sought, the same/ similar brand name with the intention of indicating a connection with the assessees goods and such other person or uses the name in such a manner that it would indicate such connection. Therefore, if the assessee is able to satisfy the assessing authorities that there was no such intention or that the user of the brand name was entirely fortuitous and could not on a fair appraisal of the marks indicate any such connection, it would be entitled to the benefit of exemption. An assessee would also be entitled to the benefit of the exemption if the brand name belongs to the assessee himself although someone else may be equally entitled to such name."

These observations bring out two significant aspects namely:-

A (1) As per the Notification, the assessee would be debarred only if it uses on the goods in respect of which exemption is sought, the same/similar brand name with the intention of indicating a connection with the assessees goods and such other person or uses
B the name in such a manner that it would indicate such connection. If there is no such intention or that the user of the brand name was entirely fortuitous and could not on a fair appraisal of the marks indicate any such connection, it would be entitled to the benefit of
C exemption.

(2) The assessee would also be entitled to the benefit of exemption if the brand name belongs to the assessee himself although someone else may be
D equally entitled to such name.

16. Having clarified the real position, we find that matter is not examined by the authorities below in the right perspective. The factual aspects can be established only
E before the adjudicating authority. Therefore, while setting aside the judgment, we remit the case back to the Commissioner, Central Excise to hear the respondent de novo on the show cause notice which was issued by him and decide the matter afresh after taking into consideration
F the law laid down in the aforesaid judgments. It would be open to the respondent to place on record whatever material it wants to place in consonance with the stand already taken in the reply to show cause notice and opportunity in this behalf shall be given to the respondent.
G Respondent shall also be given oral hearing by the Commissioner before recording its finding on those issues and deciding the fate of show cause notice. It would be open to the respondent to press the plea of limitation as
H well.

17. The appeal is allowed in the aforesaid terms with no order as to costs. A

18. It would be open to the respondent to press the plea of limitation as well.

Nidhi Jain Appeal allowed.