SUPREME COURT OF INDIA

Commissioner of Central Excise, Chandigarh-II

Vs.

Bhalla Enterprises

C.A.No.950 of 2004

(Mrs.Ruma Pal and Arun Kumar JJ.)

30.09.2004

JUDGMENT

1. These appeals raise a common question of law arising out of exemption Notification No. 1 of 1993-C.E. by which exemption was granted under Section 5(a) of the Central Excise and Salt Act, 1944 with regard to certain goods up to a particular value. The particular paragraph of this notification the interpretation of which is in issue, is Paragraph 4 and Explanation-IX to that paragraph. These read:

> "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."
>
> 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, [x x x] 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 such name or mark with or without any indication of the identity of that person.

2. The specified goods referred to in Paragraph-4 have been set out in the annexures to the notification. It is not in dispute that the industries which manufactured and cleared specified goods up to the limits prescribed by the notification would not be entitled to the exemption if the specified goods bear a brand name or trade name of another person. The question which has been raised is whether the brand name or trade name should have been used by such other person in respect of the specified goods of the same kind or class as the goods manufactured by the assessees claiming exemption.

3. Paragraph 4 and Explanation IX of Notification have been construed by this Court in Commissioner of Central Excise v. Rukhmani PakkweU Traders, as also in Commissioner of Central Excise, Chandigarh v. Mahaan Dairies, . In both these decisions this Court held that Para- graph 4 read with Explanation IX of the notification could not be construed in the manner as contended by the assessees, namely, to make it necessary for the owner of the

trade mark/trade name to use the goods in respect of the specified goods manufactured by the assessee. We see no reason to differ with the reasoning of this Court in the aforesaid decisions. Clause 4 of the Notification read with Explanation IX clearly debars those persons from the benefit of the exemption who use someone else's name in connection with their goods either with the intention of indicating or in a manner so as to indicate a connection between the assessees goods and such other person. There is no requirement for the owner of the trade mark using the name or mark with reference to any particular goods. The object of the exemption notification was neither to protect the owners of the trade mark/trade name nor the consumers from being misled. These are considerations which are relevant in cases relating to disputes arising out of infringement/passing off actions under the Trade Marks Act. The object of the Notification is clearly to grant benefits only to those industries which otherwise do not have the advantage of a brand name. The decisions cited by the Counsel appearing on behalf of the assessees relate to decisions involving Trade Mark disputes and are in the circumstances not apposite.

4. The basic rule in interpretation of any statutory provision is that the plain words of the statute must be given effect to. It is only in the case of ambiguity that the principle of strict/liberal interpretation would arise. In the decision of Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner, (S.C.) relied upon by the Counsel appearing on behalf of the assessees, there was no dispute that the assessee was entitled to the benefit of the exemption notification. The only dispute was as to whether the assessee should be permitted to avail of the benefit in the absence of prior permission being granted to the assessee in terms of the notification. This Court noted that if the conditions for grant of exemption were satisfied, the authority whose permission was made a pre-condition to the availability of the benefit, had no discretion to withhold the permission. It was held that the prior permission was a technicality and had admittedly not been granted by reason of considerations which were extraneous to the right of the assessee to obtain benefit under the notification. It was in these circumstances, that the Court approved the following passage in the *Union of India & Ors. v. M/s Wood Papers Ltd. &o Ors.*[1].

> "When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction....."

5. In this case the exception carved out by Paragraph 4 is not a technicality but pertains to the parameters of the exemption itself.

6. 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. The notification clearly indicates that the assessee will 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 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.

7. The decision in Rukhmani Pakkwell Traders (supra) and Mahaan Dairies (supra) set aside the decision of the Tribunal holding to the contrary in the matter of *Fine Industries reported in*[2] . In the appeals which are being disposed of by us the decision in Fine Industries has been followed by the Tribunal and relief has been granted to the assessee's concerned without going into any other question. The learned Counsel for the different assessees have pointed out to us that in many of the appeals which are being disposed of today, there were other issues raised by them relating to limitation and ownership which would need a determination by the Tribunal. The orders in all these appeals are therefore being passed separately. C.A. No. 5387/2003; Commissioner of Central Excise v. Fine Industries, C.A. No. 4979-84/2001; CCE v. Swadesh Industries and CSA. No. 5389-5396/2003; CCE v. Swadesh Industries.

8. These appeals are taken on board and appeals are allowed. Inasmuch as the respondent-assessees claim that they have raised the issue of limitation of demands and since there was no finding on the issue of limitation by the Tribunal, these appeals are remanded back to the Tribunal for a decision on the issue of limitation.

C.A.No.950/2004:Commissioner of Central Excise,Chandigarh-II v. M/s.Bhalla Enterprises:

9. This appeal is allowed on merits. However the matter is remanded back to the Tribunal on the question of limitation and also with regard to the claim of the assessee that it was also the registered owner of the brand name/trade mark in question for the relevant period.

C.A. No. 1872/2004 & 1877/2004 : CCE v. M/s. Prakash Gramodyog Samiti & Ors.:

10. In these appeals the Tribunal had held against the assessee. The ap- peals are accordingly dismissed. Nevertheless the matters are remanded back to the Tribunal to consider whether the assessee is entitled to claim ownership in respect of the brand/trade name for the period 6-10-77 to 22-12-2003.

C.A. No. 1985/2004 : CCE v. Fine Industries :

11. This appeal is allowed. The matter is remanded back to the Tribunal on the question of limitation.

C.A. No. 2893/1999 : CCE v. Gopal Soap Industries :

12. This appeal is taken on board and is allowed and the decision of the Tribunal is set aside.

C.A. No. 3542/2004 : CCE v. M/s. Trivandrum R. Coop. Milk Prod. Uni. Ltd.:

13. The appeal is allowed and the matter is remanded back on the issue of limitation.

C.A. Nos. 2722-2723/2004 : CCE v. M/s. Trivandrum R. Co-op. Milk Prod. Uni. Ltd.:

14. The appeals are allowed.

C.A. No. 4004/2004 : CCE v. M/s. Trivandrum R. Coop. Milk Prod. Uni. Ltd.:

15. The appeal is allowed but remanded back on the question of limitation.

C.A. Nos. 1873-1876/2004 : CCE, Kanpur v. M/s. Prakash Gramodyog Samiti & Ors.:

16. These appeals relate to a demand raised on the basis of show cause notice dated 11-1-2000 claiming differential duty from the respondent for the period 30-6-97 to 31-8-99 on the ground that the respondent had wrongfully availed benefit under the exemption Notification 80 of 1988. The Tribunal came to the conclusion that the claim of the Department was barred by limitation. According to the appellant, the sole basis for the Tribunals's coming to the conclusion that the claim was barred by limitation was the fact that certain search and seizure had been made on 8-5-97 at which documents had been seized. It is submitted by the appellant that the Tribunal had failed to take into consideration that the investigation which was held on the basis of the documents seized were concluded in October, 1999. It is said that it is only thereafter that the suppression came to the knowledge of the Department and that the show cause notice was accordingly issued within a period of 6 months thereafter.

17. According to the learned Counsel appearing on behalf of the respondents, the documents on the basis of which the impugned demand has been raised against the respondent were available with the Department as on the date of the seizure. There was as such no question of holding any further investigation into any further fact for the issue of the demand on the allegation that the assessees had wrongly availed of the exemption. The only investigation which was held related to the question whether the respondent was a dummy unit of Corona Plus Industries. It is submitted that the Department cannot take advantage of the investigation held in such connection to justify a time-barred claim relating to the first issue. In any event it is submitted that the respondent-firm had all along contended that it was also the owner of the brand name/trade mark in question. In fact, the application made by the respondent for registration of the trade mark in question, namely, "Saving Plus" had been made on 16-10-97. This application had been allowed by the trade mark authorities under the Trade Mark Act on 22-12-2003 with retrospective effect i.e. 6-10-97. It is, therefore, submitted that in any event, the respondent would be entitled to the benefit of the exemption Notification. We are of the view that having regard to the contention of the parties, the matter should be reheard by the Tribunal on both the issue of limitation as well as the issue of ownership. The decision of the Tribunal is, accordingly, set aside and the matter is remanded back for the aforesaid purpose.

C.A. Nos. 5383-84/2004:

18. These appeals are taken on board. The appeals are allowed and the matters are remanded back on the issue of limitation.

[1] *1991 JT (1) 151*
[2] *2002 Indlaw CEGAT 1828*