

## **THE STRETCHED MARKS** **( By Swamy Associates)**

Respects to Shri.T.R.Rustagi, Director General of Inspection, Customs and Central Excise. Reference is drawn to his researched article titled as "Central Excise is highly democratic. But..." (2004 (62) RLT R3). The article concluded after analyzing the judgment of the Honorable Supreme Court in the case of Commissioner of Central Excise, Trichy Vs Rukmani Pakkwell Traders {2004(61) RLT 378(SC)}. Taking cue from the said article, we try to proceed a bit further.

The Honorable Apex Court in the above said judgment has ruled 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." What a categorical and decisive Ruling!

On the same date of this Ruling, the Honorable Apex Court also delivered another judgment in the case of Commissioner of Central Excise, Chandigarh – I Vs Mahaan Dairies Ltd {2004(31) RLT 382(SC)} on a similar issue. The brief facts of the case are as under. The Respondents (M/s. Mahaan Dairies Ltd) are a part of a Group of Companies, which are

- a) M/s.Mahaan Foods Ltd,
- b) M/s.Mahaan Proteins Ltd and
- c) M/s.Mahaan Dairy Ltd.

The word "Mahaan", written in a distinctive style, is a registered Trade Mark of M/s.Mahaan Foods Ltd. The Respondents (M/s.Mahaan Dairies Ltd) manufacture pickles, which are sold in packs bearing the name of "Mahaan Taste Maker". The style of "Mahaan" in the brand name "Mahaan Taste Maker" was exactly the same style as that of the registered Trade Mark of M/s.Mahaan Foods Ltd.

Now, the question before the Apex Court was about the entitlement of the benefit of the Notification 8/98 (SSI Notification) to the Respondents (M/s Mahaan Dairies Ltd) for their products bearing the brand name "Mahaan Taste Maker". In other words, the question would be whether by adding the words "Taste Maker" to the registered trademark of the other company, the Respondents could get the benefit of the Notification. Applying the ratio of the judgment in the case of Rukmani Pakkwell Traders, the Apex Court has held that,

"Even if the goods are different, so long as the trade name or brand name of some other Company is used, the benefit of Notification will not be available. Further in our view, once a trade or brand name are used, the mere use of additional words would not enable the party to claim the benefit of the Notification."

Thus the Apex Court reaffirmed its decision in denying the benefit of the notification to the cases where the trademarks are stretched by using them either partly or adding few more words. So far so good.

While concluding the said case, the Apex Court has observed as under:

" 9. It was, however, urged that the Respondents have applied for registration of the Mark "Mahaan Taste Maker" .We clarify that, if and when they get their Mark Registered, then they would become entitled to the benefit of the Notification in accordance with the Board's Circular No.88/88 dt.13.12.1988."

By observing so, the Apex Court has given a verdict that the mere fact of Registration with the Trade Mark Registry would decide the entitlement of a brand name for the benefit of the SSI Notification. In other words, by the above judgment, the Ruling of the Apex Court in the case of Rukmani Pakkwell Traders that the benefit of the Notification shall not be available even in cases, where a part of the brand name / trade name are used, is made vulnerable. By this latest verdict in the case of M/s.Mahaan Dairies Ltd, it appears that the benefit of the Notification would be available to the brand names / trade names, which are either part of an existing registered Trade Mark or a Trade Name with some added words, provided they are registered with the Trade Mark Registry.

With due respect to the judiciary, we prefer to differ with the above said Ruling of the Apex Court, as the mere fact of registration of the brand name / trade name has nothing to do, in deciding the entitlement for the benefit of the SSI Notification. This is evident from the words of the explanation to the Notification which defines the brand name as follows:-

"Explanation. For the purposes of this notification-

(A) "brand name" or "trade name" or shall mean a brand name or trade name **whether registered or not**, that is to say a name or a mark such a symbol, monogram, label, signature or invented word or writing which issued 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."

There are several common brand names like Lakshmi, Raja etc., which are used across the nation for various commodities. A person manufacturing a wet grinder under the brand name Lakshmi at Andhaman & Nicobar and another person using the same brand name Lakshmi for his Gas stoves at Arunachal Pradesh may have nothing in common except the use of the common brand name "Lakshmi". Not only the brand name but the style may also match. There can also be another manufacturer at Aurangabad manufacturing some other commodity under the brand name "Yuva Lakshmi" who may also maintain the same style of Lakshmi. Are all these manufacturers not entitled to the benefits of the Notification, just because of the fact they use the common brand name? Will they be entitled to the exemption only if they register their brand names? It will be highly illogical and unreasonable to arrive at a conclusion to deny the benefit of the Notification to the above said manufacturers.

To rescue the situation, the Board came up with a clarification vide the Circular 88/88 dt.13.12.1988. The clarification spelt out in the said Circular has definitely a good amount of logic and force. But it is unfortunate that the clarification has been stretched by various judicial forum finally to arrive at a conclusion that, as long as the commodities are different, even if identical brand names are used, then the benefit of the SSI Notification shall be available

to all of them. Irritated by this undue flexibility, the Honorable Apex Court gave a beating to the stretched interpretation of the Tribunal, in the case of M/s.Rukmani Pakkwell Traders. But by the above said observation in the case of M/s.Mahaan Dairy Ltd,, the Apex Court has also given a lead for further interpretations / litigations.

In our humble opinion, the brand name / trade name for the purposes of the SSI Notification has to be looked into in terms of their relationship indicating a connection in the course of trade between such goods and some person using such brand name and not to the fact of its registration. In other words, it is the under current relationship between the goods and the "other person", by means of a brand name, which shall decide the entitlement / disentitlement for the benefit of the exemption and not the fact whether such brand name is registered or not.