

M/S REIZ ELECTROCONTROLS PVT. LTD.

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v.

COMMR. OF CENTRAL EXCISE, DELHI-I

JULY 31, 2006

[ARIJIT PASAYAT, LOKESHWAR SINGH PANTA, JJ.]

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Central Excise Act, 1944.

Section 11A proviso—Notification providing small scale exemption—Assessee manufacturing goods under band name belonging to another—Whether benefit of notification available—Held, benefit of notification not available to assessee and demands of duty, penalty and interest rightly levied—Assessee in the meanwhile obtaining certificate of registration of trademark covering the period in question—Such stand not taken before Tribunal—Held, Tribunal has to consider the plea—Trade Marks Act, 1999.

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M/s. Reiz Enterprises (RE) is proprietary concern of A and is engaged in the manufacture of Electronic Fan Regulators, Dimmers and Remote Control Switches under the brand name 'REIZ' since 1988. Appellant-M/s. Reiz Electrocontrols Pvt. Ltd. (REPL) was constituted in the year 1993 with A and his two brothers as its Directors and it was engaged in the manufacture of Electronic Transformers, also under the common brand name of 'REIZ'. The Commission, Central Excise-I, New Delhi held that brand name 'REIZ' belonged to M/s. RE till its transfer to M/s. REPL in 2000 and denied small scale exemption to appellant-M/s. REPL on the ground that under Notification no. 1/93 a manufacturer affixing the brand name of another person was ineligible for exemption and also held that M/s. RE became ineligible for exemption once the brand 'REIZ' was transferred on 30.3.2000 to M/s. REPL and levied duty, pentaly and interest upon them. Appeals were preferred before the Central Excise and Gold Control Appellate Tribunal, New Delhi questioning the duty, penalty and interest levied. Tribunal held that authorities had rightly denied small scale exemption to M/s. REPL and M/s. RE and further held that duty, penalty and interest levied under Central Excise Act, 1944 and Central Excise Rules, 1944 did not suffer from any infirmity. Hence this appeal by M/s. REPL.

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- A Appellant contended that electronic transformers manufactured by M/s. REPL were not manufactured under brand name of another person; the brand name 'REIZ' belonged to M/s. REPL in respect of electronic transformer as M/s. RE never manufactured electronic; that there was no suppression of facts to evade payment of duty as both manufacturers had filed declaration before Central Excise authorities that goods are manufactured under brand name belonging to them and brand name of another person is not used; and alternatively, that M/s. REPL had applied in 1995 for registration of brand name 'REIZ' in their favour for electronic transformers and in the meantime obtained certificate of registration of trade mark under the Trade Marks Act, 1999 which also covered the period in question and hence no duty, penalty or interest can be levied.

Disposing the appeal, the Court

HELD: 1. In economic and taxation sphere, a large latitude should

- D be allowed to the legislature. It makes no difference whether the goods on which the trade name or mark 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 name or brand name of some other Company is used the benefit of the Notification would not be available. Therefore, the main contention of the appellant about eligibility for exemption is *sans merit*. [190-C-D; 192-C-G]

Commissioner of Central Excise Chandigarh-I v. Mahaan Dairies, (2004) 166 ELT 23 SC, Union of India v. Paliwal Electricals (P) Ltd. and Anr., [1996] 3 SCC 407 and Pahwa Chemicals Private Limited v. Commissioner of Central Excise, Delhi (2005) 189 ELT 257, SC relied on.

F 2.1. However, the alternative plea needs to be considered. It is accepted for the parties that this plea needs factual adjudication which has not been done. It appears that such a stand was not taken before the Tribunal. The Tribunal has to consider the plea. [192-G-H; 193-A]

- G *Commissioner of Central Excise, Chandigarh-I v. Mahaan Dairies, (2004) 166 ELT 23 SC, relied on*

H 2.2. If the Tribunal holds that the trade mark registration has any relevance, then question of limitation is really of academic interest. But if it is held that the same has no relevance the question of limitation has to

be decided in the background of the factual scenario. [193-G-H] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7449 of 2003.

From the Final Order No. 86/03-B (Composite Final Order No. 86-89/03-B) dated 18.12.2002 of the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi, Northern Bench-B, in appeal Nos. E/244-245/02B with Appeals Nos. 238-239/2002-B. B

V. Sridharan, Alok Yadav and Rajesh Kumar for the Appellant.

P. Parmeswaran for the Respondent.

C The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Challenge in this appeal is to the decision of the Central Excise and Gold Control Appellate Tribunal, New Delhi (in short 'the Tribunal') holding that the authorities had rightly denied small scale exemption to Reiz Electrocontrols Pvt. Ltd. (in short the 'REPL') and Reiz Enterprises (in short the 'RE'). It was further held that the demands of duty from them and imposition of penalty as well as interest levied under Central Excise Act, 1944 (in short the 'Act') and Central Excise Rules, 1944 (in short the 'Rules') do not suffer from any infirmity. However, the case was remanded to the jurisdictional Commissioner for re-computing the duty demands and re-determining penalty. However, in the light of observations made, penalties imposed on Shri Atul Agarwal and Sh. Siddarth Agarwal under Rule 209A were set aside. D

E The back ground facts in a nutshell are as follows:

M/s RE is a proprietary concern of Shri Atul Agarwal and is engaged in the manufacture of Electronic Fan Regulators, Dimmers and Remote Control Switches under the brand name 'REIZ' since 1988. In the year 1993, M/s REPL was constituted with Shri Atul Agarwal and his two brothers Shri Siddarth Agarwal and Shri Ravindra Agarwal as its Directors. M/s REPL was engaged in the manufacture of Electronic transformers. Both the units manufacture their goods under a common brand name of 'REIZ'. The Commissioner, Central Excise-I, New Delhi by his order dated 31.10.2001 held that since the brand name 'REIZ' belonged to M/s RE till its transfer to REPL in 2000, the Electronic transformers manufactured under brand name 'RETZ' by REPL till the transfer were ineligible for small scale exemption, inasmuch as under the Notification no.1/93 a manufacturer affixing the brand G H

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name of another person was ineligible for the exemption. Similarly, it was held that M/s RE became ineligible for exemption once the brand name REIZ was transferred on 30.3.2000 to REPL. Appeals were preferred before the Tribunal questioning duty, penalty and interest levied. Tribunal disposed of the appeals as aforesaid. Tribunal noted the position as follows:

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"It is a specific condition under Notification No. 1/93 that the goods manufactured under the brand name of another person is not eligible for exemption under the notification. Investigations have established that Shri Atul Agarwal on behalf of M/s. RE had applied

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on 12.1.1993 for registration of brand name of 'REIZ' in respect of goods including electronic transformer. This registration application was allowed in his favour in 2000. It is well settled that registration of trade mark/brand name once granted relates back to the date of application. Thus, in respect of electronic transformer also Mr. Atul Agarwal, proprietor of RE became owner of the brand name 'REIZ'

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w.e.f 1993. Therefore, the electronic transformers manufactured by M/s. REPL with the brand name REIZ impugned in the present proceeding being manufactured subsequent to 1993 became ineligible for small exemption on account of the use of brand name 'REIZ' which belonged to another person (RE). On account of the subsequent

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transfer of the brand name of REPL, RE has also become ineligible for exemption in respect of the goods produced under that brand name subsequent to the transfer."

Stand of the appellants before the Tribunal was that M/s RE never manufactured electronic transformer and therefore, in respect of that item, the brand name REIZ belonged to M/s REPL. It was also submitted that REPL had applied for registration of that brand name in their favour for electronic transformer in 1995. In these circumstances, it has to be held that electronic transformers manufactured by the REPL were not manufactured under the brand name of another person.

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The demands in the present case were raised under extended period permitted in the proviso 11A of the Act, on the ground that, the non-levy in the result of suppression of facts with intention to evade payment of duty. It was contended that there was no suppression of facts in as much as both the manufacturers had filed declaration before the Central Excise authorities that goods are manufactured under the brand name belonging to them and brand name of another person is not used. It is also stressed that both the units are

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located in the same building in the jurisdiction of same Central Excise A Superintendent and therefore, the facts of the cases were known to the Central Excise authorities and a change of suppression of facts is not maintainable.

The respondents pointed out that in view of the specific prescriptions in the Notification the demands have been rightly raised. B

As noted above the contentions did not find acceptance by Tribunal and, therefore, the impugned order was passed. C

Stands before the Tribunal were reiterated by learned counsel for the appellant. Additionally, it was submitted that the appellant had in the meantime obtained a certificate under the Trade Marks Act, 1999 (in short the 'Trade Marks Act') and the certificate of registration of trade mark covered the period in question. Therefore, even if it is conceded that the Tribunal's view is correct no duty, penalty or interest can be levied. C

So far as the views regarding non-eligibility are concerned view D expressed by this Court in several cases needs to be noted.

In *Commissioner of Central Excise, Chandigarh-I v. Mahaan Dairies*, (2004) 166 ELT 23 (SC) it was noted (in para 6) as follows:

"We have today delivered a judgment in *Commissioner of Central Excise, Trichy v. Rukmani Pakkwell Traders*, (2004) (165) E.L.T. 481 (S.C.) (Civil Appeal Nos. 3227-3228/1998) 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 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 Notification." E F

In *Union of India v. Paliwal Electricals (P) Ltd. and Anr.*, [1996] 3 G SCC 407 it was noted (in paras 10 and 11) as follows:

"10. We are of the opinion that while examining the challenge to an exemption notification under the Central Excise Act, the observations in the decisions aforesaid should be kept in mind. It should also be remembered that generally speaking the exemption notification and H

A the terms and conditions prescribed therein represent the policies of the Government evolved to subserve public interest and public revenue. A very heavy burden lies upon the person who challenges them on the ground of Article 14. Unless otherwise established, the court must presume that the said amendment was found by the Central Government to be necessary for giving effect to its policy (underlying the notification) on the basis of the working of the said notification and that such an amendment was found necessary to prevent persons from taking unfair advantage of the concession. In fact, in this case, the explanatory note appended to amending notification says so in so many words. If necessary, the Court could have called upon the Central Government to establish the reasons behind the amendment. (It did not think it fit to do so.) It is equally necessary to bear in mind, as pointed out repeatedly by this Court, that in economic and taxation sphere, a large latitude should be allowed to the legislature. The courts should bear in mind the following observations made by a Constitution Bench of this Court in *R.K. Garg v. Union of India*, [1981] 4 SCC 675: (SCC pp. 690-91, para 8)

E "Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J. that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The Court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in *Morey v. Doud*, [354 US 457 (1957) where Frankfurter, J. said in his inimitable style:

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G 'In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy not to reconstruct. When these are added to the complexity of economic regulation, the

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uncertainty, the liability to error, the bewildering a conflict of the experts, and the number of times the Judges have been overruled by events-self-limitation can be seen to be the path of judicial wisdom and institutional prestige and stability.'

The court must always remember that 'legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry' that exact wisdom and nice adaptation of remedy are not always possible and that judgment is largely a prophecy based on meagre and uninterpreted experience'. Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot, as pointed out by the United States Supreme Court in *Secy. of Agriculture v. Central Roig Refining Co.* [94 L Ed 381 : 338 US 604 (1950)] be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on itself framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues."

11. The same principle should hold good in the matter of exemption notifications as well, for the said power is part and parcel of the enactment and is supposed to be employed to further the objects of

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A enactment-subject, of course, to the condition that the notification is not *ultra vires* the Act, and/or Article 14 of the Constitution of India. (See *P.J. Irani v. State of Madras*, [1962] 2 SCR 169].

In *Pahwa Chemicals Private Limited v. Commissioner of Central Excise, Delhi* (2005) 189 ELT 257 (SC) it was held as follows at para 3:

B "Paragraph 4 and Explanation IX of Notification have been construed by this Court in *Commissioner of Central Excise v. Rukhmarii Pakkwell Traders*, (2004) 165 E.L.T. 481; as also in *Commissioner of Central Excise, Chandigarh v. Mczhaan Dairies*, (2004) 166 E.L.T. 23. In both these decisions this Court held that Paragraph 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 assessee's 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."

G Therefore, the main contention of the learned counsel for the appellant about eligibility for exemption is *sans merit*. However, the alternative plea raised needs to be considered. It is accepted by learned counsel for the parties that this plea needs factual adjudication which has not been done.

H It appears that such a stand was not taken before the Tribunal. In any event in view of what has been stated by this Court in *Mahaan Dairies' case*

(supra) the Tribunal has to consider the plea. In *Mahaan diaries*' A (supra) case it was observed as follows:

“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 Board’s Circular No.88/88, dated 13.12.1988.” B

Similarly in *Bhalla*’s case (supra) it was observed as follows:

“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 D E F

If the Tribunal holds that the trade mark registration has any relevance, then question of limitation is really of academic interest. But if it is held that the same has no relevance the question of limitation has to be decided in the background of the factual scenario. G

The appeal is accordingly disposed of with no orders as to costs.

A.K.T.

Appeal disposed of. H