

Thio Pharma Vs. Collector of Central Excise

Thio Pharma Vs. Collector of Central Excise

SooperKanoon Citation : sooperkanoon.com/6968

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-21-1992

Reported in : (1992)(60)ELT395TriDel

Appellant : Thio Pharma

Respondent : Collector of Central Excise

Judgement :

1. The Collector of Central Excise (Appeals) New Delhi allowed the Revenue's appeal before him and upheld their contention that the assessee is not entitled to the benefit of the Notification No. 175/86 as the asses-sees, manufacturers of medicines, were affixing the trade name/brand name "Synthico" belonging to the company M/s. Synthiko Formulations. M/s. Synthiko Formulations were exclusively purchasing the medicines manufactured by the assessee and were marketing the same.

However, they were not manufacturers of any goods or holding any L-4 licence under the Central Excises and Salt Act, 1944.

2. The contention of the appellants has been that they were manufacturers of Brosmin tablets alongwith other medicines, which is their own product with their brand name. They have engaged the services of a marketing firm M/s. Synthiko Formulations, Bombay. As they were their sole selling and marketing agent and for easy identification, their company's name 'Synthico' was printed on the labels. This mention of the word 'Synthico' on the labels does not attract Notification No.223/87

dated 22-9-1987. The learned Collector held that the affixing on goods with the brand name or trade name, whether registered or not of another person, would disentitle them from the eligibility of the Notification No. 175/86 dated 1-3-1986. The findings of the learned Collector are reproduced below - "I have carefully examined the impugned order, the appeal and the respondents' contention. It is a fact that the Brand name 'Synthico' has been used by the appellant and this brand name is also being used by M/s. Synthiko Formulations Pvt. Ltd., Bombay who are marketing this product manufactured by the respondent. It is also a fact that Notification No. 175/86 lays down that the exemption shall not apply whether the manufacturer affixes his goods with the brand name or trade name, whether registered or not; of another person who is not eligible for the said exemption. The reasoning in the impugned order is that 'synthiko' is not a trade name or brand name for the Brosmin and that the ownership of the latter vests with the respondents and hence the incidence of duty on Brosmin would be as per entitlement of the respondents. In this regard, I observe that the very purpose of mentioning the words 'Synthico' on the label belies the contention of the respondents and the finding in their favour in the impugned order. The entire quantity of products is being marketed through M/s. Synthiko Formulations Pvt. Ltd., Bombay and hence there is not only connection but also the benefit of marketing on use of such a brand name accruing to the respondents as well as M/s. Synthiko Formulations Pvt. Ltd., Bombay and in the situation, I observe that the exemption under Notification No. 175/86 is not intended to the respondents." 3. We have heard Shri V. Lakshmi Kumaran, learned advocate for the appellants and Shri M. Jayaraman, learned Departmental Representative for the respondents, perused the records and considered their submissions.

4. The Notification No. 175/86 dated 1-3-1986 is a notification for granting exemption to specified items manufactured under small scale sector. The exemption granted in this notification is subject to several provisions and conditions laid down in this notification. There is no dispute in this case with regard to the appellants being a small scale industry or also being entitled for exemption on the basis of their clearances. The Notification No. 175/86 dated 1-3-1986 was amended by Notification No. 223/87-C.E., dated 22-9-1987. By this amended notification, para 7 and Explanation VIII has been introduced.

Para 7 of this notification as well as Explanation IV of Notification No. 175/86 and Explanation VIII of amended Notification No. 223/87-C.E.is reproduced below - "7 - The exemption contained in this notification should not apply to the specified goods where a manufacturer affixes the specified goods with a brand name or trade name (registered or not) of another person who is not eligible for the grant of exemption under this notification.

Provided that nothing contained in this paragraph shall be applicable in respect of the specified goods cleared for home consumption before the 1st day of October, 1987.

For the purpose of this notification, where the specified goods manufactured by a manufacturer, are affixed with a brand name or trade name (registered or not) of another manufacturer or trader, such specified goods shall not, merely by reason of that fact, be deemed to have been manufactured by such other manufacturer or trader.

'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 the said goods and some person using such name or mark with or without any indication of the identity of that person".

5. The appellants are manufacturers of medicines and a tablet having name of 'Brosmin'. On the labels, name of the marketing agency namely M/s. Synthiko Formulations is printed. Just above this is printed 'Synthico'. This word 'Synthico' is encircled with a line. The Collector has considered this word 'Synthico' placed in a circle to be a particular mark or brand name for the tablet 'Brosmin' and has held that as 'Synthico' is owned by the marketing agency namely M/s.

Synthiko Formulations Pvt. Ltd., Bombay, the benefit of the exemption under the said notification will not be available as per Explanation IV of the said notification.

6. The question is whether this word 'Synthico' is a brand name or trade name and whether the use of such a name would make the appellants disentitled to the benefit of the notification. The brand name or trade name is connected with the product. A product is always identified with the brand name or trade name. The product is also traded in the same brand name or trade name. The appellants are manufacturing the tablets Brosmin. The trading of this product is not being done in the name of Synthico. Synthico may be the emblem of the marketing agency, who are marketing the goods of the appellants. But in the market, the goods are being sold in the name of medicine or tablet. The appellants' contention that the prescription for the medicine would be given in the name of the tablet and sale by the Pharmacist and chemist is also done in the name of the medicine or tablet, is a valid contention. The trade will not understand the medicine in the name of the emblem which the marketing agency has put on the label. Therefore, it cannot be held that the word 'Synthico' is a brand name or trade name of the medicine.

The para 7 of the notification spells out that if the manufacturer affixes on the specified goods with a brand name or trade name of another person who is not eligible for grant of exemption, then the benefit under the notification will not be applicable. In this case, the marketing agency M/s. Synthiko Formulations are not 'another person who is not eligible for grant of exemption' under this notification as per para 7 of the notification. The marketing agency in this case are not holding any L-4 licence nor they are manufacturers of specified goods with a brand name or trade name and who are not eligible for grant of exemption under the notification, as laid down in para 7 of the notification. If the appellants had used the brand name or trade name of another person who is a manufacturer then in that event, para 7 of the notification would be attracted for interpretation. The Explanation VIII has also explained the words 'brand name' or 'trade name' which is reproduced above. As per this definition, the trade shall recognise the goods in the market with the trade name or brand name, which could be in the form of a name, mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such goods for the purpose of indicating or so as to indicate in the course of trade between the goods and the person using the name or mark with word without any indication of the identity of that person.

7. The Revenue has not shown that the appellants are trading their goods in the brand name or trade name of 'Synthico'. The appellants are trading the medicine in the name of 'Brosmin tablet'. Therefore, the contention of the lower authorities that the word 'Synthico' is a trade name or brand name is not correct. In *Collector of Central Excise v. Bengal Chemicals & Pharmaceutical* 1989 (43) E.L.T. 591 (Tri.), it has been held in para 8 as follows - "Even applying the alternative criterion, we do not think the legend 'Bengal Chemicals' is sufficient to attract the mischief of the second criterion referred to above specially considering that the names of the medicines are specified in pharmacopoeia. The legend only shows that the medicines are manufactured by the respondents.

It does not constitute a brand name or mark used in relation to the medicines for indicating or to indicate a connection between the medicines and the respondents. In this context the observations of the Madras High Court in the case of *Indo-French Pharmaceuticals Co.*

(supra) are apposite - 'A close reading of explanation however in my view indicates that the marks, symbols, monogram, label, signature or other words which are used in the medicinal preparation or its container should be such as to indicate that the medicine is a special preparation made by the manufacturer. The connection between the medicine and the manufacturer contemplated under the explanation, should be such as to indicate that the manufacturer has a proprietary interest in the medicine. It is well known that in all medicinal preparations, the manufacturer's name is and has necessarily to be indicated. Every container of a medicinal preparation will necessarily indicate the manufacturer's name and this cannot be taken to indicate a connection between the medicine and its manufacturer. If that is so, every medicinal preparation will automatically become patent or proprietary medicine as defined in the explanation in addition to the manufacturer's name some other symbol mark, monogram or label has been used by the manufacturer to indicate that his is a special preparation and not exclusively based on any pharmacopoeia then it can be said that they indicate that the manufacturer has got a proprietary interest in the medicine. The antithesis between the expression 'a name which is not specified in a monograph in a pharmacopoeia, formula or other publications' and the expression 'a brand name

occurring in the Explanation' have to be considered significant. That indicates that if a manufacturer uses a word, symbol, label, monogram etc., apart from a monograph, in a pharmacopoeia, formulary or other publication then that can be treated as indicating that the manufacturer has a prop, interest in the medicine manufactured by him'.

In the case before the High Court the three medicinal preparations had a mark thereon with a flame inside which occurred the words "India French" (in the present case, there is no picture etc., but only the words 'Bengal Chemicals'). With reference to this legend, the observations are as follows - "These words have been taken by the authorities as indicating the petitioners the prop, interest in the three medicines on the ground that explanation by virtue of the user of such symbol can be taken to confer a proprietary right on the petitioner in the medicines. It cannot be disputed that the petitioner has been using this symbol, a flame inside which the words 'India French' occur, in respect of all the articles manufactured by it. It is seen that even in the letter head, the petitioner has been using this mark. Therefore, it is not a distinctive mark given by the petitioner to the three medicines referred to above. But it is a mark which is generally given to all labels in its letter dated 11-12-1967, the petitioner has categorically stated that this mark is being used in respect of all the articles manufactured by it." 9. A reading of the above para clearly supports the findings given by us. The appellants are entitled to succeed in this appeal and the same is allowed with consequential relief.

10. I have gone through the order proposed by my learned brother Shri S.L. Peeran. However, I regret I am unable to persuade myself to agree with the proposed order.

11.1 After a show cause notice had been issued by the Superintendent for a demand of Rs. 76,113.22 p. and the said show cause notice had been dropped by the Assistant Collector in his order-in-original No.6/88 dated 20-5-1988, the Collector had reviewed the said order-in-original passed by the Asstt. Collector and the following facts, inter alia were recorded by him after examination of the case records in his order-in-review No. 25-CE/89 dated 16-5-1989 by virtue of

which an application under Section 35-E of the Central Excises and Salt Act, 1944 was filed before the Collector of Central Excise (Appeals) which has led to the impugned order :- (ii) In reply to the notice, Assessee by their letter dated 13-1-1988, inter alia, stated that Brosmin Tablets & 'Brosmin Forte Tablets' are their own brand names and are affixed with trade name/Brand name 'SYNTHIKO' and marketed by Synthiko Formulations Pvt. Ltd., Bombay on the labels/cartons/strips, as entire goods are purchased by the said company and that they do not affix the said goods themselves with the trade mark/Brand name of the company and are therefore entitled to exemption".

11.2 The Collector raised the following points in view of which he considered that the order of the Asstt. Collector was wrong :- "(i) Notification No. 175/86 dated 1-3-1986 grants exemption to first clearances of specified goods upto the value of Rs. 15 lakhs and concessional rate of duty on subsequent clearances in the case of manufacturer, having clearances not exceeding Rs. 1.5 crores in the preceding year.

(ii) As per para 7 of the aforesaid Notification as inserted vide Notification No. 223/87 dated 22-9-1987 the exemption contained in the Notification No. 175/86 dated 1-3-1986, will 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 the grant of exemption under the said Notification No. 175/86.

(iii) That as per Explanation VIII to the said notification 'Brand Name' or 'Trade Name' shall mean a brand 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.

(iv) That word 'SYNTHIKO' in stylised script, bound by a rectangle, in the strips, or medicines, manufactured by the Assessee is brand name/trade name, used by M/s. Synthiko Formulations Pvt. Ltd., Bombay, and the said trade name/brand

name 'Synthiko' bound by a rectangle is also used by following sister organisations of the said M/s. Synthiko Formulations.

(1) M/s. Synthiko Industries, C-I/62 Mauji Valiv Village, Bassein (Vassi) Distt. Thane - a manufacturer of P or P medicines.

(2) M/s. Synthiko Foils Ltd., Jay House, 13/14, Andheri-Kurle Road, Bombay.

(3) M/s. Synthiko Organic Pvt. Ltd. Falna. - a manufacturer of P or P medicines.

(v) That assessee manufactures medicines and affixes the trade name/brand name, 'Synthiko', belonging to Company, which is the exclusive purchaser of the said goods.

(vi) That M/s. Synthiko Formulations Pvt. Ltd. are not eligible for the grant of exemption under the said Notification No. 175/86 dated 1-3-1986 as amended.

(vii) That word 'Synthiko' bound by a rectangle is a symbol/monogram/label which is used for the purpose of indicating a connection in the course of trade between P or P medicines (BROSMIN) with M/s. Synthiko Formulations Pvt. Ltd. and (viii) That P or P medicines with Brand/Trade name 'Synthiko' is advertised by M/s. Synthiko Formulations Pvt. Ltd. and (ix) That M/s. Synthiko Formulations Pvt. Ltd. is a trader falls in the definition of 'another person' and the specified goods P or P medicines (BROSMIN) manufactured by Assessee affixed with trade name/Brand name, 'SYNTHIKO' of the company i.e. another person, would not be entitled to S.S.I. exemption.

(x) P or P medicines affixed with the brand name/trade name 'SYNTHIKO' used in relation to some goods by another person (company) who is not eligible for S.S.I. exemption, are hit by para 7 of the notification and exemption under Notification No. 175/86 is not available".

12. We are required now to examine in the light of the submissions made by the appellants and the points raised by the department read with the impugned order whether the appellants are entitled to the benefit of Notification No. 175/86 dated 1-3-1986 (as amended) in respect of the drugs tablets carrying the mark 'Synthiko'

in a stylised manner enclosed in a rectangle. I am inclined to agree with the respondents for the following reasons: 13. The goods are specified goods i.e. they are patent or proprietary (P or P) medicines because of the use of the trade name/brand name 'Brosmin' carried by the medicine. The appellants' contention is that marking of 'Synthiko' in the manner it has been done does not connect the goods with M/s. Synthiko Formulations Pvt. Ltd. inasmuch as the goods are still 'Brosmin' tablets and 'Brosmin' is the trade name/brand name of the appellants. The connection of the goods is with the appellants through the use of the word 'Brosmin' and the use of the word 'Synthiko' in a stylised manner in rectangle does not create a connection with the goods and M/s. Synthiko Formulations Pvt. Ltd. This submission of the appellants in my view is not correct. We are examining here the benefit of exemption in respect of certain specified goods. The goods namely P or P medicine became specified goods in the first instance by virtue of use of the words 'Brosmin'. Para 7 of the aforesaid Notification No. 175/86 further declares that the said notification would not be applicable to the goods where a manufacturer affixes the specified goods with brand name or trade name of another person who is not eligible for grant of exemption under the said Notification No. 175/86. The question that falls for consideration now is whether by use of the word 'Synthiko' in a stylised manner and enclosed in a rectangle is a brand name or the trade name of another person. What is brand name or trade name has also been defined by Explanation VIII given in the said notification itself. It states that brand name means 'a brand name or trade name, whether registered or not, that is to say a name or a mark such as 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 [Emphasis supplied]. It has already been brought on record by the Collector of Central Excise, Jaipur in his order-in-review that 'Synthiko' written in a stylised manner and bound by a rectangle is the trade name/brand name of M/s. Syn-thiko Formulations Pvt. Ltd. No doubt is, therefore, left that this mark indicates a connection in the course of trade between such specified goods and M/s. Synthikp Formulations Pvt. Ltd. Para 7 of the notification, therefore, would stand in the way of the extension of the

benefit of notification for such goods. Reliance placed by the learned advocate on the decision of the Tribunal 1989 (43) E.L.T. 591 (Tri) - CCE v. Bengal Chemicals & Pharmaceutical Co. which in turn is based on a decision of Madras High Court in the case of U. O.I. v. Indo-French Pharmaceutical Co. 1983 (12) E.L.T. 725 is not relevant because the question involved in the said decision was in respect of classification of the goods under the then T.I. 14E (now Tariff Heading 3003.19). The name 'Brosmin' by virtue of being a non-pharmacopoeial name makes the 'Brosmin' tablets a patent or proprietary medicine falling under Tariff Heading 3003.19. Here we are concerned with grant of exemption Notification No. 175/86 in respect of medicines falling under Tariff Heading 3003.19. Then notification imposes a further condition on specified goods for non-applicability of the notification in respect of goods which carry a trade name/brand name on the specified goods or on its containers of another person who is not eligible for grant of exemption.

14. Next submission of the appellants' learned advocate is that para 7 of the notification which has been relied upon for not extending the benefit of the notification speaks of a person who is not eligible for grant of exemption under this notification. Therefore, according to the learned advocate the person should be one who is a manufacturer of specified goods and eligible for grant of exemption under this notification and should not be a person who is merely a trader because question of extending an excise exemption notification can arise for a manufacturer only. In the instant case, submits the learned advocate for the appellants, the person namely M/s. Synthiko Formulations Pvt.

Ltd. is not a manufacturer of P or P medicines; that company is merely a trading company and therefore, para 7 of the notification does not place a bar on use of trade name or brand name of such a person by the manufacturer of the specified goods. This reasoning of the appellants' learned advocate in my view narrows down the scope of the term 'person' to one who is a manufacturer of excisable goods; there is no reason to cut down the scope of the word 'person' to the above extent. The golden rule of construction is that the words in a statute should be given their ordinary meaning. The word 'person' in its ordinary connotation would include any person whether he is a 'manufacturer' or a 'non-manufacturer'. The

only condition which qualifies the term 'person' in para 7 of the notification is that he should not be eligible for the grant of exemption under this notification. A non-manufacturer i.e. a trader having a brand name or trade name in respect of goods with a huge turn-over far exceeding the exemption limit and getting his goods manufactured from small scale manufacturers would be at the same pedestal as a manufacturer of specified excisable goods would be who is not eligible for grant of exemption under this notification. Ultimately a person manufactures goods for the purpose of selling them. For this reason, I do not agree with the appellants' contention that ordinary meaning of the word 'person' should not be adopted for construing this para. It is also seen that wherever the subordinate legislative authority intended to use 'manufacturer' it has used that word accordingly in the Notification 175/86-C.E., for example Explanation IV of the notification refers to brand name or trade name of other manufacturer.

15. It is also further noticed from the material placed on record by the Collector of Central Excise, Jaipur in his order-in-review No.20-CE/89 that M/s. Synthiko Formulations Pvt. Ltd., though a trading concern, having the trade name/brand name as 'Synthiko' has sister concerns namely (1) M/s. Synthiko Industries and (2) M/s. Synthiko Organic Pvt. Ltd., Falna who are both manufacturers of P or P medicines and using the same trade name/brand name 'Synthiko'. It is thus seen that the trade name/brand name 'Synthiko' is used by other manufacturers of P or P medicines and M/s. Synthiko For mutations Pvt.

Ltd. is the owner of that trade name/brand name. In other words, M/s.

Synthiko Formulations Pvt. Ltd., Bombay in this way enjoys the status of a manufacturer of P or P medicines as well having the trade name/brand name 'Synthiko'. I am, therefore, of the view that Notification No. 175/86 would not be available to the appellants in respect of the goods 'Brosmin tablets' carrying the brand name/trade name 'Synthiko' in a stylised manner bound by a rectangle. The impugned order is, therefore, correct in law and on facts. The appeal is, therefore, liable to be rejected and I order accordingly.

Sd/- Following difference of opinion has arisen between the members of the Bench : "Whether the benefit of Notification No. 175/86-C.E., dated 1-3-1986 would be

available to the goods under consideration".

2. In view of the aforesaid difference of opinion the President is requested to take appropriate action to have the difference of opinion resolved by the third Member.

16. I have perused the order written by learned brother Member Judicial, Shri S.L. Peeran and learned brother Member Technical, Shri P.C. Jain. The difference of opinion has arisen and the following point of difference has been referred to me :- "Whether the benefit of Notification No. 175/86-C.E., dated 1st March, 1986 would be available to the goods under consideration." The facts of the case have been duly narrated by both the learned brothers and, as such, I am not repeating the same. The issue to be decided is whether the appellants are entitled to the benefit of Notification No. 175/86-C.E., dated 1st March, 1986 as amended by Notification No. 223/87-C.E., dated 22nd September, 1987. Shri V.Lakshmi Kumaran, the learned advocate has appeared on behalf of the appellants. He pleaded that the appellants are manufacturing Brosmin tablets marketed by Synthiko Formulations Private Ltd. Shri Lakshmi Kumaran, the learned advocate argued that Synthiko Formulations does not belong to the appellants and it belongs to a third person. Shri Lakshmi Kumaran referred to Notification No. 175/86-C.E. and referred to Para No. 7 of the said notification which provides that the exemption contained in this notification should not apply to the specified goods where a manufacturer affixes the specified goods with a brand name or trade name (registered or not) of another person who is not eligible for the grant of exemption under this notification, and there is a proviso that nothing contained in this paragraph shall be applicable in respect of the specified goods cleared for home consumption before the 1st day of October, 1987. Shri Lakshmi Kumaran argued that Brosmin itself is a brand name. These tablets are made of Salbutamol with Etofyline Plus Bromhexine HCl drugs and Synthiko Formulations Pvt. Ltd. are the distributors and the appellants' unit is a unit registered with the Drug Controller. He argued that the word "Synthiko" is the name only for drug sold through Synthiko Formulations. He pleaded that Synthiko is not the brand name. Brosmin is the brand name and the doctor prescribes it by the brand name and Synthiko Formulations are just marketing agents. The mere mention of word Synthiko in rectangular cannot lead to the inference that it is a brand name/trade name and the product cannot have

two brand names or trade names affixed on it. He referred to the book on "Trade Marks and Passing-Off" by P. Narayanan, third edition published by Eastern Law House, Calcutta and referred to page 25 and Section 50, where it is described "House mark and product mark". He argued that house mark and product mark means: "where a person manufactures a number of different products he may use a separate trade mark for each product which will be used only on the particular product and another mark called house mark which will be used on all the products to indicate the manufacturer. This is common in many trades particularly in the pharmaceutical, chemical, dyes, cosmetics, textile, food, beverages, liquor and cigarette trade. In the pharmaceutical trade the product mark is also referred to as a brand name." He also referred to Section 677A page 324 of the same book. It further describes that: "In the pharmaceutical business a distinction is made between a house mark and a product mark. The former is used on all the products of the manufacturer. It is usually a device in the form of an emblem, word or both. For each product a separate mark known as a product mark or a brand name is used which is invariably a word or a combination of a word and letter or numeral by which the product is identified and asked for. In respect of all products both the product mark and house mark will appear side by side on all the labels, cartons, etc. Goods are ordered only by the product mark or brand name. The house mark serves as an emblem of the manufacturer projecting the image of the manufacturer generally. Shri Lakshmi Kumaran, the learned advocate also referred to volume 42 1658 To Date published by St. Paul Minn, West Publishing Co. and referred to page 258 which defines commercial mark." The distinction between a "trade mark" and "commercial mark" in the civil law of France is pointed out by Pouillet, Mare-ques de Fabrique, S 6, where he says: "A trade-mark is not a commercial mark. *** The trade-mark is especially or peculiarly the mark of the manufacturer, of him who creates the product, who manufactures it. The commercial mark is that of the dealer, of him who, receiving the product of the manufacturer, sells it to the consumer." Shri Lakshmi Kumaran, the learned advocate argued that the product cannot have two trade names.

Shri Lakshmi Kumaran referred to explanation VIII of the notification which describes the brand name or trade name and a simple perusal of the same shows that "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 the said goods and some person using such name or mark with or without any indication of the identity of that person." He again argued that Synthiko does not belong to the appellants. He argued that 100% sales of the appellants are through Synthiko Formulations. He also argued that since Synthiko Formulations is a trader, it cannot be said that he is eligible to the benefit of Notification No.175/86-C.E., dated 1st March, 1986. He cited a decision of the Supreme Court in the case of Manohar Nathurao Samarth v. Marotrao and Ors.

reported in 1979 (4) SCC 93 and referred to Para No. 11 of the said judgment where the Hon'ble Supreme Court had held that ineligibility must flow from a specific provision of law designed to deny eligibility or to lay down disqualification. He referred to para 8 of the decision of the Member Judicial, Shri S.L. Peeran. He also referred to page 11 of the order recorded by Member Technical, Shri P.C. Jain where the Hon'ble Member had distinguished for the sake of distinction. He argued that Synthiko is not a manufacturer and no benefit arises to Synthiko.

He pleaded for the acceptance of the appeal.

17. Shri M. Jayaraman, the learned SDR who has appeared on behalf of the respondent, referred to para 7 of the notification. He argued that the specified goods are manufactured by the appellants and registration of the brand name is not necessary. He pleaded that the dictionary meaning cited by the learned advocate does not help him. The meaning as given in the notification for trade name or brand name has to be adopted. He argued that Synthiko is a sister concern and Synthiko is the brand name of purchaser and all the advertisements are by Synthiko.

He relies on the order passed by the Technical Member and the judgment cited by the learned advocate is not applicable. He argued that trade name Synthiko is a brand name and as such the exemption under the notification is not available to the appellants.

18. In reply, Shri V. Lakshmi Kumaran, the learned advocate pleaded that after this problem the word Synthiko as mentioned in the rectangular are no longer printed by Synthiko Formulations Pvt. Ltd. and as such, the appellants are entitled to the benefit of the notification.

19. I have heard both the sides and have gone through the facts and circumstances of the case. For proper appreciation of the legal position, para No. 7 of Notification No. 175/86-C.E. and Explanations IV and VIII are reproduced below :- "7 - The exemption contained in this notification should not apply to the specified goods where a manufacturer affixes the specified goods with a brand name or trade name (registered or not) of another person who is not eligible for the grant of exemption under this notification.

Provided that nothing contained in this paragraph shall be applicable in respect of the specified goods cleared for home consumption before the 1st day of October, 1987.

For the purpose of this notification, where the specified goods manufactured by a manufacturer, are affixed with a brand name or trade name (registered or not) of another manufacturer or trader, such specified goods shall not, merely by reason of that fact, be deemed to have been manufactured by such other manufacturer or trader.

'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 the said goods and some person using such name or mark with or without any indication of the identity of that person." A perusal of Para 7 of the Notification No. 175/86-C.E. shows that the exemption, contained in this notification will not apply to the specified goods where a manufacturer affixes the specified goods with a brand name or trade name (registered or not) of another person who is not eligible for the grant of exemption under this notification.

Synthiko Formulations Private Ltd. are not the manufacturers. They are the marketing/selling agents and they cannot have the benefit of Notification No. 175/86-C.E. Explanation VIII of the said notification defines brand name or trade name. Brand name or trade name shall be the 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 the said goods and some person using such name or mark with or without any indication of the identity of that person.

It is a settled law that dictionary meaning or other meanings can be resorted to only when in a particular statute or notification there is no meaning or definition of a particular word, but where a statute gives or defines particular word/words, then that meaning has to be adopted. The learned advocate's argument that house mark is different from brand name/trade name will not apply here, as the notification itself explains the meaning of brand name/trade name. Explanation VIII is very clear that the brand name or trade name may be registered or may not be registered, and it may 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 trade between the said goods and some person using such name or mark with or without any indication of the identity of that person. In my view, the word "Synthiko" has to be treated as a brand/trade name keeping in view the definition as given in Explanation VIII of the notification. I agree with the conclusions given by the learned brother, Shri P.C. Jain, Member Technical. Accordingly, I am of the view that benefit of Notification No. 175/86-CE dated 1st March, 1986 is not available to the goods under consideration.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com