

UNISON ELECTRONICS PVT. LTD. AND ANR. A

V.

COMMISSIONER, CENTRAL EXCISE, NOIDA

Civil Appeal Nos 6788-6789 of 2005

FEBRUARY 13, 2009 B

(DR. ARIJIT PASAYAT AND DR. MUKUNDKAM
SHARMA, JJ)

Central Excise Act, 1944 :

s.5-A – SSI exemption Notification – Benefit not allowed in respect of goods bearing brand name of another person – Items manufactured by assessee affixed with stickers bearing UTS and TSN – Revenue treating words “UTS” and “TSN” as brand names of other persons disallowing benefit of Notification – CESTAT upholding demand of duty and penalty imposed on assessee-company except the separate penalty imposed on its director – HELD: In view of the position in law indicated in various decisions, and conclusions of CESTAT being essentially factual, no scope for interference. C D

The appellants were in the business of manufacturing and selling, *inter alia*, ice-cream makers in their own brand name ‘CREMICA’ and were availing benefit of SSI exemption Notification. The items sold to United Tele Shopping (UTS) and Tele Shopping Network (TSN) were being examined by supervisors of these customers before dispatch from the factory and stickers bearing UTS/TSN were being affixed thereto. The Revenue treated these words “UTS” and “TSN” as brand names belonging to other persons and disallowed the benefit of exemption Notification. The CESTAT upheld the demand of duty and penalty imposed on the company but set aside the separate penalty imposed on its Director. Aggrieved, the assessee filed the appeals. E F G

Dismissing the appeals, the Court

A **HELD : The conclusions of CESTAT are essentially factual. In view of the factual position noted by CESTAT and the position in law indicated in the decisions, there is no scope for interference. [para 10] [622-G]**

B *Commissioner of Central Excise, Trichy v. Rukmani Pakkwell Traders 2004 (11) SCC 801; Commissioner of Central Excise, Chandigarh-I v. Mahaan Dairies 2004 (11) SCC 798; Commissioner of Central Excise, Calcutta v. Emkay Investments (P) Ltd. and Anr. 2005 (1) SCC 526; Reiz Electrocontrols (P) Ltd. v. Commissioner of Central Excise, Delhi-I 2006 (6) SCC 213; Commissioner of Central Excise, Chandigarh-I v. Mahaan Dairies 2004 (166) ELT 23 (SC); and Pahwa Chemicals Private Limited v. Commissioner of Central Excise, Delhi 2005 (189) ELT 257 (SC) – relied on.*

D *Union of India v. Paliwal Electricals (P) Ltd. And Another (1996) 3 SCC 407 – referred to.*

Case Law Reference

	2004 (11) SCC 801	relied on	para 6
E	2004 (11) SCC 798	relied on	para 7
	2005 (1) SCC 526	relied on	para 8
	2006 (6) SCC 213	relied on	para 9
	2004 (166) ELT 23	relied on	para 9
F	(1996) 3 SCC 407	referred to	para 10
	2005 (189) ELT 257(SC)	relied on	para 11

G **CIVIL APPELLATE JURISDICTION : Civil Appeal Nos 6788-6789 of 2005**

From the final Judgement and Order dated 1.03.2005 of the Customs Excise and Service Tax Appellate Tribunal New Delhi in Final Order No. 250-251/05B.

H **Jagjit Singh Chhabra, for the Appellants.**

S. Washim A. Qadri, Anil Katiyar, Shweta Garg, Ashish A
Gopal Garg B.K. Prasad and B.V. Balaram Das, for the
Respondent.

The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J. B

1. In these appeals challenge is to the order passed by
the Customs, Excise & Service Tax Appellate Tribunal, New Delhi
(in short 'CESTAT'). The basic issue is whether the appellants
are clearing excisable goods manufactured by them bearing
the brand name of another person. C

2. Background facts in a nutshell are as follows:

The SSI Exemption Notification which provides exemption
to the excisable goods manufactured by a SSI unit provides
that the exemption shall not apply to goods bearing the brand D
name or trade name, whether registered or not, of another
persons. Explanation to Notification defines the brand name as
a name or mark, such as a symbol, monogram, label, signature
or invented word or writing which is used in relation to the E
specified goods for the purpose of indicating a connection in
the course of a trade between specified goods and some person
using such name or mark with or without any indication of the
identity of that person.

According to the appellants they manufacture ice-cream F
makers cooler and Popcorn makers and avail of the benefit of
SSI Exemption Notification and sell ice cream maker in their
own brand name "CREMICA" and sell the same to different
customers including United Tele Shopping (in short 'UTS') and
Tele Shopping Network (in short 'TSN') and that in respect of G
sale to UTS & TSN the goods were being examined by the
Supervisors of these customers before dispatch from their
factory and stickers bearing UTS/TSN were being affixed and
these sticker bear the words "Checked SI. No. Do not remove
this sticker" and that the Department has treated the words UTS
and TSN as brand name belonging to other and has disallowed H

A the benefit of small scale exemption notification. It was submitted that the words UTS and TSN are not brand names but are the abbreviations of the name of the marketing companies which does not amount to use of the brand name.

B Stand of the department was as follows:

B It has not been controverted by the appellants that the excisable goods before clearance from their factory premises bear stickers of UTS/TSN and as per definition of the brand name given in SSI Exemption Notification, "brand name" means
C any name, symbol, monogram, label, signature or invented word or writing which indicates connection in the course of trade between excisable goods and same person using such name and that the words UTS/TSN mentioned on the packaging of the products indicate the connection in the course of trade with
D UTS and TSN.

After considering the rival stands the CESTAT concluded as follows:

E "A perusal of the sample shown by the learned consultant at the time of hearing revealed that the sticker mentions that it has been put after checking the quality of the product manufactured by the appellants. In fact the sticker reads as under:



Tele Shopping Network



Quality at your doorstep

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UNISON ELECTRONICS PVT. LTD. AND ANR. V. COM., 611
CENTRAL EXCISE, NOIDA [DR. ARIJIT PASAYAT J]

Accordingly, the CESTAT upheld the demand of duty and penalty imposed on the appellant-company, but the separate penalty imposed on the Director of the company was set aside. A

3. In support of the appeals, learned counsel for the appellants submitted that the brand names do not apply to the same goods. It essentially is the brand name of another person. B

4. Learned counsel for the respondent on the other hand supported the judgment and submitted that even if it is conceded for the sake of arguments that brand names related to other person, that is really of no consequence. C

5. The Notification in question reads as follows:

"In exercise of the powers conferred by sub-section (1) of Section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, and in super session of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.7/97-Central Excise dated the 1st March, 1997, hereby exempts clearances, specified in column (2) of the Table below, for home consumption, of the excisable goods of the description specified in the Annexure appended to this notification (hereinafter referred to D E

"the specified goods"), from so much of the duty of excise leviable thereon which is specified in the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), as is in excess of the amount calculated at the rate specified in column (3) of the said Table against such clearances. F

3. For the purpose of determining the aggregate value of clearances, the following clearances shall not be taken into account, namely :- G

(a) any clearances, which are exempt from the whole of the excise duty leviable thereon (other than an exemption based on quantity or value of clearances) under any other H

A notification or on which no excise duty is payable for any other reason;

(b) any clearances bearing the brand name or trade name of another person, which are ineligible for the grant of this exemption in terms of paragraph 4 below :

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(c) any clearances of the specified goods which are used as inputs for further manufacture of any specified goods within the factory of production of specified goods. Such clearances of specified goods used as inputs shall be deemed to be exempt from the whole of the duty of excise leviable thereon:

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(d) any clearances of strips of plastics used within the factory of production for weaving of fabrics or for manufacture of sacks or bags made of polymers of ethylene or propylene.

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4. The exemption contained in this notification shall not apply to goods bearing a brand name or trade name, whether registered or not, of another person, except in the following case:-

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(a) where the specified goods, being in the nature of components or parts of any machinery or equipment or appliances, are cleared for use as original equipment in the manufacture of the said machinery or equipment or appliances by following the procedure laid down in Chapter X of the Central Excise Rules, 1944. Manufacturers, whose aggregate value of clearances of the specified goods for use as original equipment does not exceed rupees thirty lakhs in a financial year, may submit a declaration regarding such use instead of following the procedure laid down in Chapter X of the said rules;

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(b) where the goods bear a brand name or trade name of Khadi and Village Industries Commission or of the State Khadi and Village Industry Board or the National Small Industries Corporation or the State Small Industries

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Development Corporation or the State Small Industries Corporation; A

5. Explanation — For the purpose of this notification :-

(a) “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; B
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(b) where the specified goods manufactured by a manufacturer bear a brand name or trade name, whether registered or not, of another manufacturer or trader, such specified goods shall not, merely by reason of that fact be denied to have been manufactured by such other manufacturer or trader.” D

6. In *Commissioner of Central Excise, Trichy v. Rukmani Pakkwell Traders* (2004 (11) SCC 801) it was noted as follows: E

“5. The Tribunal then proceeds on the basis that the exemption can be denied only if the trade mark or brand name is used in respect of the same goods for which the trade mark is registered. In coming to this conclusion we are afraid that the Tribunal has done something which is not permissible to be done in law. It is settled law that exemption notifications have to be strictly construed. They must be interpreted on their own wording. Wordings of some other notification are of no benefit in construing a particular notification. Clause 4 of this notification and the Explanation (set out hereinabove) make it clear that the exemption will not apply if the specified goods (i.e. scented supari) bear a brand or trade name of another person. Neither in clause 4 of the notification nor in Explanation IX F
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A is it provided that the specified goods must be the same
or similar to the goods for which the brand name or trade
name is registered. The Tribunal has, in adopting the above
reasoning, effectively added to the notification words to
the effect "brand name or trade name in respect of the
B same goods". This is clearly impermissible. It is to be
seen that there may be an unregistered brand name or an
unregistered trade name. These might not be in respect
of any particular goods. Even if an unregistered brand
name or trade name is used, the exemption is lost. This
C makes it very clear that the exemption would be lost so
long as the brand name or trade name is used irrespective
of whether the use is on same goods as those for which
the mark is registered.

D 6. The Tribunal had also held that under the notification the
use must be of "such brand name". The Tribunal has held
that the words "such brand name" show that the very same
brand name or trade name must be used. The Tribunal
has held that if there are any differences then the exemption
would not be lost. We are afraid that in coming to this
E conclusion the Tribunal has ignored Explanation IX.
Explanation IX makes it clear that the 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, code
number, design number, drawing number, symbol,
F monogram, label, signature or invented word or writing.
This makes it very clear 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. In
G this case, admittedly, the brand name or trade name is the
word "ARR" with the photograph of the founder of the group.
Merely because the registered trade mark is not entirely
reproduced does not take the respondents out of clause
4 and make them eligible to the benefit of the notification."

H 7. Similarly, in *Commissioner of Central Excise*,

Chandigarh-I v. Mahaan Dairies (2004 (11) SCC 798) in paras A
6 and 8 it was noted as follows:

“6. We have today delivered a judgment in *CCE v. Rukmani Pakkwell Traders* (2004 (11) SCC 801) 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 the notification. B
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8. It is settled law that in order to claim benefit of a notification, a party must strictly comply with the terms of the notification. If on wording of the notification the benefit is not available then by stretching the words of the notification or by adding words to the notification benefit cannot be conferred. The Tribunal has based its decision on a decision delivered by it in *Rukmani Pakkwell Traders v. CCE* (1999 (109) ELT 204 (CEGAT)). We have already overruled the decision in that case. In this case also we hold that the decision of the Tribunal is unsustainable. It is accordingly set aside.” D
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8. Further in *Commissioner of Central Excise, Calcutta v. Emkay Investments (P) Ltd. and Anr.* (2005 (1) SCC 526) this Court stated the position in law as follows: F

“7. The dispute, in the instant case, is as to whether the respondents who are manufacturers of plywood under their own brand name “Pelican” have made themselves, disentitled to the benefit of small-scale exemption Notification No. 175/86-CE by using a logo indicating “MERINO” on their products along with their brand name. The next question which arises is as to whether the H

A markings or inscriptions should be considered as the brand name of M/s Merinoply and Chemicals Ltd. and will come within the mischief of clause 7 read with Explanation VIII of the notification, as contended by the department. Clause 7 reads as follows :

B “The exemption contained in this notification shall 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.”

C Explanation VIII of clause 7 reads as follows :

D ‘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.’

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H 8. Mr G.E. Vahanvati, learned Solicitor General, submitted that the impugned goods admittedly contained the registered logo “MERINO” belonging to and owned by M/s Merinoply and Chemicals Ltd. Thus it was a clear case where the impugned goods were admittedly affixed with registered logo/trade mark of the other person not eligible to SSI exemption. According to the learned Solicitor General, CEGAT erred in not appreciating that to attract provision of clause 7 of Notification No. 175/86-CE, it is sufficient that the product contained a trade mark/logo of another ineligible person which was fully satisfied in the present case and whether the product also contained a brand name/trade name/logo of the manufacturer would not and cannot alter such position. Arguing further, learned Solicitor General contended that the interpretation of

Explanation VIII as advanced by the Tribunal does not appear correct in law and fact. It was imperative that by using the registered logo "MERINO" belonging to M/s Merinopoly and Chemicals Ltd. on their own products, the first respondent herein, M/s Emkay Investments Ltd. fulfilled the purpose of indicating a relation between the said products and the logo owner so as to influence the trade and, therefore, the provision of Explanation VIII were fully satisfied so far as the present case was concerned. Learned Solicitor General also submitted that the exception or exempting provision in a taxing statute should be construed strictly and it is not open to the court or to the tribunal to ignore conditions prescribed in the exemption notification.

9. In support of his submissions, learned Solicitor General, relied on the following judgments:

1. *B.H.E.L. Ancillary Assn. v. CCE* (1990 (49) ELT 33 (Mad)
2. *CCE v. Rukmani Pakkwell Traders* (2004 (11) SCC 801
3. *CCE v. Mahaan Dairies* (2004 (11) SCC 798)
4. *CCE v. Bhalla Enterprises* (2004 (173) ELT 225

15. We have gone through the common order passed by the Tribunal. In our view, the Tribunal has erred in not appreciating that to attract provision of clause 7 of Notification No. 175/86-CE, it is sufficient that the product contained a trade mark/logo of another ineligible person which was fully satisfied in the instant case and whether the product also contained the brand name/trade name/logo of the manufacturer would not and cannot alter such position. Likewise, the interpretation of Explanation VIII as advanced by the Tribunal does not appear to be correct in law and in fact. It was imperative that by using the registered logo "MERINO" belonging to M/s Merinopoly and Chemicals Ltd. on their own product M/s Emkay Investments Ltd. fulfilled the purpose of indicating a relation

A between the said products and the logo owner so as to influence the trade and therefore, the provisions of Explanation VIII were fully satisfied so far as the case on hand was concerned. The finding of the Tribunal to the contrary, in our opinion, is wrong and liable to be set aside."

B 9. Considering the position involved in *Reiz Electrocontrols (P) Ltd. v. Commissioner of Central Excise, Delhi-I* (2006 (6) SCC 213) the position was re-iterated as follows :

C "8. So far as the views regarding non-eligibility are concerned view expressed by this Court in several cases needs to be noted.

D 9. In *Commissioner of Central Excise, Chandigarh-I v. Mahaan Dairies* [2004 (166) ELT 23 (SC)] it was noted (in para 6) as follows:

E "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."

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

G "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

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generally speaking the exemption notification and 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)

"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

A 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:

B '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 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.'

D 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

H it is not possible for any legislature to anticipate as if by

some divine prescience, distortions and abuses of its A
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 B
bestowed on its e 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, C
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 D
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 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]). E

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

“Paragraph 4 and Explanation IX of Notification have been F
construed by this Court in *Commissioner of Central
Excise v. Rukhmani Pakkwell Traders*, 2004 (165) E.L.T.
481; as also in *Commissioner of Central Excise,
Chandigarh v. Mczhaan Dairies*, 2004 (166) ELT. 23. In
both these decisions this Court held that Paragraph 4
read with Explanation IX of the notification could not be G
construed in the manner as contended by the assesseees,
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 H

A 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
B 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
C 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
D otherwise do not have the advantage of a brand name.
The decisions cited by the Counsel appearing on behalf
of the assessee relate to decisions involving Trade Mark
disputes and are in the circumstances not apposite."

E 13. 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 Dairies'* case (supra)
it was observed as follows:

F "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."

G 10. The conclusions of CESTAT are essentially factual and,
therefore, there is no scope for interference. In view of the factual
position noted by CESTAT and the position in law indicated
above, the appeals are dismissed. No costs.