

M/S. RDB TEXTILES LTD.

A

v.

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX,
KOLKATA-IV COMMISSIONERATE

(Civil Appeal No. 8534 of 2015)

B

FEBRUARY 13, 2018

[R. F. NARIMAN AND NAVIN SINHA, JJ.]

Central Excise Act, 1944 – Exemption Notification no.12/2011-CE dated 1.3.2011 and Notification no.30/2004 dated 9.7.2004 – Brand name of another unit – Jute bags manufactured by appellants and supplied to the PSUs, various State Governments and Governmental agencies for use in packing of foods grains sold through the PDS – Exemption under Notification no.30/2004 dated 9.7.2004 denied on the ground that affixing the name, logo and particulars of buyers like FCI and the State Governments amounted to affixing on the jute bags a “brand name” – Held: In the instant case, what was in fact affixed to the jute bags was the name of the procurer agency in question such as the FCI, the State Government of Punjab and so on, the crop year, the name of the jute mill concerned, its BIS certification number and the statement that the food grains are manufactured in India – Such markings were made under compulsion of law, which are meant for identification, monitoring and control by Governmental agencies involved in the PDS – Such markings do not enhance the value of the jute bags in any manner nor is it the intention of the appellants to so enhance the value of jute bags, which is necessary if excise duty is to be imposed – Markings on the jute bags are not for the purpose of indicating a connection in the course of trade between the jute bag and some person using such name or mark – This being the case, it is obvious that there is no “brand name” involved in the facts of the instant cases – Appellant was entitled to the benefit of exemption – Jute Packaging Materials (Compulsory Use in Packing Commodities) Act, 1987 – Essential Commodities Act, 1955 – Jute and Jute Textiles Control Order, 2000 – Notification no.12/2011-CE dated 1.3.2011 – Notification no.30/2004 dated 9.7.2004.

C

D

E

F

G

H

A *Circulars/Government Orders/Notification: Circulars – Binding effect of – Held: The circulars that are issued by the Ministry of Finance are binding on the Department of Central Excise.*

Allowing the appeals, the Court

B **HELD: 1. A reading of letter dated 18.3.2011 written by the Jute Commissioner to the Commissioner (Central Excise) and circular dated 21.6.2011 issued by the Ministry of Finance would show that merely because the name of an institution is printed or embroidered on articles would not mean that they would become branded products. A brand name, in addition to**
C **the name or logo, would have to be given in order to attract excise duty. Also, mere affixing of the name of a manufacturer would not constitute a brand name. [Para 12] [1016-D-E]**

D **2.1 A typical requisition order issued by the Directorate of Supplies and Disposals required the emblem of the purchaser and excise duty payable by the purchaser to be printed on the jute bags manufactured by the appellants. [Para 13] [1016-F]**

E **2.2 A typical supply order placed by the Jute Commissioner also required, as a matter of law, that the purchaser's name be put together with the name of the manufacturer's mill as well as the BIS certification for purposes of identification of the jute bags to be used in the PDS. [Para 13] [1017-A]**

F **3. In the instant case, what was in fact affixed to the jute bags was the name of the procurer agency in question such as the FCI, the State Government of Punjab and so on, the crop year, the name of the jute mill concerned, its BIS certification number and the statement that the food grains are manufactured in India. It is clear that all these markings have, on the pain of penalty, to be done by the manufacturers of the jute bags, given the Jute Control Order and the requisition orders made thereunder. Obviously, such markings are made by compulsion**
G **of law, which are meant for identification, monitoring and control by Governmental agencies involved in the PDS. Neither do such markings enhance the value of the jute bags in any manner nor is it the intention of the appellants to so enhance the value of jute bags, which is necessary if excise duty is to be imposed. This**

H

flows from the expression “...for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark...”. In the present case, the markings on the jute bags are not for the purpose of indicating a connection in the course of trade between the jute bag and some person using such name or mark. The markings are by compulsion of law only in order that Governmental authorities involved in the PDS may identify and segregate the aforesaid jute bags. This being the case, it is obvious that there is no “brand name” involved in the facts of the present cases. [Para 18] [1020-F-H; 1021-A-B]

A

B

Kohinoor Elastics (P) Ltd. v. CCE (2005) 7 SCC 528 – distinguished.

C

CCE v. Stangen Immuno Diagnostics [2015] 4 SCR 528 : (2015) 11 SCC 761 ; CCE v. Sanghi Threads (2015) 14 SCC 701 – relied on.

D

4. The circulars that are issued by the Ministry of Finance are binding on the department of Central Excise. [Para 19] [1021-B]

CIT v. Trans Asian Shipping Services (P) Ltd. [2016] 3 SCR 337 : (2016) 8 SCC 604 – relied on.

E

Case Law Reference

(2005) 7 SCC 528	distinguished	Para 4
[2015] 4 SCR 528	relied on	Para 17
(2015) 14 SCC 701	relied on	Para 17
[2016] 3 SCR 337	relied on	Para 19

F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8534 of 2015.

From the Order dated 30.06.2015 of the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Branch, Kolkata in Appeal No. Excise Appeal – 75676 of 2014

G

WITH

C. A. Nos. 8703, 8725-8726, 8769, 8565, 9153, 8894-8895, 8896-8897, 13331, 9242-9243, 9087, 9249, 9144, 8885-8886, 8890-8891, 13330, 8706, 8743, 9146-9147, 8759-8760 of 2015.

H

A S. K. Bagaria, Niraj Kishan Kaun, Sr. Adv, Amit Agarwalla, Saurav Agarwal, Sourabh Bagaria, Kapil Rustagi, Ajit Singh, Sanyat Lodha, Vivek B., Ms. Aakriti Dawar, Sushal Tewari, T. R. B. Sivakumar, Adv for the Appellant.

B K. Radhakrishnan, Sr. Adv, Rupesh Kumar, Ms. Nisha Bagchi, Ms. Sunita Rani Singh, Ms. Pooja Sharma and B. Krishna Prasad, Advs for the Respondents.

The Judgment of the Court was delivered by

C **R. F. NARIMAN, J.** 1. The present appeals arise out of a judgment dated 30.6.2015, passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), in which the CESTAT has denied exemption under excise notifications, referred to hereinafter, in respect of jute bags manufactured by the appellants and supplied to the Food Corporation of India (FCI), various State Governments and Governmental agencies for use in packing of food grains sold through the Public Distribution System (PDS). The said exemption has been denied for a period of two years by holding that affixing the name, logo and particulars of buyers like the FCI and State Governments amounts to affixing on the jute bags a “brand name”.

E 2. In exercise of powers conferred by Section 3(1) of the Jute Packaging Materials (Compulsory Use in Packing Commodities) Act, 1987 (hereinafter referred to as the “Jute Act”), the Central Government has issued orders, from time to time, directing the minimum percentage of food grains required to be packed, from raw jute produced in India, in jute bags manufactured in India to protect the jute industry.

G 3. At the same time, in exercise of powers conferred by Section 3 of the Essential Commodities Act, 1955, the Central Government has made the Jute and Jute Textiles Control Order, 2000. In exercise of powers conferred by the Jute & Jute Textiles Control Order, the Jute Commissioner issues specific orders, from time to time, to jute mills requiring them to produce specified categories and stated quantities of jute bags, to sell the same to such persons as may be specified by the Director (Supplies and Disposals), who issues requisition orders, wherein the names of the persons to whom supply is to take place, prices of jute

H

bags and other particulars are given. Such prices are exclusive of excise A
duty. The aforesaid requisition orders are then followed by the issuance
of supply orders wherein, inter alia, further details of the prices, delivery
period, terms of delivery and markings are mentioned.

4. Shri S.K. Bagaria and Shri Neeraj Kaul, learned senior counsel B
appearing on behalf of the appellants, referred us to the demands that
have been made based, on the amended exemption notifications, and
have painstakingly taken us through the record, including the
Commissioner's order dated 7.3.2014 and the impugned judgment of the C
CESTAT. According to learned counsel, the exemption that was granted
qua jute bags under the Central Excise Act, 1944 was lifted for a period
of two years, from 1.3.2011 till 1.3.2013, only if goods which were
manufactured bore a brand name or were sold under a brand name. If
the definition of "brand name" is to be seen, according to learned counsel,
it will be clear that a "brand name" is a name or a mark which is used in
relation to a product for the purpose of indicating a connection in the D
course of trade between the product and some person using such name
or mark. According to learned counsel, using the name of the buyer/
procurer of food grains is obviously not a brand name that results in
indicating a connection in the course of trade between the jute bag and
the said buyer. They argued that the show cause notices proceeded on
the footing that using the name of the manufacturer and an emblem of E
the manufacturer resulted in the use of a brand name, but that the
CESTAT, realizing that this could not be so, founded its judgment on the
basis of using the name of the buyer/procurer of food grains and that
this would be beyond the show cause notices and also, therefore, the
CESTAT decision should be set aside. They also argued, relying upon F
several judgments, that, in the present case, there is no "brand name",
as defined, at all, and that, therefore, the show cause notice, the
Commissioner's order as well as the CESTAT's order are all incorrect.
They further relied upon a letter dated 18.3.2011 and a Ministry of Finance
circular dated 21.6.2011 to buttress their submissions. According to
them, the Commissioner has not referred to these documents at all and G
the CESTAT merely brushes away the aforesaid documents, which go
to the root of these cases. They also cited decisions on how such circulars
are binding on the department. According to them, the CESTAT grossly
erred in relying heavily upon the judgment in **Kohinoor Elastics (P)**
Ltd. v. CCE, (2005) 7 SCC 528, as that judgment dealt with a specific

H

A exemption notification and held that as a brand name was assumed to have been used, on the facts of that case, no argument was addressed as to whether the particular mark used was a brand name as defined. Further, they said that the judgment was clearly distinguishable, in that, in the exemption notification in that case, the brand name had to be used by small scale units and could not be used by a third party, which was
B found to be the case on the facts of that case. According to them, therefore, the CESTAT was wholly incorrect in its finding that a “brand name” had been used on the facts in these cases.

5. Shri Radhakrishnan, learned senior counsel appearing on behalf
C of the Revenue, has placed before us various Sections of the Jute Act and Section 5A of the Central Excise Act. It is his submission that the Jute Act cannot control Section 5A of the Central Excise Act and exemption notifications issued thereunder. He went on to read the definition of brand name and stated that there was no need to show that a brand name was being used for monetary advantage, so long as it was,
D in fact, being used, which is clear on the facts of these cases. He then argued that what was, in fact, printed on the jute bags, as per the buyer’s specification, was, *inter alia*, the name of the manufacturer as well as strips of different colours, thereby indicating that not only was the manufacturer’s name disclosed, but that the colour strip would be a
E “mark”, leading to the fact that there is a “brand name” in these cases. According to him, a literal interpretation of the definition of brand name would show that the CESTAT is correct. Also, according to learned counsel, the CESTAT correctly relied upon the judgment in **Kohinoor Elastics** (supra) to arrive at a conclusion, based on the same definition of brand name, that there is a name or mark used, in the facts of these
F cases, and which shows not only the manufacturer’s name, but the buyer’s name or procurer’s name as well.

6. Before dealing with the facts of these cases in some detail, it is
G important to first set out the exemption provided under Notification 30/2004 dated 9.7.2004. This notification, issued under Section 5A of the Central Excise Act, exempts excisable goods mentioned thereunder in public interest. Item 16 of the aforesaid notification exempts all goods falling within Central Excise Tariff Entry 63, except goods falling within 6307.10. The Central Excise Tariff, with which we are concerned, is

H

6305, and in particular, 63051030 and 63051040, where the rate of duty is 10%. Thus, upto 1.3.2011, it is clear that all the goods mentioned in Central Excise Tariff Entry 63 were exempt from payment of excise duty. However, by notification 12/2011 dated 1.3.2011, Item 16 was substituted, in which what was exempted was “all goods, other than those bearing a brand name or sold under a brand name”.

A

B

7. Brand name, for the purpose of Chapter 63, is defined as follows:

“(iv). In relation to products of this Chapter, “brand name” means a brand name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product, for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person.”

C

D

8. The aforesaid situation carried on for two years till 1.3.2013, when notification No.11/2013 reinstated the previous entry, without excepting goods bearing or sold under a brand name and, thus, reverted to the position that existed between 2004 and 2011, which is that jute bags, with or without brand names, were completely exempt from excise duty.

E

9. The facts of Civil Appeal No.8534 of 2015 will now be referred to. On 7.3.2011, pursuant to the amended notification of 1.3.2011, the Superintendent (Central Excise) sent a notice to the appellant that as they were selling goods which bore a brand name, excise duty, at the rate of 10%, would be imposed on the aforesaid goods.

F

10. A letter dated 18.3.2011 was then written, by the Jute Commissioner to the Commissioner (Central Excise), in which it was stated:

G

“2. It may be mentioned in this connection that jute mills print certain items on jute bags as per the requirements of the buyers and directions of the Jute Commissioner. The items printed on jute bags and the reasons for such printing are stated below:

H

S. No.	Items Printed	Remarks
1.	Mill's Name	As per Notification No. S.O.698(E) dated 04.07.2002
2.	"Manufactured in India"	-Do-
3.	Buyer's Name	As per buyer's requirement
4.	Logo	-Do-
5.	Year of manufacture	-Do-
6.	BIS mark with licence No.	As per BIS rule

3. The jute mills have to print the items on the bags as per the requirements of the buyers and the Notification No. S.O. 698(E) dated 04.07.2002 issued by the Jute Commissioner.

4. Reasons for printing the bags are given below:

Item no. 1&2.

The Notification No. S.O. 698(E) dated 04.07.2002 (copy enclosed) issued by the Jute Commissioner is to distinguish between Indian jute products and imported jute products and secure compliance of the stipulation of the order issued under JPM Act, 1987. These orders, inter alia, stipulate that "percentage of total production of certain commodities or class or commodities required to be packed in jute packaging material manufactured in India from raw jute produced in India." A copy of the latest order dated 27.08.2010 and JPM Act, 1987 are enclosed.

Item No.3 to 6.

These are printed on bags so that buyers can identify their products and the year when food grains or other material is packed. If a buyer prefers jute products as per BIS standard, jute mill has to manufacture bags conforming to BIS standard and it is proved BIS standard only when it is marked BIS with licence number.

5. Thus jute bags printed with above items by jute mills are part of specifications and so where bearing any brand name of the mill company, may not be treated as branded bags in the context of levies of duties. By printing the items on bags, jute mills are not getting any kind of extra mileage in promoting their products. A

6. In view of the above, it is requested that the Notice dated 08.03.2011 served by the Office of the Superintendents of Central Excise under the Division of Kol-IV to various jute mills for payment of 10% Adv. Duty may be withdrawn.” B

11. This was followed by a circular dated 21.6.2011 issued by the Ministry of Finance which stated: C

“Subject: Clarification on issues pertaining to the levy of excise duty on branded readymade garments and made-up articles of textiles–Regarding.

Board has received representations from trade and industry seeking clarification on certain issues pertaining to the levy of excise duty on readymade garments/made-ups that either bear or are sold under a brand name. These issues are:- D

(i) Applicability of the mandatory levy of excise duty on school uniforms, uniforms for private security guards, companies, hotels, airlines etc. and made-ups such as linens, towels etc. bearing the name or logo of a hotel, restaurant or airlines etc; and E

(ii) Applicability of mandatory levy of excise duty on made-ups such as blankets bearing the name of the manufacturer and supplied to the Ministry of Defence or its organizations.

2. The matter has been examined. On the issue of applicability of excise duty on uniforms or made-up articles like quilt, blankets, towels, linen etc. bearing the name or logo of a school, security agency, company, hotel or airline etc, it is clarified that such products would not merit treatment as “branded” products merely because the name of the school, institution or company or their logo is either printed, embroidered or etched on them. This is equally true of made ups such as towels, linen etc. bearing the name of the hotel, restaurant or airlines. In all these cases, there is no nexus between such a name or logo & the product at the F
G

H

A time of its sale which is essential ingredient in the definition of the term “brand name”. Unless such garments/made-ups also bear a brand name in addition to the name or logo of the school, security agency, hotels, airlines and company, such goods would not attract the excise duty. It is also gathered that in some cases, apart from
B the name or logo of such organizations, the name of the tailor or manufacturer is affixed on such garments. However, mere affixing of name of the tailor or manufacturer would not constitute a brand name. Another related issue is the applicability of the mandatory excise duty to blankets which are supplied to the defence
C establishment, armed forces, police forces etc. against tenders that stipulate that the name of the manufacturer should be clearly indicated or marked on the product. As pointed out above, affixing the name of the manufacturer on such goods would not, by itself, bring them within the ambit of branded goods.”

D 12. A reading of the aforesaid letter and circular would show that merely because the name of an institution is printed or embroidered on articles would not mean that they would become branded products. A brand name, in addition to the name or logo, would have to be given in order to attract excise duty. Also, mere affixing of the name of a manufacturer would not constitute a brand name. Given the aforesaid
E two documents, the Superintendent (Central Excise) did not go ahead with the notice dated 7.3.2011.

F 13. A typical requisition order issued by the Directorate of Supplies and Disposals required the emblem of the purchaser and excise duty payable by the purchaser to be printed on the jute bags manufactured by the appellants. Also, what was required by the aforesaid requisition order was the following:

“Branding: Every bag shall be screen printed in dark navy blue colour (darkest possible) with the emblems as per clause 8 with the following:

- G a) Identification of procurement agency (containing insignia and name or short name or both as advised by the procurement agency).
b) Rabi 2013-14
c) Short name of mill in capitals and CM/L No.
H d) “MANUFACTURED IN INDIA”

A typical supply order placed by the Jute Commissioner also required, as a matter of law, that the purchaser's name be put together with the name of the manufacturer's mill as well as the BIS certification for purposes of identification of the jute bags to be used in the PDS. A

14. Long after the exemption notification of 1.3.2013, by which all jute bags were exempt whether branded or not, a show cause notice was issued on 17.12.2013 for the period from 1.3.2011 to 31.7.2013 demanding a sum of Rs.30,49,72,784/- by way of excise duty. B

15. The learned Commissioner, by its order dated 7.3.2014, confirmed the show cause notice, even for the period beyond 1.3.2013, as follows: C

“4.7 On taking note of such arguments advanced by the said assessee, I find that the said assessee have erred in fundamental aspects of definition of “brand name” under Chapter Note 5 of Chapter 63. When goods are bought and sold that would constitute a market. In the instant case, the said assessee sold the jute bags to their customers, and such goods, allegedly being branded ones, it cannot be contended that the said branded goods were not sold in the market. Further, as per definition of “brand name” under Chapter Note 5 of Chapter 63, “brand name” may not be necessarily a name, as wrongly contended by them, but any writing, mark, invented words may constitute “brand name” under the said definition. Here, the printings/writings on the jute bags satisfy the definition of “brand name” under Chapter Note 5 of Chapter 63, as rightly alleged in the impugned Show Cause Notice. D E

4.8 On perusal of copy of notification no. nil dated 04.07.02 issued by the Jute Commissioner and further clarification given by the said authority vide his letter dated 18.03.11, I find that some of the printings/writings contained in the body of jute bags as per requirement of the said Textile Ministry's Notification, as opined by the Jute Commissioner, and such goods cannot be treated as branded goods as viewed by him. In this context, I find that persuasive value of the Jute Commissioner's views in the matter may not be ruled out or brushed aside at one stroke, but as a quasi-judicial revenue authority, I am to go by the settled principles of law that nothing can be imported in the wordings of the statutory provisions, and for that matter, Chapter Notes require to be read in its stricter terms. Since the ingredients of the definition of “brand F G H

A name” are present in the impugned jute bags, I am inclined to hold that such goods bear brand name to consider them as branded goods, for the purpose of levy of Central Excise duty for the rest period i.e. March, 2011 to February, 2013 is also sustainable.”

B 16. The CESTAT, by the impugned order, set aside the penalty that was imposed and stated that the longer period of limitation could not be availed in the facts of these cases. However, relying strongly upon this Court’s judgment in **Kohinoor Elastics** (supra), it came to the conclusion that since the jute bags had a brand name, the exemption contained in the amended notification of 1.3.2011 would not apply to the appellants. In dealing with the Finance Ministry circular dated 21.6.2011, C the CESTAT brushed aside the same stating:

D “Further, we find that the circular bearing no. 947/8/2011-CX dated 21.06.2011 referred to by the Appellant in the context of levy of excise duty on garments and also it is not binding on the interpretations advanced by the courts as has been held by the Hon’ble Supreme Court in the case of CCE, Bolpur vs. Ratan Melting and Wire Industries, 2008 (231) ELT 22 (SC).”

E 17. The very definition of “brand name”, which has been referred to hereinabove, has come up for consideration in several judgments of this Court. In **CCE v. Stangen Immuno Diagnostics**, (2015) 11 SCC 761 at 763, this Court, in paragraph 3, set out the definition of brand name, which is the same as the definition in the present case. This Court then went on to hold:

F “12. The central idea contained in the aforesaid definition is that the mark is used with the purpose to show connection of the said goods with some person who is using the name or mark. Therefore, in order to qualify as “brand name” or “trade name” it has to be established that such a mark, symbol, design or name, etc. has acquired the reputation of the nature that one is able to associate the said mark, etc. with the manufacturer. We are supported in G this view by series of judgments of this Court in *Tarai Food Ltd. v. CCE* [*Tarai Food Ltd. v. CCE*, (2007) 12 SCC 721] the expression “brand name” was explained in the following terms: (SCC p. 723, paras 7 & 9)

H “7. The words brand name connotes such a mark, symbol, design or name which is unique to the particular manufacture which when

used on a particular product would establish a connection between A
the product and the manufacturer.

9. Furthermore the definition of the words 'brand name' shows B
that it has to be a name or a mark or a monogram, etc. which is
used in relation to a particular product and which establishes a
connection between the product and the person. This name or
mark, etc. cannot, therefore, be the identity of a person itself. It
has to be something else which is appended to the product and
which established the link."

xxx xxx xxx C

16. We would also like to reproduce the following observation
from *CCE v. Bhalla Enterprises* [*CCE v. Bhalla Enterprises*,
(2005) 8 SCC 308] : (SCC p. 311, para 6)

"6. The apprehension of the assesseees that they may be denied D
the exemption merely because some other traders even in a remote
area of the country had used the trade mark earlier is unfounded.
The notification clearly indicates that the assessee will be debarred
only if it uses on the goods in respect of which exemption is sought,
the same/similar brand name with the intention of indicating a E
connection with the assesseees' goods and such other person or
uses the name in such a manner that it would indicate such
connection. Therefore, if the assessee is able to satisfy the
assessing authorities that there was no such intention or that the
user of the brand name was entirely fortuitous and could not on a F
fair appraisal of the marks indicate any such connection, it would
be entitled to the benefit of exemption. An assessee would also
be entitled to the benefit of the exemption if the brand name belongs
to the assessee himself although someone else may be equally
entitled to such name."

17. These observations bring out two significant aspects, namely: G

(I) As per the notification, the assessee would be debarred only if
it uses on the goods in respect of which exemption is sought, the
same/similar brand name with the intention of indicating a
connection with the assesseees' goods and such other person or
uses the name in such a manner that it would indicate such H

A connection. If there is no such intention or that the user of the brand name was entirely fortuitous and could not on a fair appraisal of the marks indicate any such connection, it would be entitled to the benefit of exemption.

(2) The assessee would also be entitled to the benefit of exemption if the brand name belongs to the assessee himself although someone else may be equally entitled to such name.”

(at pages 766, 767-768)

To similar effect is the judgment of this Court in **CCE v. Sanghi Threads**, (2015) 14 SCC 701 at 702, wherein it was held that:

C “3. Challenging the order of CESTAT, the present appeal is preferred. We find from the narration of the aforesaid facts that it is held that the monogram used by the respondent is nothing but its own house-mark and is used for identification of the Group and not a brand name for the identification of the product. What is emphasised is that the monogram does not belong to any third party but that belongs to the Sanghi Group and is therefore, in-house monogram. On these facts, we are of the opinion that the case is squarely covered by the judgment of this Court in *CCE v. Stangen Immuno Diagnostics* [(2015) 11 SCC 761 : (2015) 318 ELT 585] decided on 19-3-2015.”

D 18. It is obvious that, on the facts of these cases, what is in fact affixed to the jute bags is the name of the procurer agency in question such as the FCI, the State Government of Punjab and so on, the crop year, the name of the jute mill concerned, its BIS certification number and the statement that the food grains are manufactured in India. It is clear that all the aforesaid markings have, on the pain of penalty, to be done by the manufacturers of the jute bags, given the Jute Control Order and the requisition orders made thereunder. Obviously, such markings are made by compulsion of law, which are meant for identification, monitoring and control by Governmental agencies involved in the PDS.

F Neither do such markings enhance the value of the jute bags in any manner nor is it the intention of the appellants to so enhance the value of jute bags, which is necessary if excise duty is to be imposed. This flows from the expression “...for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark...”. In the present case, the markings on the

H

jute bags are not for the purpose of indicating a connection in the course of trade between the jute bag and some person using such name or mark. The markings are by compulsion of law only in order that Governmental authorities involved in the PDS may identify and segregate the aforesaid jute bags. This being the case, it is obvious that there is no “brand name” involved in the facts of the present cases. A

19. Equally, it is clear that circulars that are issued by the Ministry of Finance are binding on the department of Central Excise, there being no judgment by this Court laying down the law contrary to such circulars. This is a well settled proposition as laid down in paragraph 30 of **CIT v. Trans Asian Shipping Services (P) Ltd.**, (2016) 8 SCC 604 at 621. B

20. However, since heavy reliance was placed on the judgment of this Court in **Kohinoor Elastics** (supra) by the CESTAT, it has become necessary for us to deal with the aforesaid judgment. The exemption notification, which was involved on the facts of that case, was a notification dated 28.2.1993. The relevant portion of the notification, with which the Court was concerned, is set out in paragraph 4 as follows: C

“The exemption contained in this notification shall not apply to the specified goods, bearing a brand name or trade name (registered or not) of another person: D

Provided that nothing contained in this paragraph shall be applicable to the specified goods which are component parts of any machinery or equipment or appliances and cleared from a factory for use as original equipment in the manufacture of the said machinery or equipment or appliances and the procedure set out in Chapter X of the said Rules is followed: E

Explanation IX.—‘Brand name’ or trade name’ shall mean a brand name or trade name, whether registered or not, that is to say a name or a mark [Code number, design number, drawing number, 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.” F

(at page 530) G

21. The judgment of this Court turned on the fact that the exemption contained in the notification shall not apply to specific goods which bear H

A a brand name of another person. It may first be noticed that there was no argument that the particular brand name concerned, on the facts of that case, could not be said to be a “brand name” at all, which is what has been argued before us. Further, it was held, on the facts of that case, that:

B “It is an admitted position that the appellants are affixing the brand/
trade name of their customers on the elastics. They are being so
affixed because the appellants and/or the customer wants to
indicate that the “goods (elastic)” have a connection with that
customer. This is clear from the fact that the elastics on which
C brand/trade name of ‘A’ is affixed will not and cannot be used by
any person other than the person using that brand/trade name. As
set out hereinabove once a brand/trade name is used in the course
of trade of the manufacturer, who is indicating a connection
between the “goods” manufactured by him and the person using
the brand/trade name, the exemption is lost. In any case it cannot
D be forgotten that the customer wants his brand/trade name affixed
on the product not for his own knowledge or interest. The elastic
supplied by the appellants is becoming part and parcel of the
undergarment. The customer is getting the brand/trade name
affixed because he wants the ultimate customer to know that
there is a connection between the product and him.

E (at page 532-533)

22. The facts of these cases are far from the facts in **Kohinoor
Elastics** (supra). In **Kohinoor Elastics** (supra), it was found that, as
a matter of fact, the customer wanted the brand name affixed on the
product because he wanted the consumer to know that there is a
F connection between the product and him. This is very far from the facts
of the present case, in that, as has been held by us above, it is clear that
the markings required on the jute bags are compulsory, being required
by the Jute Commissioner, and are not for the purpose of enhancing the
value of the jute bags by indicating a connection in the course of trade
G between the aforesaid products and the manufacturer of those products.

23. This being the case, the appeals are, therefore, allowed and
the judgment of the CESTAT is aside.