

Concept of Brand under Indirect Tax Laws



The object of keeping distinction between branded and unbranded goods is neither to protect the owners of the trade mark/trade name nor the consumers from being misled. These are considerations which are relevant in cases relating to disputes arising out of infringement/ passing off actions under the Trade Marks Act. Under Excise Law as well as under VAT Laws, many times there are different tax rates for many of the goods which bear or do not bear a brand name/ trade name. The object of bringing the concept in Indirect tax law is clearly to grant benefits only to those industries which otherwise do not have the advantage of a brand name. The author in this article analyses some judgments where the courts have defined trade name/brand name.

Use of trademarks, brand names, logos etc. on products fulfils the purpose of indicating a relation between the said product and the logo owner so as to influence the trade. The function of a trade mark is to give an indication to the purchaser, or a possible purchaser, as to the manufacture or the quality of the goods, to give an indication to his eye of the trade source or trade hands through which they pass on their way to the market. Under Excise Law as well as under VAT Laws, many times there are different tax rates for many of the goods which bear or do not bear a brand name/trade name. Under the Excise Law, distinction is made in two fashions. Often exemption from duty is allowed to SSI units. Notification granting exemption generally bear a clause providing that exemption shall not apply to goods bearing a brand name or trade name, whether registered or not, of another person.



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Some times higher rates of tax is prescribed for goods bearing a brand name or trade mark irrespective of type of unit (whether large or SSI) where such goods are manufactured. As VAT is a tax on sale only, wherever VAT Laws intend to distinguish between branded or unbranded goods, this distinction is only by way of higher rate of tax on branded goods.

The object of keeping distinction between branded and unbranded goods is neither to protect the owners of the trade mark/trade name nor the consumers from being misled. These are considerations which are relevant in cases relating to disputes arising out of infringement/passing off actions under the Trade Marks Act. The object of bringing the concept in Indirect tax law is clearly to grant benefits only to those industries which otherwise do not have the advantage of a brand name.

Meaning of 'Brand name' under Central Excise Act

What is meant by brand name or Trade name is not defined under Central Excise Act. Because of this reason every time, whenever a notification or tariff chapter refers concept of Brand/Trade name, its definition is also provided in the same notification or tariff chapter.

Notification No. 8/2003-C.E., dated 1st March, 2003 Provides for exemption from duty of Excise to Small Scale Industrial Units. This exemption is not available, if goods bear a 'brand name or trade name whether registered or not, of another person.' There are certain exceptions to this rule, which are not discussed here. What is meant by 'brand name or trade name' is defined by way of explanation which reads as under:-

'brand name' or 'trade name' means a brand name or a 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.

Chapter 61 & 62 of the Central Excise Tariff Act pertain to Articles of Apparel and Clothing Accessories. Articles falling in these Chapters attract Excise Duty if goods bear a 'brand name'.

Word brand name is defined in both the Chapters thus:

"In relation to a product 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."

Concept of brand or trade name is there in several other Chapters and notifications of Central Excise Tariff.

Both these definitions are very wide. Yet uses of words 'that is to say' limit its scope to some extent. Further it needs to be noted that the concept gets invoked only when such use of brand or trade name is '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'.

The concept of brand for the purpose of SSI unit exemption is larger than concept of brand for the purpose of taxation of Articles of Apparel and Clothing Accessories. In the former definition 'trade name' is also included. A trade name can be a name in which or by which a person or body carries on their trade. It would, if the contexts so permits include the name of a company. A trade name can be different from the legal name the business has been registered as, for corporate status. If one goes with literal interpretation, whether it is only 'brand name' or 'brand name' & 'trade name' both, it makes little difference as the definition of word 'brand name' includes a 'name'. Name includes 'trade name'.

In Astra Pharmaceuticals (P) Ltd Vs. Collector of CE [1995] 75 ELT 214 (SC) judgment dated 16th December, 1994 a House mark was distinguished from brand name. Astra was manufacturer of Dextrose injections. It was denied benefit of exemption from duty as on the cover it carried the name 'AP-Astra'. According to the Department, since the medicine was described by a monogram and it established a relation between the manufacturer and the medicine, it was hit by exclusion clause. The Supreme Court quoted from a book on Trade Marks to note 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. It was held that the 'AP' or 'Astra' on the container or packing was used to project the image of manufacturer generally. It did not establish any relationship between the mark and the medicine. For instance, if the appellant instead of using Dextrose injections would have described it as Astra Injections or Astra Dextrose injections then it could be said that a relationship between the monograph and medicine was established. Use of these words was held to be only a monograph to identify the manufacturer.

In *Commissioner of Central Excise Vs. Grasim Industries Ltd* [2005] 183 ELT 123 (SC) judgment dated 12th April, 2005 the matter pertained to SSI exemption. Product was cement and bag of cement carried following words on it –

'manufactured by Dharani Cements Ltd

A subsidiary of Grasim Industries Ltd'

There was no dispute about the fact that Grasim Industries Ltd was a well known cement manufacturer. It was also undisputed that the purpose of putting the name of Grasim Industries Ltd was to show a connection between the product and Grasim. However the contention of the assessee was that the words 'Grasim Industries Limited' were neither a brand name nor a trade name. It was further contended that mere use of the name of a company does not amount to using a brand name or trade name of some other company. Assessee invoked Astra Pharmaceuticals case (supra) in its favour to contend that benefit of relevant notification is not lost by use of the name of a company. The Court distinguished judgment in Astra Pharmaceuticals case (supra) on two grounds (i) in Astra Pharmaceuticals case the matter under judgment pertained to 'Patent or proprietary medicines' (ii) the concept of brand in Astra Pharmaceuticals case was narrower compared to case in hand as in the case in hand, use of trade name was also included as one of the prohibiting conditions. While holding that use of name of Grasim Industries was hit by the prohibition contained in

Notification granting exemption generally bear a clause providing that exemption shall not apply to goods bearing a brand name or trade name, whether registered or not, of another person. ”

notification, the Court went by the theory of intention. The key question was, what was the intention to use the name of Grasim Industries Limited. As noted earlier, there was no dispute about the fact that the purpose of putting the name of Grasim Industries Ltd was to show a connection between the product and Grasim. It was further held that by use of words 'that is to say' in the notification the term 'brand name or trade name' gets qualified by the words which follow. The words which followed were a 'name or mark'. Thus even an ordinary name or an ordinary mark is sufficient.

Use of House Marks is not akin to Use of brand or Trade name

The distinction between 'House mark' and 'trade mark' for the purpose of Central Excise Act was first explained by the Supreme Court in Astra Pharmaceuticals' case (supra). This difference was again noted by the Supreme Court in *Commissioner of Central Excise Vs. Kalvert Foods India Pvt. Ltd.* [2011] 270 ELT 643 (SC) judgment dated 9th August, 2011 by relying on following passage from a book on Law of Trade Marks:

"It is possible that the proprietor may use several trade marks in respect of his goods (known as product mark), besides using a common mark in all its products to indicate the origin of the goods from the enterprise (known as house mark). This practice is more predominant in the pharmaceuticals trade. Though both are trade marks and are registrable as such, each has its own distinct function. While the House mark represents the image of the enterprise from which the goods emanate, the Product mark is the means by which goods are identified and purchased in the market place and is the focal point of presentation and advertisement."

What emanates from above is that if the mark, phrase, symbol etc. is being used on all the products from a production house, with the intention of identification only, it remains out of concept of brand or trade name. In *C. Krishnaiah Chetty & Sons Pvt. Ltd. Vs. Commissioner Central Excise* [2009] 246 ELT 353 (Tribunal-Bangalore) Judgment dated 6th March, 2009 it was held that mere embossing of the initials of the raw material supplier for easy indication cannot be equated with the affixing of brand name. The matter pertained to Jewelry business. The Jewelry was got manufactured on job work basis by supplying Gold to the job worker, manufactured jewelry carried an embossing of words 'CKC'.

In Circular No B-1/3/2011-TRU dated 25th March, 2011 the use of House mark has been held to be out of concept of Brand or Trade name in following words:

"Whether a particular name or mark or symbol etc. is a brand name or not is a matter of fact, and can be ascertained from the manner in which it is understood in commercial or trade parlance. The test of goods being branded would be if the buyer seeks to buy the goods because they bear or are sold under a particular brand. As such, a mere mark of identity put by a jeweler or the job worker, commonly known as a 'house mark' shall not be considered a brand name."

Mere alphabets or numerals (unless styled) cannot be registered as a brand name or trademark. Thus, while designing the house mark care should be taken to use only simple form of alphabets or numerals.

Intention is the key

The use of name or mark should be with the intention of indicating, a connection, between the product and the person using such name or mark. From the analysis of above Judgments as well as administrative understanding, it can be safely concluded that intention of putting or using name or mark, on the product is key to decide whether a product can be said to be bearing a brand name or trade name. The question to be answered is whether use of such name or mark was with an intention to indicate a connection between the product and some person using such name or mark.

Intention is a state of mind. No person can make out the state of mind of another person. State of a person's mind can only be determined by deducing facts of a case.

Mere writing of manufacturer's name on packet does not make product branded. In *Tarai Food Ltd Vs. Commissioner of Central Excise* [2006] 198 ELT 323 (SC) judgment dated 26th April, 2006 the assessee was manufacturing and selling 'French Fries' under the brand name 'Inland Valley'. However, it was also selling same commodity without using brand name. Goods sold under brand name were liable for excise duty whereas goods without bearing brand name attracted nil rate of duty. The revenue argued that it is the manufacturer's name which is sufficient to place the second type of packets within the tariff entry pertaining to branded goods. Rejecting the argument, the Apex Court noted that under the Standard Weights and Measures (Packets Commodities) Act, 1977 every packet is required to bear thereon or on a label squarely affixed thereto a definite, plain and conspicuous declaration as to, *inter alia*, the name and address of the manufacturer (see Rule 6 & 10). If the name of the manufacturer were to be a brand name then this would mean, that there would be no unbranded unit container

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at all in law and the distinctiveness between branded and unbranded would be meaningless.

In *Commissioner Central Excise Vs. Bhalla Enterprises* [2004] 173 ELT 225 (SC)/ 2004-TIOL-90-SC-CX the assessee had apprehension that in remand proceedings it may be denied exemption merely because some other traders, at some point of place and time might have used the trade mark. The Supreme Court held that the apprehension of the assessee 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 connection with the assessee's 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 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.

In *Nirlex Spares Pvt Ltd Vs. Commissioner of Central Excise* [2008] 222 ELT 3 (SC) judgment dated 4th January, 2008 use of Hexagonal artistic design on the cartons of goods was held not to be in nature of use of 'Brand name' as (i) no body claimed ownership of that design (ii) intention to indicate a connection between the design and product was not present.

Surnames as brand names

While weighing whether some name, mark or sign will be considered as brand or not, its registrability under Trade Marks Act, 1999 should be examined. Section 9 of the Trade Marks Act, 1999 states the situations when registration under trade marks Act will be denied. As per sub-section (1) the trade marks which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person shall not be registered. There are no special, stricter rules for assessing the distinctive character of signs which consist of surnames. The question whether a particular surname can be registered as Trademark is to be answered on case to case basis. Surnames have three characteristics

in particular which differentiate them from other word marks. First, individuals generally acquire them at birth (although they may be adopted subsequently). Thus one's surname is generally given so far as the individual is concerned, rather than the result of an exercise of choice. Secondly, they form an important part of an individual's identity. There is thus a strong motivation for individuals to use surnames to denote the origin of goods or services supplied by them (or by companies founded by them). Thirdly, it is inherent in the nature of surnames that they are shared with a greater or lesser number of other individuals. Those other individuals may also supply such goods or services or desire to do so. As a matter of logic, the prevalence or otherwise of the use of surnames is a relevant factor, since if the use of surnames is prevalent a surname is less likely to be distinctive than if the use of surnames is not prevalent. In fact, CBEC has recognised a situation where same name or mark is being used by several units, though there is no person who claims ownership to that mark or name. The Board has clarified those units which are using trade name or brand name, which does not belong to any person, were eligible for exemption of SSI Unit¹.

In *Pethe Brake Motors Ltd Vs. CCE, Pune* [2005] 179 ELT 57 (Tribunal-Mumbai) judgment dated 13th February, 2004 the Tribunal held that use of word

'PETHE' on the metal labels is not a brand name or trade name but only a house mark or family name. As it happens "PETHE" is a surname and anybody having "PETHE" surname can use the same without any restriction².

However in *Commissioner of Central Excise Vs. Kalvert Foods India Pvt. Ltd.* [2011] 270 ELT 643 (SC) judgment dated 9th August, 2011 use of word 'Kalvert' on packets was held to be brand name despite the fact that there was no denying of the fact that 'Kalvert' was a surname. In this case arguments revolved around whether use of word 'Kalvert' is a 'House mark' or 'brand name'. No judgment or circular was cited before the Court to impress that use of that word was in the sense of surname only.

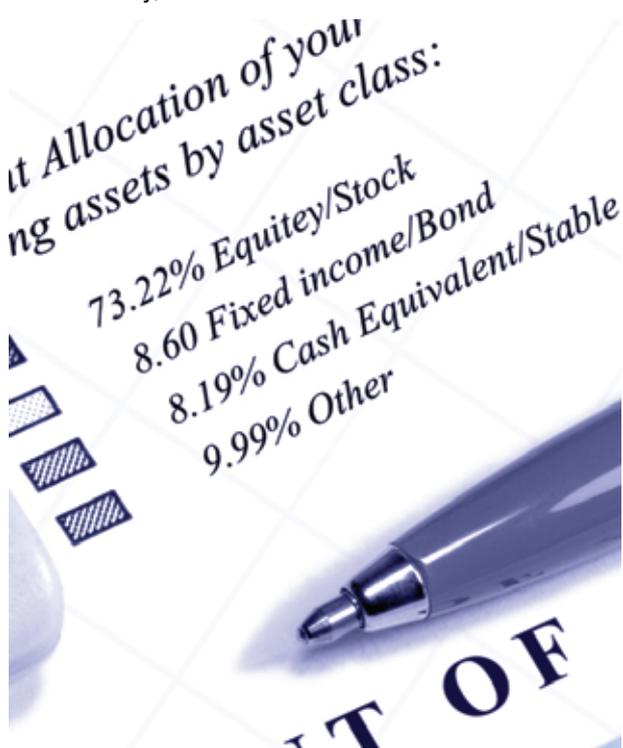
Difference between bearing a brand name and sold under a brand name

Goods falling under Chapter Heading 61 & 62 of Central Excise Act will attract charge of duty if they are 'bearing a brand name' or are 'sold under a brand name.' There is no problem in understanding the concept of 'bearing a brand name'. Here word 'bearing' can be understood as synonyms to 'affixed'. Such affixation can be on the product itself which remain part of the product while in use such as label affixed on the piece of garment or a plate affixed on piece of electronic/electrical article. Such affixation can be through a removable mode such as a tag hanged with piece of garment. However what is the meaning of term 'sold under a brand name' is not clear.

In *Commissioner of Central Excise Vs. Superex Industries* [2004] 174 ELT 4 (SC) judgment dated 3rd November, 2004 relevant SSI unit exemption notification provided that exemption shall not apply where manufacturer 'affixes' the specified goods with a brand name or trade name of another person. Products cleared by the assessee from its factory did not bear name of any other person. However in the invoices, issued to the purchasers, the product 'generating set' was described as 'Kirloskar Generating sets'. It was held that merely because, in the invoices, the set is passed off as a Kirloskar generating set, the benefit of the Notification would not be lost.

In *Connaught Plaza Restaurant P. Ltd Vs. Commissioner of Central Excise* [2003] 154 ELT 187

If the mark, phrase, symbol etc. is being used on all the products from a production house, with the intention of identification only, it remains out of concept of brand or trade name.



¹ Circular No. 52/52/94/CE, dated September 1, 1994 cited in *Nirlex Spares Pvt. Ltd v Commissioner of CE* (supra).

² Appeal against this Judgment was admitted by Supreme Court and is pending for disposal – [2006] 198 ELT A175 (SC).

(Tribunal-Delhi) judgment dated 29th January, 2003 the assessee was selling frozen desert from the outlets of McDonald. The cup or cone in which such desert was served did not bear any brand name. It was held that merely because the product is sold from the outlets of McDonald, it cannot be claimed that it is bearing a brand name.

In *Cookie Man Foods India P. Ltd Vs. Commissioner of Central Excise* [2006] 197 ELT 425 (Tribunal-Chennai) judgment dated 27th September, 2005 again the sale of unbranded cookies was held not to be hit by prohibition about use of brand name of others merely for the reason that they were sold from an outlet which was brand owned by some body else and invoice for the goods also carried title of that brand.

Both of above two judgments of Tribunals have been appealed against by the revenue before the Supreme Court vide [2003] 158 ELT A72 (SC) & [2006] 201 ELT A130 (SC) respectively. Exact grounds on which appeal is filed are not available. However from the information available in reporting journal, it appears that in the former case appeal has been filed on the issue of classification whereas in the later case appeal is filed on the issue whether goods sold can be said to be unbranded. There is marked difference in facts of these cases. In *Connaught Plaza* case there is finding of the fact that the cup or cone in which such desert was served did not bear any brand. However, in *Cookie Man* case there is finding that cookies were being sold in plastic pouches/containers on which the brand name 'Cookie Man' and the connected logo were printed.

From the above it can be concluded that sale would be 'under the brand name' if the product is stored and displayed in the show room in the container/packet displaying brand. However, if the product is stored and displayed in the shop or area within shop where branded products are also displayed, it will not become branded.

Now comes the question whether goods can be said to be branded, if these are handed over to customer in a carry bag on which the brand name or brand logo is printed. Definition of 'brand name' mandates that use of name, mark etc. should be (i) in relation to a product, (ii) for the purpose of indicating, or so as to indicate, a connection (iii) in the course of trade (iv) between the product and some person. The term 'in the course of trade' means user of the mark in the course of production and preparation of the goods for the market. After the goods have reached the consumer, they are no longer in the course of trade. Carry bags are articles meant for conveyance or packing of goods. Putting of the

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bought out piece in packing case is post sale activity. A customer's decision for buying does not change merely because in what type of carry bag goods will be handed over to him/her. Whether a shop keeper, who is dealing in both branded and unbranded goods should give two carry bags to customer, one of them necessarily should not have a brand name or logo on it only because otherwise goods will become liable to tax? Here again theory of intention should be applied. Whether any branded good will cease to be 'branded' merely because it is kept in a carry bag which does not contain brand name or logo on it? Answer certainly will be 'no'. In *Commissioner of Central Excise Vs. Electronic Research Ltd* [2005] 187 ELT 495 (Tribunal-Bangalore) judgment dated 28th February, 2005 the Tribunal has mentioned that there are broadly two ways of interpreting law. The first approach would be to go by the grammatical and ordinary sense of the words. In this approach, one sticks to the letter of the law. According to this approach, even if the interpretation gives rise to unjust results, which Parliament never intended, the literal meaning must prevail. If law and rules are interpreted with mathematical rigour, then a computer can be programmed to administer law. There will not be any need for human beings. The law is for the society and society is not for the law. After all procedures are handmaidens of law and not the other way. Another way of interpreting law is, looking into spirit. One has to go into the spirit of the relevant Notification and the Rules and come to a decision. In view of foregoing discussion, it can be concluded that merely use of a carry bag containing brand name or logo on it will not come in way of availing benefit associated with unbranded goods.

Concept of brand under VAT Laws

VAT laws in different states also carry distinct rates of tax for some of the entries based on their status about branding. In the VAT Acts of States of Tamilnadu, Karnataka, Gujarat and Jharkhand³ meaning of branded goods has been given a meaning with reference to the Trade Marks Act, 1999. According to definition of branded goods in these States, 'branded' means any goods sold under a name or a trade mark registered under the Trade Marks Act, 1999 (Central Act 47 of 1999). State of Rajasthan has adopted similar meaning through a circular⁴ providing that wherever different tax rates are provided for branded or unbranded goods, rate of tax applicable

³ Tamilnadu S. 2(9); Karnataka S. 2(5-B); Gujarat entry 48 of Sch II; Jharkhand S. 2(vii).

⁴ 16(466)Tax/VAT/Commissioner/08/933 dated September 12, 2008.

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to branded goods would apply to only those goods which are registered under "The Trade Marks Act, 1999". However under the Maharashtra VAT Act, brand is defined in wider terms and is almost similar to definition as contained in Chapter 61 & 62 of Central Excise Act.

Section 2(3-A) of MVAT Act defines brand name as "brand name" when used in the schedule means a brand name, (whether registered or not), that is to say, a name or a mark such as 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.

There is a marked difference between concept of brand for SSI unit exemption under Excise Act *vis-à-vis* Excise Tariff Chapters & Maharashtra VAT Act. Concept under SSI unit exemption scheme prohibits use of 'brand name' and also 'trade name' for being eligible to benefits associated with unbranded goods. However, use of words 'Trade name' is absent in definition of 'branded' in Excise Tariff Chapter definitions and Maharashtra VAT Act definition.

Now let us examine status of goods in packet carrying following information on it —

Manufactured in India by
Nipa Chemicals Ltd.,
In Collaboration with
Nihon Parkerizing Co. Ltd., Japan.
Cathedral Road, Chennai-600086.
Marketed in India by
Goodlass Nerolac Paints Ltd.,
FOR INDUSTRIAL USE ONLY

In *Nippa Chemicals P. Ltd Vs. Collector of Central Excise* [1998] 100 ELT 490 (Tribunal-Chennai) judgment dated 11th September, 1997 above writing was held to be out of ambit of expression 'brand name' or 'trade name' used in SSI unit exemption Notification. This decision was overruled by the Supreme Court in *Grasim Industries Ltd case* (supra). However, while overruling, the Supreme Court observed that 'Of course this being a Notification under the Excise Act,

the connection must be of such a nature that it reflects on the aspect of manufacture and deal with quality of the products. No hard and fast rule can be laid down however it is possible that words which merely indicate the party who is marketing the product may not be sufficient. As we are not dealing with such a case we do not express any opinion on this aspect. Thus the question whether only words indicating the party who is marketing the product would come in the way of being eligible for benefits available to unbranded goods remains open with balance in favour of tax payer.

Now let us examine above example in the light of definition of 'brand name' in Maharashtra VAT Act for goods manufactured in India with technology available in India. The packet would have look as —

Manufactured by: Nipa Chemicals Ltd.,...
<address>
Marketed by: Goodlass Nerolac Paints Ltd.
In case of any complaint please contact:
<Goodlass Nerolac Paints Ltd, address,
e-mail id and phone number>

Rule 6(1)(a) of The Legal Metrology (Packaged Commodities) Rule, 2011 mandates that in case of packages intended for retail sale, the name and address of the manufacturer, or where the manufacturer is not the packer, the name and address of the manufacturer and packer and for any imported package the name and address of the importer shall be mentioned on the package. Rule 6(2) mandates that every package shall bear the name, address, telephone number, e-mail address, if available, of the person who can be or the office which can be, contacted, in case of consumer complaints. If the package contains food articles, requirement of the Prevention of Food Adulteration Act, 1954 and the rules made thereunder also apply. Rule 32(c)(i) of Prevention of Food Adulteration Rules, 1955 requires the name and complete address of the manufacturer and the manufacturing unit etc to be carried on the prepackaged food.

As per decision from Apex Court in *Tarai Food Ltd* (supra) mere writing of name of manufacturer on packet as required under Standard Weights and Measures (Packets Commodities) Act, 1977 will not

Sample would be 'under the brand name' if the product is stored and displayed in the show room in the container/packet displaying brand. However, if the product is stored and displayed in the shop or area within shop where branded products are also displayed, it will not become branded.

make product branded. Similar logic applies to contact details for consumer complaints.

Now the question remains whether information about name of the organisation which is marketing the product makes goods branded. Apex Court in *Grasim Industries* case (supra) has already indicated that use of words which merely indicate the party who is marketing the product may not be sufficient to say that product is branded. However such indication was qualified by the reasoning that excise being tax on manufacture, the connection must be of such a nature that it reflects on the aspect of manufacture and deal with quality of the products. Whether view of the court would have been different, had this dispute was under VAT Act? VAT is a tax on sale. However merely writing the name of marketing agency does not give any assurance about quality of the product. Quality of the product is decided at the time when it is manufactured. It is true that in trade, manufacturing of several commodities is outsourced and marketers ensure that goods which are being sold through their outlet confirm to minimum quality parameters. But such inferred or implied assurance has no value in the eyes of law. In fact the Apex Court in *Grasim Industries*' case (supra) itself has discussed a situation when use of a third party name amounts to assurance about quality. Overruling decision in the case of *Commissioner of Central Excise, Hyderabad Vs. Sarat Electronics* [2004] 167 ELT 404, the court held that expression 'A quality product from ITL group' indicated that the quality of the product was the same as that of a product of ITL group. The court exclaimed 'if use of such words did not disentitle a party from the benefit of the Notification, we fail to understand what sort of words would disentitle a party.'

There is another aspect to this matter. Concept of brand as used in Chapters of Central Excise Act and Maharashtra VAT Act is different from the concept in SSI unit exemption notification under Central Excise. Under SSI unit exemption notification what is prohibited is use of both 'Brand name' and 'Trade name' of others. However in Chapters of Central Excise Tariff as well as Maharashtra VAT Act, word used is 'brand name'. Reference of 'Trade name' is consciously absent. The Apex court, in *Grasim Industries*' case (supra) while distinguishing its earlier ruling in *Astra Pharmaceuticals* case (supra) has noted this fact in following words "Further, the Explanation to Tariff item 14 E nowhere uses the words 'trade name'. As is commonly known, a trade name can be a name in which or by which a person or body carries on their trade. It would, if the context so permits, include the name of a company. In the context of a 'trade name' the words 'a name' and 'or any writing' would cover the name of a company so



long as it is used in relation to the product and is used for the purpose of indicating a connection in the course of a trade between the product and other person." In *Grasim Industries*' case (supra) both brand name & trade name were prohibiting words.

Now question is why seller wants to put information about marketer on the package. This information is being put on the package for the purpose of identification. By putting its name on the product/package, marketer is completing link between manufacturer and the agency to which consumer can raise a complaint if there are any quality issues. Without bringing reference of marketing agency, taking/putting onus of quality in case of consumer complaint will become difficult and create confusion in the mind of consumer. So long the name through which marketer is identified as a legal entity is put on the product/package in simple alphabets, without any claim about quality of the goods, this would not fall under the concept of brand name. Here writing serves purpose of 'house mark'.

The Apex Court in *Tarai Food Ltd* (supra) was dealing with definition of 'brand' worded similar to definitions presently in force. The definition did not include reference to trade name. Negating argument of revenue that it is the manufacturer's name which is sufficient to place the product in the category of branded the court held that the definition of the words 'brand name' shows that it has to be a name or a mark or 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 establishes the link. ■