

**THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX**

**(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)**

**ORDER NO. MAH/AAAR/SS-RJ/05/2018-19**

**Date- 07.08.2018**

**BEFORE THE BENCH OF**

**(1) Smt. Sungita Sharma, MEMBER**

**(2) Shri Rajiv Jalota, MEMBER**

GSTIN Number	27AAACP2678Q1ZQ
Legal Name of Applicant	M/s.Aditya Birla Retail Limited
Registered Address/Address provided while obtaining user id	Skyline Icon, 6 <sup>th</sup> Floor, 86/92-Andheri Kurla Road, Marol Naka, Near Mittal Industry Estate, Andheri (East), Mumbai- 400059
Details of Appeal	Appeal No. MAH/GST-AAAR-07/2018-19 dated 11.05.2018 against Advance Ruling No. GST-ARA-13/2017/B dtd. 23.03.2018
Concerned officer/Jurisdictional Officer	Assistant/Dy. Commissioner, Div-V, CGST, Mumbai East

**PROCEEDINGS**

**(Under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)**

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.

The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by M/s Aditya Birla Retail Limited (herein after referred to as the "Appellant") against the Advance Ruling No. GST-ARA-13/2017/B dtd.23.03.2018.





### **BRIEF FACTS OF THE CASE**

- A. Aditya Birla Retail Limited ('the Appellant') is *inter alia* engaged in the processing and/or trading of a wide range of cereals, pulses and flour classifiable under Chapter 10 of the First schedule to the Customs Tariff Act, 1975 ('subject goods'). The subject goods are sold by the Appellant at its supermarket and hypermarket format stores, namely 'More Stores', located in various states, including Karnataka, Andhra Pradesh, Delhi, Kerala, Maharashtra, Telangana, Tamil Nadu, West Bengal, Punjab, Haryana, UP, MP, Chandigarh and Puducherry.
- B. The Appellant sells the subject goods under the following brand names, 'More for you', 'More Selecta' and 'More value' (collectively referred to as 'More trademarks'), which are registered trademarks (in the name of the Appellant) under the Trade Marks Act, 1999 ('the Trade Marks Act'). Further, the packaging of the subject goods also bears the 'AdityaBirla' logo which is the registered trademark of Aditya Birla Management Corporation Pvt. Limited, under the Trade Marks Act, which trademark has been licensed to the Appellant for specified purposes. The subject goods are presently sold from its 'More Stores'. The brand name 'More', pertaining to such 'More Stores', is also registered under the Trade Marks Act. However, from the 'More' stores, several categories of products, manufactured by different companies, are also sold. Such products may or may not be bearing a brand name.
- C. The subject goods are either processed and packed 'in-house' by the Appellant (Stream 1) or are procured in processed and packed form from third party vendors (Stream 2). The *modus operandi* followed by the Appellant in respect of the said transaction streams, and, the nature of details disclosed on the packaging of the subject goods under such streams is as follows:

(i) Stream 1- Subject goods processed and packed in-house by the Appellant:

The Appellant procures unprocessed food products from various vendors and undertakes processing and packing in its own units. Such processing would generally involve sorting, quality assessment, grading etc. The subject goods would thereafter be sold by the Appellant from its More Stores.





The package of subject goods sold by the Appellant under Stream 1 *inter alia* bears the name of the Appellant as being the manufacturer and the registered trademarks viz. 'More trademarks' and the 'Aditya Birla' logo. The package also bears a telephone number and an email address, for being contacted in case of consumer complaints.

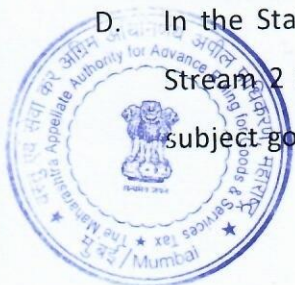
(ii) Stream 2- Subject goods are procured by the Appellant in processed and packed form from third party vendors:

Unprocessed food products are procured by third party vendors and subsequently processed and packed, in terms of the quality standards fixed by the Appellant. The subject goods are thereafter procured by the Appellant for being sold from its More Stores.

The package of subject goods sold by the Appellant under Stream 2 *inter alia* bears the name of the manufacturer, the declaration 'Marketed By – Aditya Birla Retail Limited' and the registered trademarks viz. 'More trademarks' and the 'Aditya Birla' logo. The package also bears a telephone number and an email address, for being contacted in case of consumer complaints.

It is relevant to note that some of the subject goods are sold by the Appellant in different quality variants, determined based on various parameters including the quality or size of grains or seeds, nature of processing undertaken, nutritional content, sourcing, etc. It therefore becomes essential for the Appellant to have appropriate disclosures on the package of such subject goods so as to enable the customers to identify and buy products based on their requirements, budget and preferences. Therefore, in respect of such subject goods, under both streams, the package also bears a declaration which acts as a quality indicator (e.g. whether the product is of standard quality, premium quality or superior quality).

D. In the State of Maharashtra, the Appellant sells the subject goods under Stream 1 and Stream 2 from around twenty five More Stores located across the State. As regards the subject goods under Stream 1, the same are either processed at its processing unit located





in Pune or are sourced from processing units located in other States. As regard the subject goods under Stream 2, the same are procured from various third party vendors located within or outside Maharashtra.

E. In terms of the present packaging adopted by the Appellant for the subject goods sold by it under both Stream 1 and Stream 2, the same *inter alia* bear the trademarks registered under the Trade Marks Act, viz. 'More trademarks' and the 'Aditya Birla' logo. In terms of the relevant entries under Schedule 1 to Notification No.1/2017-Central Tax (Rate) dated 28<sup>th</sup> June 2017 ('CGST Rate Notification'), and, corresponding entries under Schedule 1 to Notification No.1/2017-Intergrated (Serial no. 46, 48, 50, 51, 53) tax, dated 28th June 2017 ('IGST Rate Notification') and under Schedule 1 to Notification No.1/2017-State tax, dated 29th June 2017 ('SGST Rate Notification'), the supply of subject goods, when put up in unit containers and *inter alia* bearing a 'registered brand name', attract GST at the rate of 5%. The Appellant, in respect of supply of the subject goods under either streams, is presently discharging GST at the rate of 5%.

F. It is relevant to note that the requirements to (a) have specific declaration on the package of the subject goods, as regards its manufacturer, and, (b) to provide contact details in relation to consumer complaints (customer care related details), are statutory requirement in terms of the Legal Metrology Act, 2009 read with the Legal Metrology (Packaged Commodity) Rules, 2011, and, the Food Safety and Standards Act, 2006 read with Food Safety and Standards (Packaging and Labelling) Regulations, 2011, the relevant extracts of which legislations [collectively referred to as 'Subject Statutory Provisions'] are provided below-

Legal Metrology Act, 2009	<i>'Section 18. Declarations on pre-packaged commodities.—(1) No person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and <b><u>bears thereon such declarations and particulars in such manner as may be prescribed.</u></b></i>
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Legal Metrology (Packaged Commodity) Rules, 2011:	<p><i>'CHAPTER -II- Provisions Applicable To Packages Intended For Retail Sale</i></p> <p><i>Rule 6. Declarations to be made on every package. - (1) <b><u>(a) the name and address of the manufacturer,</u></b> 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 every package'</i></p> <p><i>...Explanation III- In respect of packages containing food articles, the provisions of this sub-rule shall not apply, and instead, the requirement of the Food Safety and Standards Act,2006 (34 of 2006) and the rules made there under shall apply</i></p> <p><i>(2) Every package shall bear the name, address, telephone number, email address of the person who can be or the office which can be contacted, in case of consumer complaints.</i></p>
Food Safety and Standards Act, 2006	<p><i>'23. Packaging and labelling of foods.</i></p> <p><i>(1) No person shall manufacture, distribute, sell or expose for sale or dispatch or deliver to any agent or broker for the purpose of sale, any packaged food products <b><u>which are not marked and labelled in the manner as may be specified by regulations...</u></b>'</i></p>
Food Safety and Standards (Packaging and Labelling) Regulations, 2011	<p><i>'CHAPTER-2- Packaging and Labelling</i></p> <p><i>6. Name and complete address of the manufacturer-</i></p> <p><i><b><u>(i) The name and complete address of the manufacturer and the manufacturing unit if</u></b> these are located at different places and in case the manufacturer is not the packer or bottler, the name and complete address of the packing or bottling unit as the case may be shall be declared on every package of food...'</i></p>

G. The Appellant intends to revise the packaging of the subject goods and the manner in which the subject goods are put up for sale, to exclude from the packages the registered





trademarks, namely 'More trademarks' and the 'Aditya Birla' logo. The proposed packaging of subject goods under both streams would accordingly bear the following details:

- Subject goods sold under Stream 1:- The packaging would bear only details of the Appellant as the manufacturer and the customer care related details as mandated under the Subject Statutory Provisions.
- Subject goods sold under Stream 2:- The packaging would bear details of the manufacturer, and, the customer care related details, as mandated under the Subject Statutory Provisions, and would have a declaration- '*Marketed by Aditya Birla Retail Limited*'.

Under both the streams, for some of the subject goods, the package would also bear a certain declaration for the sole purpose indicating the quality variant of the product so as to enable the customers to identify and buy products based on their requirements, budget and preferences. In this regard, the Appellant intends to make the following indicative declarations on the product package by using common/ generic words-

- The term '*Value*' with a corresponding statement that the said term is merely a quality indicator and that it indicates that the product is of a standard quality;
- The term '*Choice*' with a corresponding statement that the said term is merely a quality indicator and that it indicates that the product is of a premium quality.
- The term '*Superior*' with a corresponding statement that the said term is merely a quality indicator and that it indicates that the product is of a superior quality.

H. Vide Application dated 26<sup>th</sup> December 2017 filed with the Advance Ruling Authority ('ARA'), the Appellant sought an advance ruling on the following questions *qua* the applicability of GST exemption in terms of certain Notifications, in respect of the subject goods intended to be sold by the Appellant under the proposed packaging-





• **Question 1-** Whether the subject goods, proposed to be sold under Stream 1, where the package of the subject goods would merely have a declaration mentioning the name and registered address of the Applicant as the manufacturer, as per the statutory requirement under the Subject Statutory Provisions, can be considered as '*not bearing a brand name*', and, accordingly eligible for exemption from GST in terms of relevant entries to Notification No. 2/2017 Central tax (Rate) dated 28<sup>th</sup> June 2017 ('CGST Notification'), and, the corresponding entries under Notification No. 2/2017-Integrated tax (Rate) dated 28<sup>th</sup> June 2017 ('IGST Notification') and Notification No.2/2017-State Tax (Rate) dated 29<sup>th</sup> June 2017) [collectively referred to as 'the Exemption Notifications']?

• **Question 2-** Whether the subject goods proposed to be sold under Stream 2, where the package of the subject goods would have a declaration mentioning the name and registered address of the manufacturer as per the statutory requirement under the Subject Statutory Provisions as also the declaration '*Marketed by- Aditya Birla Retail Limited*' can be considered as '*not bearing a brand name*', and, accordingly eligible for exemption in terms of relevant entries to the Exemption Notifications?

• **Question 3-** Whether the declarations made on the package, by *inter alia* using common/ generic terms viz. '*Value*', '*Choice*' and '*Superior*', for the sole purpose of indicating the quality of the product so as to enable the customers to identify and buy products based on their requirements, budget and preferences can be construed to be a '*brand name*' for the purpose of the Exemption Notifications?

I. Vide its Order dated 23<sup>rd</sup> March 2018 ('Impugned Order'), issued under Section 98 of the Central Goods and Service tax Act, 2017 ('CGST Act') and Maharashtra Goods and Service tax Act, 2017 ('MGST Act'), the ARA has, basis the findings recorded in the Impugned Order, answered Question 1 and Question 2 in the negative. As regards Question 3, the ARA has not specifically dealt with the same on the premise that '*the question cannot be raised in isolation*'.

J. Aggrieved by the Impugned Order, the Appellant has filed the present Appeal. Whereas, the ARA has, in terms of common findings set out in the Impugned Order, answered the





Question 1 and Question 2 negatively, the Appellant is, owing to commercial and business exigencies, only raising issues pertaining to Question 1 and Question 3. However, all the findings in the Impugned Order are being disputed.

### GROUND OF APPEAL

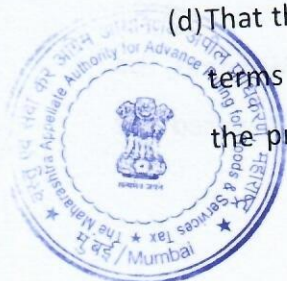
1. The Impugned Order is bad in law and deserves to be set aside to the extent set out in the grounds of appeal hereunder in detail, including for the following reasons:

(a) That the Impugned Order fails to take into consideration the settled law as declared by the Hon'ble Supreme Court in the case of **Tarai Foods Limited Vs CCE, Meerut-II 2006 (198) E.L.T. 323 (S.C.)**, that the declaration of name of a company as per the statutory requirements would not amount to 'bearing a brand name'. This case is squarely applicable to the facts of the present case. This legal position has also been subsequently followed by the Courts/ Tribunals including in the case of **Commissioner of Central Excise v. Synotex Industries, [2012 (278) ELT 90 (Tri-Kolkata)]**.

(b) The reliance placed on the decision of the Hon'ble Supreme Court in the case of the **Commissioner of Central Excise, Trichy vs Grasim Industries Ltd [2005 (183) E.L.T. 123 (S.C.)]** is totally misplaced as the relevant facts and the issue involved therein are distinguishable from Appellant's case and accordingly the said decision is inapplicable.

(c) That the Impugned Order erroneously holds that availability of the subject goods only at More Stores would render the subject goods branded. On a plain reading of the Exemption Notifications, it is abundantly clear that as per the scheme of relevant provisions, the condition to be examined is whether the unit container of the subject goods bears the brand name. Accordingly, the reliance placed on the decision of the Hon'ble Supreme Court in the case of the **CCE vs. Australian Foods India (P) Ltd. [(2013) 12 SCC 468], [(2014) 1 SCC (Civ) 701]** is totally misplaced as the facts therein are distinguishable from Appellant's case and therefore the said decision is inapplicable.

(d) That the declarations made on the proposed package by *inter alia* using common/ generic terms viz. 'Value', 'Choice' and 'Superior', for the sole purpose of indicating the quality of the product so as to enable the customers to identify and buy products based on their





requirements, budget and preferences cannot be construed to be a 'brand name' for the purpose of the Exemption Notifications.

2. The grounds of appeal are set out in detail herein after, which are taken in the alternative and are without prejudice to one another.

**A. The name of the Appellant does not qualify as 'brand name' in respect of the subject goods for the purpose of the Exemption Notifications**

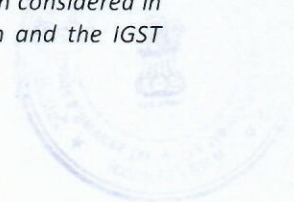
3. In terms of the relevant entries of the CGST Notification<sup>1</sup>, the exemption thereunder would be available to supplies of the subject goods where the following conditions are satisfied:

- (a) Where the subject goods fall under the tariff item, sub-heading, heading or Chapter as specified in the column (2) of the CGST Notification, and;
- (b) Where the subject goods are other than those (i) put up in unit containers, and (ii) bearing a registered brand name; or bearing a brand name on which an actionable claim or an enforceable right in the court of law is available, other than those where any actionable claim or any enforceable right in respect of such brand name has been voluntarily foregone, [subject to the conditions as set out in the Annexure to the CGST Notification].

The relevant part of the CGST Notification No.2/2017-Central Tax (Rate) dated 28th June, 2017 is extracted below:

*G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts intra-State supplies of goods, the description of which is specified in column (3) of the Schedule appended to this notification, falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column*

<sup>1</sup>For the purpose of the determination of the questions under this Appeal, which would require reference to be made to the Exemption Notifications, the relevant entries under the CGST Notification have been considered in this application, which are identical to the corresponding entries under the SGST Notification and the IGST Notification.





(2) of the said Schedule, from the whole of the central tax leviable thereon under section 9 of the Central Good and Services Tax Act, 2017 (12 of 2017).

Schedule

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
69.	1005	Maize (corn) [other than those put up in unit container <b>and</b> , - (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily, subject to the conditions as in the ANNEXURE I]

For the purpose of the exemption notifications, the terms 'unit containers', 'brand name' and 'registered brand name' have been defined to mean as follows:

(i) "unit container" means a package, whether large or small (for example, tin, can, box, jar, bottle, bag, or carton, drum, barrel, or canister) designed to hold a predetermined quantity or number, which is indicated on such package

(ii)(a) The phrase "brand name" means brand name or trade name, 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) The phrase "registered brand name" means,-*

*(A) a brand registered as on the 15th May 2017 under the Trade Marks Act, 1999. irrespective of whether or not the brand is subsequently deregistered;*

*(B) a brand registered as on the 15th May 2017 under the Copyright Act, 1957(14 of 1957;*

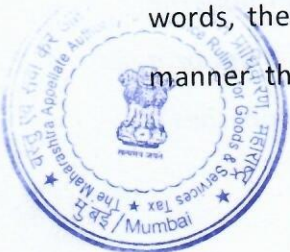
*(C) a brand registered as on the 15th May 2017 under any law for the time being in force in any other country."*

The range of cereals, pulses, etc. (subject goods), being supplied by the Appellant are covered under the various headings / sub-headings of Chapter 10 to the First Schedule to the Customs Tariff Act, 1975. The said goods would be covered under different serial numbers of the Exemption Notifications. However, as the conditions for applicability of the exemption are similar for each of such serial numbers, for ease of reference and for brevity, Sr.No.69 of the CGST Notification is reproduced above.

4. In terms of the above meaning, a name or a mark would become a 'brand name', for the purpose of the CGST Notification, only when the following conditions are satisfied:

- (i) When such name or mark is used in relation to specified goods; and
- (ii) When such name or mark is so used for the purpose of indicating a connection in the course of trade between such specified goods and the person using the name or mark, with or without any indication of the identity of that person.

5. In this regard, it is submitted that for any name to qualify as a brand name, it must be used in relation to specified goods indicating a connection in the course of trade between the said goods and the person, with or without indicating the identity of such person. In other words, the use of the name should be to associate specified goods with the person, in a manner that the customer would identify the specified goods with that person. Mere





mention of the name of the manufacturer would not constitute a brand name as the customer would obviously not identify the goods with the name of the manufacturer. Reliance in this regard is placed on the following decisions:

**i. Astra Pharmaceuticals (P) Ltd. vs Collector of C. Ex, Chandigarh [1995 (75) E.L.T. 214**

**(S.C.)]-** *'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 the medicine was established. In the case of appellant it was only a monograph to identify the manufacturer'.*

**ii. Commissioner of C. Ex., Mumbai vs Kalvert Foods India Pvt. Ltd [2011 (270) E.L.T. 643**

**(S.C.)]-** *'In the book of "Trade Marks" by Sarkar, the distinction between the expressions "House mark" and "Product mark" or "Brand name" has been clearly brought out by way of reference to the decision in Astra Pharmaceutical Pvt. Ltd. (supra). It is stated therein that "House mark" is used on all the products of the manufacturer and that it is usually a device or a form of emblem of words or both. It was also pointed out that for each product a separate mark known as a "Product mark" or "Brand name" is used which is invariably a word or combination of word and letter or numeral by which the product is identified and asked for....In the book of "Law of Trade Marks" by K.C Kailasam and Ramu Vedaraman the distinction between 'Product mark' and 'House mark' has been beautifully delineated, which is as under : "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 his products to indicate the origin of the goods from the enterprise (known as House mark). This practice is more predominant in the pharmaceutical trade. Though both are trademarks 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 it the focal point of presentation and advertisement."*

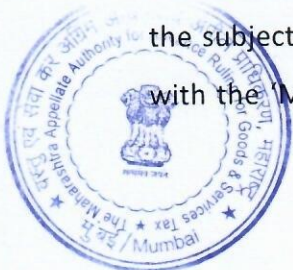
**iii. Tarai Foods Limited Vs CCE Ex. Meerut-II 2006 [(198) E.L.T. 323 (S.C.)]-** *'Furthermore the definition of the words 'brand name' shows that it has to be a name or a mark or a monogram etc. which is used in relation to a particular product and which establishes a*





*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 establishes the link'*

6. In Appellant's case, the subject goods are presently sold under the brand name 'More' from its 'More' Stores. However, from the 'More' stores, several similar products, manufactured by different companies, are also sold, which products may or may not be bearing a brand name. The Appellant has over the course of period made concentrated efforts and incurred costs, which *inter alia* include significant efforts by way of advertising and marketing, to publicize and establish the 'More' brand. It is consequent to such efforts that the customers of the subject goods recognize the brand and identity and ask for the products of the said brand. Customers of the subject goods who enter the 'More' stores to purchase the subject goods, associate the subject goods with the 'More' brand name, and, do not necessarily associate/ connect the subject goods with the name of the Appellant. Accordingly, it is the 'More' trademarks which establishes a connection in the course of trade between the subject goods and the Appellant. The definition itself indicates that brand name is one which establishes the said connection with or without indicating identity of such person. Therefore, in the present case, where the product packaging, though having the Appellant's name, will not have the brand name of the Appellant (i.e. 'More' trademarks), it cannot be construed to be branded.
7. Further, the Impugned order, by referring to the Appellant's website and by stating that the Appellant *'is a big brand name in the business world, world over'* and that *'Aditya Birla is a benchmark in itself and is associated with a certain trust and quality'*, has erroneously proceeded to conclude that the Appellant's name, which is to be reflected on the proposed packaging, *'is more than sufficient to establish an identity with the goods.'* On this basis it has been erroneously held that the name of the Appellant would constitute a brand name. In this regard, it is relevant to note that, in the context of subject goods, the Appellant has, over a period of time, worked towards establishing the brand 'More' and its association with the subject goods. Clearly, the customers of the subject goods associate the subject goods with the 'More' brand name, and, do not necessarily associate/ connect the subject goods





with the name of the Appellant. It is the 'More' trademarks which establishes a connection in the course of trade between the subject goods and the Appellant.

8. The ARA ought to have appreciated that there are several practical illustrations which would establish that a product is recognised in the market through its brand name and may not be directly associated or identified with the name of the manufacturer/brand owner even where such manufacturer/brand owner is a reputed company. The products are associated with the brand and not with the name of the company. Further, there would also be such illustrations where the product is identified with the name of the company. An illustrative list in this regard is provided. As evident, this strictly holds true in case where the product is eponymous to the manufacturer, which is not the case of the Appellant.

a. In this regard, the reliance placed on the decision of the Hon'ble Supreme Court in the case of the ***Commissioner of Central Excise, Trichy vs Grasim Industries Ltd [2005 (183) E.L.T. 123 (S.C.)]*** is totally misplaced as the facts therein are distinguishable from Appellant's case and accordingly the said decision is inapplicable. The Impugned Order therefore erroneously places reliance on the said decision to hold that the name of a company would constitute a brand name. The issue involved in the present case i.e. whether mentioning of the name of the manufacturer on the package of a product, in terms of statutory requirements, would constitute a 'brand name', was not before the Hon'ble Supreme Court in the case of Grasim (supra). In Grasim (supra), the Hon'ble Court was concerned with whether use of the words 'A Subsidiary of Grasim Industries Ltd', by the manufacturer, can be construed to be a 'brand name'. To this extent, the said decision operates in a different domain and does not deal with the question as to whether the name of the manufacturer which is declared as per the statutory requirement can be construed to be a brand name. It is a settled principle of law that a judicial decision is an authority for what it actually decides and not for what can be read into it by implication or by assigning an assumed intention to the judges-

- **Bhavnagar University v. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111-** 'A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may





make a lot of difference in the precedential value of a decision. [See *Ram Rakhi v. Union of India* AIR 2002 Del 458 (db), *Delhi Admn. (NCT of Delhi) v. Manohar Lal* (2002) 7 SCC 222, *Haryana Financial Corpn. v. Jagdamba Oil Mills* (2002) 3 SCC 496 and *Nalini Mahajan (Dr.) v. Director of Income Tax (Investigation)* (2002) 257 ITR 123 (Del).]

- **Armaendra Pratap Singh v. Tejbendar Prajapati - 2004 (10) SCC 65-** 'A judicial decision is an authority for what it actually decides and not for what can be read into it by implication or by assigning an assumed intention to the judges'

9. Further, the Impugned Order places a misconstrued reliance on the definition of the term 'trade description' under the Trade Marks Act, to support the contention that identity of the manufacturer/ person qualifies as a brand name/ trade description. Without prejudice to the fact that the said reference does not form a substantive basis of the findings made in the Impugned Order, it is submitted that the said reference is extraneous to the terms of the Exemption Notifications as the definition of the term 'brand name' therein neither includes a 'trade description' nor does it borrow its meaning from the Trade Marks Act. It is well established *inter alia* in terms of the decision of the Hon'ble Supreme Court in the case of **Hemraj Gordhandas vs. Assistant Collector of C. Ex. & Customs** [1978 (2) E.L.T. J 350 (S.C.)) that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words.
10. It is also relevant to note that, in terms of the Exemption Notifications, to constitute a brand name, it needs to be established that the same has been purposefully used to indicate a connection between the goods and the person. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of **Commissioner of C. Ex., Hyderabad-IV vs. Stangen Immuno Diagnostics** [2015 (318) E.L.T. 585 (S.C.)) wherein, relying on the decision of the Hon'ble Supreme Court in the case of **Commissioner of Central Excise, Chandigarh-II v. Bhalla Enterprises** [2004 (173) E.L.T. 225 (S.C.)) it was *inter alia* held that '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 assessee's goods** and such other person or uses the name in such a manner that it would indicate such 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'.





11. Applying the said principle to the Appellant's case, it cannot be said that the disclosure of Appellant's name on the proposed packaging, in terms of a statutory prescription, tantamount to an intention of indicating a connection between the subject goods and the Appellant. Such a conclusion is further flawed when viewed in the context that reflection of its name equally coincides with withdrawal of the corresponding brand names i.e. 'More trademarks', with which the subject goods have been historically identified. In terms of the decision of the Hon'ble Supreme Court in the case of Stangen (supra), *'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'*. In the present facts, it is the 'More trademarks' which best answer this description, having been used over a period of time to acquire the reputation associated with the subject goods. Therefore, withdrawal of the said brand name would render the subject goods unbranded, and, mere mention of Appellant's name, in terms of statutory prescription, and, absent its demonstrated association with the subject goods, would not alter this position. Also, to this extent, the reliance placed by the Impugned Order on the decision of the Hon'ble Supreme Court in the case of Stangen (supra) is erroneous and misconceived. Whereas the Impugned Order rightfully observes that *'the applicant also has a family of customers purchasing from the More Stores and associating the brand with some quality standards'*, and, that *'the customers are aware of the More brand as well as the products of the More brand which are available in the More Stores alongwith products of other manufacturers'*, it erroneously and without any basis presumes that such a connection would not be broken, if the disclosures pertaining to the More Trademarks are withdrawn from its packaging.
12. The Impugned Order erroneously observes that the proposed packaging wouldbe *'using a combination of colors from the logo of Aditya Birla Group'*. The said findings are categorically denied as there is no intention on part of the Appellant to indicate, through a color combination, any connection between the subject goods and the Aditya Birla logo. Further, the manner of usage of such colors on the proposed package do not in any manner exert recall with regard to the Aditya Birla logo. In fact, in certain cases, the proposed packaging uses colors which are not a part of the Aditya Birla logo. Without prejudice to the





fact that the said observation does not form a substantive basis of the findings made in the Impugned Order, it is submitted that said observation is extraneous to the terms of the Exemption Notifications as the definition of the term '*brand name*' therein neither includes a '*combination of colours*' nor does it borrow the meaning of 'mark' from the Trade Marks Act. It is well established *inter alia* in terms of the decision of the Hon'ble Supreme Court in the case of **HemrajGordhandas vs. Assistant Collector of C. Ex. & Customs [1978 (2) E.L.T. J 350 (S.C.)]** that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words.

13. It is settled law that the declaration of name of the company as per the statutory requirements would not amount to 'bearing a brand name'

14. The ARA has failed to appreciate that the issue involved in the present case was squarely covered by the decision of Hon'ble Supreme Court in **Tarai Foods Limited VsCCEx. Meerut-II 2006 (198) E.L.T. 323 (S.C.)**. Although the Appellant had relied upon the said decision of the Hon'ble Supreme Court and also the decision of Hon'ble Tribunal in the case of Synotex Industries (supra) on this issue, the ARA has not even dealt with the said decisions. The issue as to whether mentioning of the name of the manufacturer on the package of a product, in terms of statutory requirements, would constitute a '*brand name*', is answered by the following decisions/ circulars, which though relied upon by the Appellant before the ARA, were not considered, thereby rendering the Impugned findings unsustainable :

- (i) In case of **Tarai Foods Limited VsCCEx. Meerut-II 2006 (198) E.L.T. 323 (S.C.)**, the Hon'ble Supreme Court has *inter alia* examined whether the definition of 'brand name', would include the name of the manufacturer printed on the package in terms of a legal requirement. The relevant entry to the First Schedule to the Central Excise Tariff Act, 1985, which was under consideration is as follows:





Heading No.	Sub-heading No.	Description of goods	Rate of Duty
(1)	(2)	(3)	(4)
20.01		Preparations of vegetables, fruit, nuts or other parts of plants including jams, fruit jellies, marmalades, fruit or nut puree and fruit or nut pastes, fruit juices and vegetable juices, whether or not containing added sugar or other sweetening matter.	
	2001.10	- Put up in unit containers and bearing brand name.	8%
	2001.90	- Other	- Nil

As regards this case, it is relevant to note the following:

- The issue under consideration was the classification of goods under sub-heading 2001.10 of Chapter 20 of the Central Excise Tariff (where the conditions required to be fulfilled were, (i) that the product must be put up in unit containers, and (ii) the same must bear a brand name), or, sub-heading 2001.90 of the said chapter (which covered "others")
- The assessee was engaged in the manufacture of vegetable preparation i.e. French Fries and Frozen foods. They had been using two types of packaging for the sale of their product. First packing carried the name "Inland Valley" along with other details, i.e. the name and registered address of the manufacturer, while the second packing bore all other details except the words "Inland Valley". They classified their first packing under sub-heading No. 2001.10 and cleared the same from the factory by paying duty at the rate of 8% as prescribed in that sub-heading. But the second packing had been classified by them under sub-heading 2001.90 and cleared at nil rate of duty.





- The definition of 'brand name' considered in this case was similar to the definition as stated in the Exemption Notifications.
- The department had contended that the definition of 'brand name' would include the name of the manufacturer which was printed on the products.
- In the above context, the Hon'ble Supreme Court on the issue as to whether the name of the manufacture can be considered to be a 'brand name' held as follows:

*"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). In other words, unit containers would have to bear the name of the manufacturer. If the name of the manufacturer were to be a brand name then this would mean, that there would be no unbranded unit container at all in law and the distinctiveness of T.H. 2001.10 would be meaningless.*

15. Furthermore the definition of the words 'brand name' shows 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 establishes the link.

16. There is a value attached to the brand name, a value which has been recognized in the tariff entry by providing for levy of excise duty on goods bearing a brand name. It may be that the appellant had deliberately omitted the brand name in selling the 'French Fries' to avail of the nil rate of tariff. This cannot detract from the consequences which would follow in law. If the assessee opts not to take advantage of the brand name in its trade, it could at least have the benefit of the rate of duty applicable to unbranded product."





(i). In the case of **Commissioner of Central Excise v. Synotex Industries 2012 (278) ELT 90 (Tri-Kolkata)** the Hon'ble Tribunal has inter alia examined whether the definition of 'brand name', would include the name of the manufacturer printed on the package in terms of a legal requirement and held as follows-

*'If the Revenue's plea that indicating the manufacturer's name would amount to affixing brand name is accepted, then all the goods containing manufacturer's name would be branded goods which is highly illogical. In fact in respect of the packaged goods, there are statutory requirements that the manufacturer's or packer's name and address should be indicated on the packages of the goods under the standards of Weights & Measures Act, 1976 and the rules made thereunder'*

(ii) In the case of **CCEx. Vs Pepsi Foods Ltd., [2015 (322) ELT A325 (SC)]**, the issue under consideration was whether the printing of the name of the brand owner, could be construed to make the package a branded product. The Hon'ble Supreme Court while taking note of the definition of 'brand name' (which is similar to meaning provided to the phrase under the Exemption Notifications), and the decision in the case of **Tarai Foods (supra)**, upheld the decision of the Hon'ble Tribunal in the assessee's own case, **CCEx Vs Pepsi Foods Ltd., [2003 (156) E.L.T. 1013 (Tri. - Del.)]** and in the case of **Nirula and Company Pvt. Ltd. Vs CCEx [2005 (186) E.L.T. 412 (Tri. - Del.)]**, stating that mere printing of the name of the company on unit container does not make the package branded, unless the brand itself is printed specifically.

17. It is well settled that in terms of Article 141 of the Constitution of India, the law laid down by the Hon'ble Supreme Court is binding on all the Courts and authorities in the country. Accordingly, in terms of the above decisions of the Hon'ble Supreme Court, mere mention of the name and address of the manufacturer as per the requirement under the Subject Statutory Provisions, without actually printing the brand on the product packaging, would not render the product as bearing a 'brand name'.

18. Reliance is further placed on the decision of the Hon'ble Madras High Court in the case of **CCEx. Vs CESTAT Chennai, [2015 (318) ELT 238 (Mad)]**, wherein the issue pertained to





denial of SSI exemption on account of the assessee clearing manufactured goods using the superscription 'manufactured and packed by SVS & Sons', which was contended to be an affixation of 'brand name', by the Department. The Hon'ble Madras High Court while taking note of the definition of 'brand name' (which is similar to the meaning provided to the phrase under the Exemption Notifications) held that the superscription 'manufactured and packed by SVS & Sons' cannot be considered as a brand name or a trade name.

19. In addition to the above, reference is made to the following circulars:

(a) **Circular No. 1031/19/2016-CX, dated 14<sup>th</sup> June 2016**, which was issued as regards the levy of Excise duty on readymade garments and made up articles of textiles bearing brand name or sold under a brand name having retail sale price of Rs.1,000 or more. The Board vide the said circular clarified that 'merely because the outlets (shop) of a retailer, from where readymade garments or made ups are sold, has a name, say, M/s. XYZ and Sons, the readymade garments or made ups sold from such outlet (shop) cannot be held as branded readymade garments or made ups and become liable to excise duty. Needless to say, deemed manufacture and liability to excise duty will arise only if such retailer affixes a brand name on the readymade garments and affixes a label bearing the RSP on the packages containing the readymade garments of Rs. 1000 or above.'

(b) **Circular No.947/8/2011-CV dated 21<sup>st</sup> June 2011**, which was issued as regards levy of Excise duty on branded readymade garments, (where the definition of 'brand name' was similar to the definition applicable in the present case), it was clarified therein that the mere mention of the name of the tailor or manufacturer would not render the product as branded product.

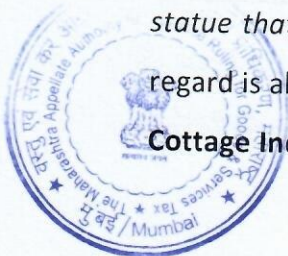
20. In view of the above, the findings of the Impugned Order that mere mention of the name of the manufacturer and / or packer, which is a statutory requirement, onto the packaging of subject goods, would render the product branded, is erroneous and unsustainable.

Construing the name of the manufacturer as a brand name would render part of the Exemption Notifications redundant





21. In terms of the Exemption Notifications, exemption is admissible for goods other than those put up in unit container and bearing a brand name. Further the term 'unit container' is defined to mean '*a package, whether large or small (for example, tin, can, box, jar, bottle, bag, or carton, drum, barrel, or canister) designed to hold a predetermined quantity or number, which is indicated on such package*'. In terms of the language employed, the requirement of goods being 'put up in unit container', and, bearing a 'brand name' would have to be cumulatively satisfied so as to exclude the corresponding goods from the purview of the exemption.
22. In terms of Section 18 of the Food Safety and Standards Act, 2006 ('FSSA') '*no person shall manufacture, distribute, sell or expose for sale or dispatch or deliver to any agent or broker for the purpose of sale, any packaged food products which are not marked and labelled in the manner as may be specified by regulations*'. Rule 6 of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011 ('FSS Regulations') in turn mandates provision of details of the manufacturer of the product on the corresponding package. Therefore, in case it is construed that name of the manufacturer is a brand name in itself, then every food product which is sold in packed form would be considered as branded. To this extent, the requirement that the product should bear a brand name would be rendered redundant, considering that a product sold in a unit container (and therefore being governed by FSSA and FSSA Regulations) would necessarily disclose the name of the manufacturer in every case.
23. It is a settled law that the courts should always presume that the legislature inserted every part in a statute/ notification for a purpose and the legislature's intention is that every part of a statute should have effect and that a construction which results in redundancy of some part of a statute, must not be accepted. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of **Bansal Wire Industries Ltd vs State of U.P. [2011 (269) E.L.T. 145 (S.C.)]** wherein the Hon'ble Court laid down that it '*is a settled principle of law that the words used in the section, rule or notification should not be rendered redundant and should be given effect to. It is also one of the cardinal principles of interpretation of any statute that some meaning must be given to the words used in the section*'. Reliance in this regard is also placed on the decision of the Hon'ble Bombay High Court in the case of **Bharat Cottage Industries vs Union of India [1992 (59) E.L.T. 30 (Bom.)]** wherein it was held that it





*'is not permissible for the Court to treat the words of the exemption notification as a mere surplus'.*

**24. Availability of the subject goods only at More Stores would not render the subject goods branded for the purposes of the Exemption Notifications**

- a. The Impugned Order wrongly holds that since the subject goods are sold exclusively from More Stores, the same would be construed to be branded. In this regard, reliance has been erroneously placed on the decision of the Hon'ble Supreme Court in the case of **CCE v. Australian Foods India (P) Ltd [(2013) 12 SCC 468]** which decision has been passed in the context of a different notification and would not be relevant in the facts of the present case for detailed reasons set out below.
- b. The facts before the Hon'ble Supreme Court, in the Australian Foods case (supra), were entirely different from the facts in the Appellant's case. In the said case, the assessee was engaged in the manufacture and sale of cookies from branded retail outlets of 'Cookie Man' and the said *'cookies were sold from a dedicated outlet of 'Cookie Man' where no other products but those of the assessee were sold'*. The assessee in the said case was discharging Central excise duty on cookies sold in plastic pouches/containers on which brand name was printed, and, was claiming benefit under the Small Scale Exemption Notification No. 1/93-C.E. dated 28th February 1993 ('SSI Exemption') in respect of some cookies sold loosely from the same retail counter. The question before the Hon'ble Supreme Court was *'whether the manufacture and sale of specified goods that do not physically bear a brand name, from branded sale outlets, would disentitle an assessee from the benefit of S.S.I. Notification'*. In this context, the Hon'ble Supreme Court *inter alia* held that to determine whether a product bears a brand name, one needs to look into the environment and that that *'a specific, dedicated and exclusive outlet from which a good is sold is often the most crucial and conclusive factor to hold a good as branded'*. It has been further held that *'whether the brand name appears in entirety or in parts or does not appear at all cannot be the chief criterion; primary focus has to be on whether an indication of a connection is conveyed in the course of trade between such specified goods and some person using the mark'*. On this basis, it was held that





cookies sold loosely from the 'Cookie Man' counter would be considered to be branded.

c. On perusal of the SSI Exemption Notification it is evident that the same was applicable to all genres of goods and the benefit thereunder was restricted in respect of goods *'bearing a brand name or trade name'*. It is noteworthy that apart from having a universal applicability, the SSI Exemption Notification did not also prescribe the manner in which the goods may bear a brand name (i.e. on a unit container etc.). It is in this context that the Hon'ble Supreme Court held that to determine whether a product bears a brand name, one needs to look into the environment i.e. *'packaging and wrapping of the goods, accessories it is served with, uniform of vendors, invoices, menu cards, hoardings and display boards of outlet, furniture and props used, the specific outlet itself in its entirety and other such factor'*, specifically considering that certain goods, which would otherwise be covered under the SSI Exemption Notification, would be *'incapable of physically bearing brand names'*- *'Liquids, soft drinks, milk, dairy products, powders, edible products, salt, pepper, sweets, gaseous products, perfumes, deodorants etc.to name a few, are either liquids, gases or amorphous/brittle solids, making it impossible for the goods to be affixed with a brand name'*.

d. In terms of the scheme of the applicable entries to the CGST Notification, it is evident that the same covers specified goods (i.e. cereals), and, in terms of the prescribed conditions, for falling outside the ambit of the said exemption, it is necessary that the goods are sold in a unit container which bears a brand name. It is abundantly clear in terms of the entries to the CGST Notification and the Annexure thereto that the condition to be examined is whether the unit container bears the 'brand name'. To this extent, the Exemption Notification explicitly correlates the exemption thereunder with the corresponding disclosures made on the unit container, which is not dependent on the manner and environment in which the goods are sold. In this regard, the relevant extract of the Annexure to the CGST Notification is reproduced below-





## ANNEXURE I

*For foregoing an actionable claim or enforceable right on a brand name,*

*(a) **the person undertaking packing of such goods in unit containers which bears a brand name shall** file an affidavit to that effect with the jurisdictional commissioner of Central tax that he is voluntarily foregoing his actionable claim or enforceable right on such brand name as defined in Explanation (ii)(a), and'*

*(b) **the person undertaking packing of such goods in unit containers which bear a brand name shall**, on each such unit containers, clearly print in indelible ink, both in English and the local language, that in respect of the brand name as defined in Explanation (ii)(a) printed on the unit containers he has foregone his actionable claim or enforceable right voluntarily'*

Accordingly, the decision of the Hon'ble Supreme Court in the case of Australian Foods is not applicable to the facts of the present case. Also, to this extent, the finding in the Impugned Order, that '*the goods are being supplied through the More stores which is registered brand as on the 15th May 2017*', is in excess of the conditions stipulated in the Exemption Notifications, which is only concerned with the nature of disclosures made on the unit container alone.

e. Further the decision of Hon'ble Supreme Court in the Australian Foods case (supra) is clearly distinguishable on facts and therefore not applicable to the present case. It is an admitted fact that, in Appellant's case, the More Stores, constituted under hyper-market and super-market formats, offer wide range of products to its customers viz. fresh fruits and vegetables, groceries, personal care, home care, general merchandise etc., which primarily pertain to third party brands, wherever applicable. Further, even in respect of the subject goods, the Appellant offers similar products of other companies alongside its own products. This specifically stems from the overall objective to project and promote More Stores as multi-brand retail outlets which offer wide range and variety of products of several brands/manufacturers. In fact, during FY 2017-18, out of the total sales generated by the Appellant from More Stores across India, around 70% of the revenue pertained





to sales from third party products. Evidently, the aforesaid facts can be clearly contrasted with the facts in the case of Australian Foods (supra). On this basis also, it can be contended that the said ruling cannot be applied to the facts of the present case.

f. Since, in the said case, the Hon'ble Supreme Court was concerned with the an interpretation specific and peculiar to the SSI Exemption Notification, the Hon'ble Court, in its wisdom, rightfully cautioned that ***'our observations must be limited to this notification and not supplanted to other laws with similar subject matter pertaining to trade names and brand names'***. The Impugned Order has thus erroneously applied the findings of the Hon'ble Supreme Court in the case of Australian Foods, dealing with the SSI Exemption Notification issued under the Central Excise law, to the present case, without appreciating that said decision itself explicitly excludes its applicability to other laws even where such other laws deal with similar subject matter pertaining to trade names and brand names.

**25. Declarations made on the package, using common/ generic terms for indicating the quality of the product cannot be construed to be a 'brand name'**

a. As stated, for some of the subject goods, the package would also bear a certain declaration by using common/ generic words for the sole purpose of indicating the quality of the product so as to enable the customers to identify and buy products based on their requirements, budget and preferences. Such declarations made on the package by *inter alia* using common/ generic words viz. 'Value', 'Choice' and 'Superior' are only aimed at creating a clearly identifiable distinction between different quality versions of the same product. Considering that the said terms would therefore not indicate any connection in the course of trade between the Appellant and the products, but would only reflect its quality versions, the same would not qualify as a 'brand name'.

b. In this regard, it is also relevant to refer to Section 9 of the Trade Marks Act, which lays down the '*absolute grounds of refusal of registration*' of a name or mark or a logo, as a trademark under the said Act. Section 9(1)(b) states that a trade mark '*which consist exclusively of marks or indications which may serve in trade to designate*





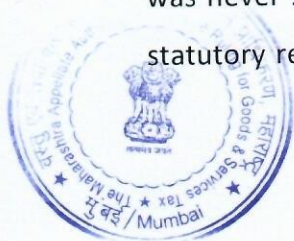
the kind, **quality**, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service', shall not be registered. The definition of 'trademark' as provided in Section 2(zb) of the Trade Marks Act is broadly similar to the definition of the term 'brand name' under the Exemption Notifications to the extent it includes a mark or a name that indicates 'a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark'. In view of the same, a name, which merely indicates quality parameters of the goods, should also not be construed to be a 'brand name'.

c. Accordingly, the declarations *inter alia* using common/ generic terms viz. 'Value', 'Choice' and 'Superior', for reflecting the quality of the subject goods to be sold under Stream 1, cannot be construed to be 'brand name' for the purpose of the Exemption Notifications. The supply of subject goods would therefore attract GST at 'Nil' rate in terms of the relevant entries to the Exemption Notifications.

d. Accordingly, based on the above submissions and analysis thereof, it can be concluded that the subject goods proposed to be sold under Stream 1, can be considered to be not bearing a 'brand name' and would accordingly be eligible for exemption from GST in terms of relevant entries to the Exemption Notifications.

### **PERSONAL HEARING**

26. Hearing in the matter was fixed on 18.07.2018 which was attended by Sh. Anay Banhatti and Sh. Supreme Kothari, both Advocates for the Appellant and Sh. S.S. Bhide, Superintendent, Div.-V, CGST, Mumbai East, as jurisdictional officer. The Advocates reiterated their written submissions and further submitted a compilation of relevant documents/legislations/cases. They stressed upon the argument that mentioning name of manufacturer on the packages, which is statutory requirement, does not result in a brand name on the package. They read out relevant portions of the judgments relied upon by them in support of their claim and also the judgments relied upon by the AAR to distinguish the same from their matter. The Advocates argued that in the judgments cited by AAR, it was never subject matter of any judgment that whether placing name of manufacturer as statutory requirement would amount to brand name. They stated that products should be





identified and asked for by the name of brand name. In their case, More is the brand which they propose to remove from the packages and also no one is going to More Stores to buy only More products. Reputation is attached with brand More and not with the name of the manufacturer. Regarding case of Australian Foods relied by AAR, they stated that Court had limited observations in the matter and there is no need to look into the environment in their case in view of the GST notification. The Advocates confirmed that the Appellant is not raising the issue about point no. 2 i.e. the cases where the goods of stream will be sold by mentioning name of the Appellant as "Marketed by".

27. The departmental representative argued that in view of the judgment in case of M/s Grasim, even name can be treated as brand name. Also, the Appellant never brought on records the facts about their link with the products. He further stated that the branding concept keeps on changing and it cannot be decided based on the past records of the Appellant. He stated that intentions of the Appellant are not free from doubt as they had earlier proposed for the goods being marketed by them (2<sup>nd</sup> question before AAR) and now withdrew the same as their claim of declaring the details on packages as per statutory requirements was not found valid by AAR. Written submissions were also tendered to fortify their say.

### Discussions

28. We have heard both the parties and gone through the written submissions made in the matter. Of the three points raised before the AAR, the Appellant is raising only points no. 1 and 3, thereby dropping the issue of products proposed to be sold under stream 2 i.e. where the goods of third parties were proposed to be marketed by the Appellant. Therefore, the issue before us to decide is :

- (i) Whether mention of name of the Appellant on the goods, as required by FSSAI regulations and Legal Metrology Rules, amounts to brand name or not.
- (ii). Whether use of general words like 'Choice', 'Value' or 'Superior' on the goods to be sold in 'More' Stores would render the said goods as branded or not.





29. The notification no. 02/2017-Central Tax (Rate) dt. 28<sup>th</sup> June 2017 (and corresponding notifications under SGST Acts and IGST Act) is the central point of discussion here, exempting as it does the goods in question from whole of GST with the exclusion of those put up in unit containers and bearing a registered brand name. During the hearing proceedings, the Advocates for the Appellant had drawn our attention to the fact that to discourage the circumvention of the conditions of the notifications by the ploy of deregistering of brand names while continuing to mention the same on goods in order to avail the exemption, the said notification has been subsequently amended by Notfn. No. 28/2017 –Central (Rate) dt. 22<sup>nd</sup> Sept. 2017, resulting in exclusion of the said goods from the exemption available under the said notification if the same are put up in a unit container and-

*(a). bearing a registered brand name; or*

*(b). bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where act actionable claim or enforceable right in respect of such brand has been foregone voluntarily, subject to the conditions as in the Annexure I].*

It is seen therefore that the said exemption is targeted for reduction in prices of unbranded goods for the purpose of exemption from GST, since branded goods carry value addition which is intended to be taxed.

30. In this context, let us look into the issue of what is a brand and whether the impugned goods can be termed as branded as per the proposed packaging strategy of the appellants. The practice of branding is thought to have begun with the ancient Egyptians who were known to have engaged in livestock branding as early as 2700 BCE. Branding was used to differentiate one person's cattle from another's by means of a distinctive symbol burned into the animal's skin with a hot branding iron. If a person stole any of the cattle, anyone else who saw the symbol could deduce the actual owner. Over time, the practice of branding objects extended to a broader range of packaging and goods offered for sale. In modern times the term has been extended to mean a strategic personality for a product or company, so that 'brand' now suggests the values and promises that a consumer may perceive and buy into. A **brand**, as we understand the term now, is a name, term, design, symbol, or other feature that distinguishes an organization or product from its rivals in the eyes of the customer. Brands are used in business, marketing, and advertising. **Name**





**brands** are sometimes distinguished from generic or store brands. **Branding** is a set of marketing and communication methods that help to distinguish a company or products from competitors, aiming to create a lasting impression in the minds of customers. The key components that form a brand's toolbox include a brand's identity, brand communication (such as by logos and trademarks), brand awareness, brand loyalty, and various branding (brand management) strategies. Many companies believe that there is often little to differentiate between several types of products in the 21st century, and therefore branding is one of a few remaining forms of product differentiation.

31. Coming to how brand name is defined under the said GST notification, we find that the definition of brand name therein includes any name, which may be name of the manufacturer as well, which may be seen as under—

*The phrase "brand name" means brand name or trade name, 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.*

In view of the above, there is no bar on the name of the manufacturer to be a brand name as long as it is used in relation to such specified goods for the purpose of indicating a connection in the course of trade between such specified goods and the person using such name. So, the real test here is the connection between the specified goods on which such a name is being used and the person using such name in the course of trade.

32. In the instant case, the goods in question are being sold under the brand 'More' in exclusive 'More Stores' and also bearing the registered logo of 'Aditya Birla Retail'. Therefore, there are two brand names attached to the said goods at present. Alternatively, the consumers identify these goods by 'More' brands and also as those manufactured by Aditya Birla Group company. The Appellant has admitted that ,





*"the Appellant has over the course of period made concentrated efforts and incurred costs, which inter alia include significant efforts by way of advertising and marketing, to publicize and establish the 'More' brand. It is consequent to such efforts that the customers of the subject goods recognize the brand and identity and ask for the products of the said brand. Customers of the subject goods who enter the 'More' stores to purchase the subject goods, associate the subject goods with the 'More' brand name, and, do not necessarily associate/connect the subject goods with the name of the Appellant"* (Para 16 above).

There is one more logo on the goods which bears 'Aditya Birla Retail', the registered trade mark of the Group company, used by the Appellant under licence agreement. Thus the goods are being identified by consumers/customers by names 'More' and 'Aditya Birla Retail'. As confirmed by the Appellant, huge investment and time is involved in establishing the brands by way of consistent advertising and marketing to register in the minds of consumers/customers. There is accordingly a lot of value attached to such brands which hire some part of Customer's mind to differentiate the goods from rival manufacturers/brands.

33. The Appellant has largely depended on the Apex Court judgment in the case of Tarai Food Ltd. [2006(198) ELT 323(SC)] to claim that the manufacturer's name on packets is not sufficient to classify the same as branded. We would like to reproduce the para 11 of the said judgment to show that facts of the case before us are different from the facts and circumstances of the case before Hon'ble Supreme Court:

*"There is a value attached to the brand name, a value which has been recognized in the tariff entry by providing for levy of excise duty on goods bearing a brand name. It may be that the appellant had deliberately omitted the brand name in selling the 'French Fries' to avail of the nil rate of tariff. This cannot detract from the consequences which would follow in law. If the assessee opts not to take advantage of the brand name in its trade, it could at least have the benefit of the rate of duty applicable to unbranded product."*

The exemption claimed in both the cases is similar but facts are different. Hon'ble Apex Court has ruled that if the assessee opts not to take advantage of the brand name in its trade, it could at least have the benefit of the rate of duty applicable to unbranded product.





34. So the question that begs an answer is whether the Appellant is opting not to take advantage of brand names 'More' and 'Aditya Birla Retail'? Looking into the circumstances and environment surrounding the proposed sale of such goods, it is our view that the answer has to be in the negative, as we shall now proceed to explain. The Appellant has proposed to remove the two trade marks from the present packing of the goods, maintaining the environment of the sale of goods intact, that is to say that the said goods will continue to be sold through exclusive 'More' stores. The style, color and nature of packing will also remain unchanged, which is identified by the customers with the 'More' brand. Even the customer-care email address and website address bears the 'More Stores' name, and all billing shall be in the name of 'More Stores'. The sale bills issued to the customers continue bearing the registered trade mark of "MORE", which gives satisfaction to the customer that the said goods, even without showing brand names of 'More' and 'Aditya Birla Retail' on the packages, still enjoy the benefit of the brand 'MORE'. The Appellant has also proposed to retain words 'CHOICE', 'VALUE' or 'SUPERIOR' on some of their goods claiming that same denote the quality of the goods and cannot be registered under Trade Marks Act as these are too generic. But they are clearly choosing to use these words which are already used to display various grades of their products for reflecting quality of the said goods. There are other words in the lexicon as well for indicating quality viz. 'Standard', 'Better' or 'Rich' etc. So they have chosen to continue the use of these words because they are already being used with the brand 'More', as can be seen from the photo of the present packing submitted by the Appellant as Exhibit of their Appeal which reads as 'MORE CHOICE' and 'VALUE'. So the words proposed to be retained on new packing and prominently displayed on it are already associated with the brand 'More' and registered in the minds of the customers who can identify the said goods by these words.

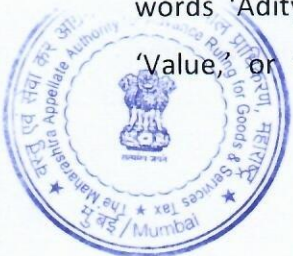
35. Additionally, it is also proposed to continue to the brand name 'Aditya Birla Retail', but without the Group Company Logo, on the package in the form of manufacturer's name. By mentioning the manufacturer's name on the packages, albeit as per statutory requirements, the Appellant is taking advantage of their registered brand, the logo of which they have opted to remove from the said goods. The Appellant has argued that if manufacturer's name on the package, declared as per statutory requirements under FSSAI and or Legal





Metrology Rules, is accepted as brand name then every packaged commodity will be considered as branded. This is not true in every case. Instead, if every reputed manufacturer whose brand name is covered in their name can just remove their brand from the package and avail the exemption of the said notification, no one would be covered under GST. For example, M/s. Patanjali Ayurved Ltd. selling Cow Ghee under the registered brand name 'Patanjali' were to remove the said brand from the package and sell the same under manufacturer's name, this will not render the said goods unbranded, because the customer will identify the said goods with the brand 'Patanjali' due to the mention of name 'Patanjali Ayurved Ltd.' declared on the package as manufacturer's name due to statutory requirement. Merely mention of manufacturer's name on the product as required under different statutes may not necessarily result in consideration of that product as branded. But if the name of manufacturer mentioned on the product, even as per statutory requirements, clearly establishes a link with the manufacturer and the product, then it surely amounts to be a brand name, as brand name includes any name as per explanation provided under the exemption notification. Though there is no laid down criterion in this regard, but the surrounding environment needs to be scrutinized as to whether the name of manufacturer on the product can result in consideration of brand or not, and we have seen in the instant case that the answer is in affirmative.

36. Thus, it is clear that even by removing their brand names 'More' and 'Aditya Birla Retail' from packaging of the said goods, the Appellant still enjoys the advantage attached to the said two brand names and thus the benefit of exemption cannot be extended to them. The mention of name 'Aditya Birla Retail Limited' on the packages, as manufacturer of the said goods clearly indicates the connection between the said goods and Aditya Birla Group in the course of trade as they are already having a registered brand in the name of 'Aditya Birla Retail' which was being displayed on the said goods till now. The customers, by reading the name on the packages as 'Aditya Birla Retail Limited', would be in a position to identify the said goods as belonging to the reputed brand 'Aditya Birla Retail' even in absence of the logo of that brand on the goods. The purpose of Appellant for taking advantage of their reputed brand, even in absence of its logo on the goods, seems to be fulfilled by mention of words 'Aditya Birla Retail Limited'. Additionally, the use of specific words like 'Choice', 'Value', or 'Superior', which were already in use with brand 'More' and reflected on





packages clearly establishes the connection between the store brand 'More' owned by 'Aditya Birla Group' and the said goods. We have demonstrated above that there is direct connection between the said goods and the brand 'More' and the manufacturer Aditya Birla Retail Ltd., thus the use of name of manufacturer on packages can be considered as brand name.

37. Two Court rulings are relied upon to substantiate our say:

(a) Hon'ble Supreme Court's order in the case of Australian Foods India(P) Ltd., **[2013(287) ELT 385(SC)]**, has specifically mentioned that a scrutiny of the surrounding circumstances is not only permissible but necessary to decipher the same. Hon'ble Court has ruled in this case that physical manifestation of brand name on goods is not a compulsory requirement. The scrutiny of surrounding circumstances, as done in above paras, clearly shows that the said goods, even though without affixing brand on them, will be considered as bearing the brand of 'More'. The 'bearing' a brand as mentioned in the said notification and vehemently argued by the Appellant, does not necessarily mean affixing on the unit container/goods. The notification does not provide specifically about the affixing the said brand on the goods itself and Hon'ble Apex Court has ruled, in similar case, that physical manifestation of brand name is not compulsory on goods. A harmonious reading of the notification and Supreme Court judgment makes it clear that the said goods in the instant case are branded even if the registered brand name logos are removed from the same.

(b) Astra Pharmaceuticals (P) Ltd. **[1995(75) ELT 214(SC)]**, has been clarified and distinguished by three member bench of Hon'ble Apex Court in the judgment of M/s Grasim Industries Ltd., **[2005(183) ELT 123(SC)]**, wherein the mention of a name of company on the packaging was considered as branding of those goods. This judgment has been relied by the AAR and we also note that this is relevant in this case even though given in a different context. Hon'ble Court has ruled that " Even an ordinary name or an ordinary mark is sufficient"

38. We now proceed to distinguish other judgments cited by the Appellant, having already referred the judgment of Apex Court in the matter of Tarai Foods Ltd.:





- (a) In case of judgment given by Kolkata Tribunal in the matter of M/s Synotex Industries, **[2012(278) ELT 90(Tri. Kolkata)]**, we observe that the facts of the case are different from the instant case as we have discussed above that inspite of the mention of manufacturer name on packages, the goods are branded in light of the surrounding circumstances and the Appellant has not foregone the advantage of brand 'More' though they have proposed to remove the logo of said brands from the packages.
- (b) The judgment of Hon'ble Supreme Court in the matter of M/s Pepsi Foods Ltd. **[2015(322)E.L.T. A325(S.C.)]**, was based on the judgment of Tarai Foods Ltd., which we have already discussed. The facts and circumstances of the case of M/s Nirula and Company Pvt. Ltd. **[2005 (186) ELT 412(Tri. Delhi)]** are same as of Tarai Foods and Pepsi Foods and hence distinguishable.
- (c) In the case of West Bengal Chemical Industries Ltd. **[2006(200)ELT 68(Tri. Kolkata)]**, the issue was regarding the goods being 'Marketed by' which is not the case here as the Appellant has already withdrawn the question regarding goods to be sold by them as Marketed by them.
- (d) Kalvert Foods India Pvt. Ltd. **[2011(270) ELT 643(SC)]** pertains to the distinction between House Mark and Brand Name and relies on the judgement of Astra Pharmaceuticals and Tarai Foods Ltd., thus distinguishable on facts.
- (e) In case of StangenImmuno Diagnostics, **[2015(318) ELT 585(SC)]**, the issue pertained to the use of brand name of other person. Two persons were using same logo/trademark simultaneously.
- (f) Bhalla Enterprises, **[2004(173) ELT 225(SC)]**, -- same brand name used by different persons.
- (g) Jaya Stores, **[2010(251)ELT 145(Tri. Bang.)]**—In this case, no brand existed at any pint of time whereas in the instant case there exists a registered brand name 'More' which appellant proposes to remove from packages without altering the environment.
- (h) In case of Rajdoot Paints Ltd., **[2001(138) ELT 281 ( Tri- Delhi)]**, the issue pertained to the distinction between 'House Mark' and 'Trade Mark'.
- (i) Commissioner of Central Excise, Pudducherry, **[2015(318)ELT 238(Mad.)]**—The issue does not state anything about the environment kept intact to take advantage of the





earlier brand being used on the goods as is being done by the Appellant in the instant case.

39. The other judgments cited by the Appellant pertain to the interpretation of the Statue. Here, the issue of interpretation is the exemption notification and we are strictly following what is prescribed under the said notification regarding the brand name. We are not inclined to extend the benefit of the said exemption notification to the Appellant by liberal construction of the said notification. In this, we are fortified by following judgments of Hon'ble Supreme Court—

(a) Rajasthan Spg. and Wvg. Mills Ltd. Vs. Collector of C. Ex. Jaipur [1995(77) ELT 474(SC)] --

*"Exemption notification construable strictly - Liberal construction which enlarges the term and scope of the notification not permissible nor extended meaning assignable to exempted item"*

(b) B.P.L. Ltd. Vs. COMMR. Of C. Ex. Cochin- II, [2015 (319) ELT 556(SC)]—

*"Interpretation of statutes - Exemption notifications - They have to be interpreted strictly - It is assesse to prove that he fulfills all conditions of eligibility under such Notifications."*

The above case was affirmed in 2015(324) A 79 (Supreme Court).

40. The two circulars issued by CBEC, now CBIC, relied upon by the Appellant, are not relevant in the matter as one pertains to the deemed manufacture and liability to excise duty only if the brand name is affixed on the goods and other pertains to excise duty on school uniforms, uniforms of private security guards, companies, hotels, airlines etc. bearing the logo of those institutions/organizations. The instant case facts are not covered in any of such situations and there is no explicit requirement under the notification to affix the brand name on the goods itself.

41. In view of the above discussions, we hold that merely by removing their registered brand name logos viz. 'MORE' and 'Aditya Birla Retail' from the packaging of some of their products and keeping the surrounding environment intact to take advantage of the said brands would not render such goods unbranded and the benefits of exemption notification





from GST would not be available to such goods. Also, the use of words like 'CHOICE', 'VALUE' or 'SUPERIOR' on the proposed packing, which are already in use with the brand 'More' on the present packing, would amount to branding of goods as the goods can be identified with the brand 'More' by the use of these words.

Accordingly, we pass the following order:

### **ORDER**

- In respect of point (i) of Prayer to the grounds of Appeal, we do not find any infirmity with the ruling given by Authority for Advance Ruling in this behalf for Question No. 1 posed before them.
- In respect of point (ii) of Prayer to the grounds of Appeal, we hold that the use or words 'VALUE', 'CHOICE' or 'SUPERIOR' on the proposed packing, without altering the surrounding environment to take advantage of brand 'MORE', would be construed as 'brand name' for the purpose of Exemption Notification.

  
(RAJIV JALOTA)  
MEMBER



  
(SUNGITA SHARMA)  
MEMBER

Copy to-

1. The Appellant
2. The AAR, Maharashtra
3. The Pr. Chief Commissioner, CGST and C.Ex., Mumbai
4. The Commissioner of State Tax, Maharashtra
5. The Commissioner CGST, Mumbai(EAST).
6. The Jurisdictional Officer
7. The Web Manager, [WWW.GSTCOUNCIL.GOV.IN](http://WWW.GSTCOUNCIL.GOV.IN)
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