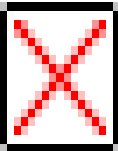


Can leave untouched

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THERE's no area of dispute that is likely to be left untouched by the [GST Act](#) looking at the question whether the GST authority is a competent authority under The Emblems and Names (Prevention of Improper Use) Act, 1950 to object to the name of the registrant approaching for a GST registration?

Neither the GST Authority nor any other similar Authorities of Tax or other regulators, would appear to be recognized as competent Authorities under Sec 3 and Sec 4 of the above Act of 1950, for the purpose of violation of the said provisions of the Act.

The competent Authority to decide upon the doubtful or objectionable nature or otherwise of the name or emblem of a business pending approval for registration before it, is either the Registrar of Companies/Societies and Firms or the Patent Authorities and the like.

In the event of a doubt or objection, it is those Authorities to approach the Ministries concerned of the GOI like the Ministry of Company Affairs, Consumer Affairs, Civil Aviation, Defence etc.

It is upon the consent/decision of the Ministry concerned by issue of a NOC, approval of the name/emblem, etc. pending approval before the above specified Registration Authorities, are further cleared for registration.

In many disputes of emblems/names for alleged violations of Sec 3/Sec 4 *ibid* respectively, it is often witnessed from a catena of Court judgments that it all depends upon the facts from case to case.

The degree of miscarriage of an unintended connection between the name or emblem of the party in case and the Government determines the approval or otherwise of the name or emblem.

A FEW CITATIONS

- 1. AIR 1989 AP 55 - South India Textiles and Ors. Vs. Government of Andhra Pradesh and Or (ALLOWED THE USE OF THE WORD SOUTH INDIA)**
- 2. AIR 2007 Bom 184 - Goenkarancho Ekvot', a Society registered under the Societies Registration Act, through its President, Ms. Suman Kurade Vs. Union of India (UOI), through its Secretary, Ministry of Home Affairs and Ors (ALLOWED THE USE OF THE WORD GOA)**
- 3. WP(C) NO.16789/2006 - All India Defence Services Advocates Association Vs Union of India (DISALLOWED THE USE OF THE WORD DEFENCE)**

The relevant sections, containing the Prohibitions under the Act, are reproduced for ready reference.

Section 3 of **the Emblems Act** provides for prohibition of improper use of certain emblems and names.

It states as under:

Prohibition of improper use of certain emblems and names:

Notwithstanding anything contained in any law for the time being in force, no person shall, except in such cases and under such conditions as may be prescribed by the Central Government, use, or continue to use, for the purpose of any trade, business, calling or profession, or in the title of any patent, or in any trade mark or design, any name or emblem specified in the Schedule or any colorable imitation thereof without the previous permission of the Central Government or of such officer of Government as may be authorized in this behalf by the Central Government.

From the bare perusal of above section, it is clear that no person is authorized to use any name or emblem as specified in the Schedule for the purpose of any trade, business, calling or profession, or in the title of any patent, or in trademark, without the **prior permission** of the Central Government or the authorized officer.

Prohibition of registration of certain companies, etc.

4. (1) Notwithstanding anything contained in any law for the time being in force, no competent authority shall,-

(a) register any company, firm or other body of persons which bears any name, or

(b) register a trade mark or design which bears any emblem or name, or

(c) grant a patent in respect of an invention which bears a title containing any emblem or name, the use of such name or emblem is in contravention of section 3.

(2) If any question arises before a competent authority whether any emblem is an emblem specified in the Schedule or a colourable imitation thereof, the competent authority may refer the question to the Central Government, and the decision of the Central Government thereon shall be final.

The following are the Guidelines of the GOI, in this regard;

GENERAL GUIDELINES

The name will attract the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950 under item 7 of Schedule, if:

(1) it is identical with the name of any society/corporation or local body which has been set up by the Government of India or State Government under any law for the time being in force.

(2) it gives the impression of the patronage of Central Government or State Government. For example, Indian Council of Agricultural Research (ICAR) is a registered body under the Ministry of Agriculture and Cooperation. Any name beginning with the words “Indian Council of” may mislead the public that it is patronized by the Government.

(3) it too nearly resembles a name of body corporation or local authority set up by Government under any law for the time being in force. For example, “Indian Institute of Mass communication” is an autonomous body under Ministry of Communication.

Names like Institute of Mass Communication may give the impression that the said society is also patronized by the Central Government. Here it should be kept in view whether any other body carrying same kind of activities with similar name is in existence.

(4) it connotes Government's participation or patronage unless circumstances justify it. Certain words in a name may give the impression of Government's patronage. Such words are “National, National Institute of, - National Council of, University, Indian Institute of, Indian Council of, etc. This list is illustrative and not exhaustive.

It is important to note that even though the guidelines do not specifically use the word "India" or "Indian", still the use of words "India" or "Indian" would require prior permission from the Central Government or the authorized officer taking into account the object of the Emblems Act and active enforcement of the same by the authorities.

From a combined reading of Section 3 and Section 4 of the Emblems Act, it can be adduced that any company, firm or other body of persons bearing a name which is specified in the Schedule cannot be registered without prior permission of the Central Government or the authorized officer.

It is also important to point out that in the above judgment cited, the Respondent, i.e., Ministry of Food and Consumer Affairs, Government of India, has also taken a stand that any name containing the words "All India" cannot be registered.

Under section 3 of the Act, no person can commercially use any government trademark or design, name, emblem, official seal or pictorial representation or any colourable imitation of the same, without Centre's previous permission. The law is applicable to Indian citizens living abroad too.

DETERRENCE FOR VIOLATIONS UNDER THE ACT

The law in the present form is ineffective. "Even if someone is caught, he or she pays a fine of Rs.500 and gets away without any punishment. The law is hardly a deterrent as instances of people flouting it more than once have come forward," a government officer said on condition of anonymity.

Netizens may remember the hullabaloo over the advertisement carried by Paytm on 9th November 2016 welcoming the demonetization decision.

Interestingly, as far back as 1975, the law was challenged on the grounds that it restricts commerce. The Supreme Court at that time upheld the law and said the restrictions were reasonable and did not interfere with the right to practice any profession.

The government has proposed increasing the fine for illegal and improper use of national emblems for commercial gains from Rs.500 to Rs.one lakh - the suggested change also includes jail time and a fine of Rs.5 lakh for repeat offenders - in an attempt to crack down on their misuse. The above proposal is yet to be enacted is a great concern to many.

The Emblems and Names (Prevention of Improper Use) Act, 1950, restricts the use of the national flag, the coat-of-arms used by a government department, the official seal of the President or Governor, the pictorial representation of Mahatma Gandhi and the Prime Minister, and the Ashoka Chakra.

However, the punishment would still look way too less and absolutely inadequate.

The other change being considered is that in case there is a prosecution, the onus to prove that the alleged contravention or alteration was lawfully authorized shall be on the violator. ***Right now, that onus is on the state.***

All said and done, the [GST Act](#)

would appear to lack both Jurisdiction and the powers to question the appropriateness of name or emblem of an entity seeking registration as the same might appear objectionable in light of the Emblems and Names (Prevention of Improper Use) Act, 1950.

The Appropriate Authority to resolve it or to be impleaded in a dispute would be the Ministry concerned which is ultimately responsible for clearing the emblem or name of an application.

It does not appear to be the Finance Ministry under any of these circumstances tasked with the function in a case of this nature as could be seen from the GST legislation.

It is the respective referral Ministry of the GOI, tasked with the Registration of Companies, Societies or firms and the like that has to raise the objection and would not be the GST Authorities, in any case, is the humble view of the Author.

Perhaps the CBIC can advise the field formations in this regard, particularly in the desert regions!

[The Author is a former Assistant Commissioner of GST, Chennai and a CBIC Master Trainer, GST and currently a Senior Associate, Indirect & Corporate Taxes, at a Chennai-based Law Firm, RANK Associates. The views of the Author are purely personal.]

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