

Osma Electronics Vs. Collector of Central Excise

Osma Electronics Vs. Collector of Central Excise

SooperKanoon Citation : sooperkanoon.com/14887

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-24-1998

Reported in : (1999)LC215Tri(Delhi)

Appellant : Osma Electronics

Respondent : Collector of Central Excise

Judgement :

The appellant herein is a manufacturer of Radio Cassette Recorder.

For the purpose of manufacturing the same, it imports certain parts from abroad namely 'dial' which carries a brand name "Sony". That part is used in the assembly of the radio cassette recorder manufactured by the appellant. The appellant submits that it tried to remove the brand name 'Sony' but it could not be done without damaging the dial. Accordingly, it pasted a sticker on the same before selling the radio cassette recorder in their own brand name that is 'Osama'. Controversy has arisen whether the appellants would be hit by mischief of Para 7 of Notification No. 175/86-C.E. Revenue contends that the radio cassette recorders have been sold under the brand name of 'Sony'. It is admittedly the brand name of another person not eligible for the benefit of the said notification inasmuch as the sticker pasted by the appellants before sale of the radio cassette recorder could be easily peeled of.

2. Learned Advocate Shri Naveen Mallick's contention is that the brand name "Sony" has not been affixed by the appellants themselves. The brand name was

already affixed on the part when the imported part was received by the appellant. Therefore, the appellant is not hit by mischief of relevant para of the said notification as held in the case of Trimurti Weldmesh reported in 1993 (64) E.L.T. 419. He further submits the Revenue's appeal against the aforesaid judgment before the Apex Court has also been dismissed as reported in 1996 (82) E.L.T.A168. In view of the foregoing position, learned Advocate submits that appeal be allowed with consequential relief to the appellants.

3. Opposing the contention, learned JDR Shri R.D. Negi, on the other hand has relied on the judgment of Tribunal reported in 1998 (79) ECR 201 in the case of Avery India Ltd. and 1991 (54) E.L.T. 153 (Tribunal) in the case of Wood Glamour v. CCE.4. We have considered the submissions of both the sides. The judgment of Tribunal in the case of Avery India Ltd. is not confined to only Notification 175/86, but also considers the effect of Notification 1/93-C.E. wherein the expression "affixes the brand name" in relation to a manufacturer has been replaced by the expression "bearing the brand name" in relation to the goods. Therefore, the concept of "affixing the brand name" by the manufacturer himself has been done away with in Notification 1/93. In the present case, we are not concerned with Notification 1 /93-C.E.5. At this stage learned Advocate Shri Naveen Mallick points out that the quotation from the Supreme Court judgment in Avery India Ltd. on which reliance has been placed by the learned SDR supports him. He relies on the following observation of the Apex Court.

"The object underlying Para 7 is self evident. If a small manufacturer who affixes the brand name or trade name of an ineligible manufacturer (a convenient expression to denote a manufacturer out side the purview of Notification No. 175/86 and who owns or entitled to use a brand name or trade name), the very raison d'etre for granting the exemption disappears and emphasize the words should affixes the brand name or trade name....

6. We are therefore, of the view that the judgments relied upon by the learned SDR Shri R.D. Negi for the Revenue does not advance the case of Revenue whereas on the other hand, the judgment of the Tribunal in the case of Trimurti (supra) is directly on the above issue and Revenue's appeal has already been

dismissed by the Apex Court. We are, therefore, of the view that this matter is covered in favour of the assessee by the aforesaid decision of the Tribunal.

7. Another distinguishing feature in the present case is that the 'goods' carry the appellant's own brand name 'Osama'. 'Sony' appearing on the dial of the radio cassette recorder is incidental to the use of the said imported part and the Radio Cassette Recorder as such cannot be considered to have the trade name 'Sony' affixed on it in the face of the other brand name 'Osama' on it. The goods in question cannot be said have been identified with the radio cassette recorder affixed with brand name 'Sony', as held by the Apex Court in Paliwal Electricals - [1996 (83) E.L.T. 241 (S.C.)].

8. Hence, we set aside the impugned order and allow the appeal with the consequential relief to the appellant.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com