

Deep Tools (P) Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-29-2000

Reported in : (2001)(134)ELT141TriDel

Appellant : Deep Tools (P) Ltd.

Respondent : Collector of Central Excise

Judgement :

1. In this case, the adjudicating authority whose order is in challenge, has held that the appellants herein were not eligible to claim exemption under Notification 175/86 since they were clearing hand tools affixed with the brand name "Deeps" belonging to M/s. Raj and Sandeeps (P) Ltd., who were not eligible to the benefit of SSI exemption. On the above basis, he has confirmed a duty demand of Rs. 3,93,750/- under Rule 9(2) of the Central Excise Rules read with proviso to Section 11A(1) of the Central Excise Act, 1944 and has also imposed a penalty of Rs. 75,000/- on the appellants.

2. We have carefully considered the rival submissions and perused the records.

3. The appellants had entered into an agreement on 9-3-1990 with M/s.

Raj and Sandeeps (P) Ltd., Ludhiana for purchase of plant and machinery required for manufacturing open-end and ring spanners, etc. There is no agreement for transfer of ownership of brand name "DEEPS" from M/s. Raj and Sandeeps (P) Ltd., to Deeps Tools. The contention of the learned Counsel that the

appellants purchased the entire plant and machinery including embossing machine (for embossing of brand name) and, therefore, they should be considered as having purchased the brand name and having become the owner thereof, is not tenable in the absence of agreement for transfer of brand name. There is no deed of assignment of brand name from the brand name owner to the appellants. The appellants' contention that they are paying royalty to M/s. Raj and Sandeeps (P) Ltd., for use of brand name is not substantiated by any documentary proof and even assuming that the appellants were paying royalty to the brand name owner, payment of royalty does not confer ownership of the brand name on the appellants. In other words, the question of payment of royalty for use of brand name will arise only when the brand name belonged to another person and if M/s. Deeps Tools become the owners of the brand name, there would have been no requirement for them to pay any royalty to M/s. Raj and Sandeeps (P) Ltd. In these circumstances, we hold that the bar contained in para 7 of the Notification No. 175/86 operates against the appellants and that they are not eligible to exemption under the above mentioned Notification. We, therefore, agree with the adjudicating authority that the appellants are liable to pay duty and that penalty is also warranted for contravention of the rules.

The appellants do not contest the applicability of the extended period of limitation.

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