

**Setech Electronics Ltd. Vs. Collector of Central Excise**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** May-03-2000

**Reported in :** (2000)(119)ELT577TriDel

**Appellant :** Setech Electronics Ltd.

**Respondent :** Collector of Central Excise

**Judgement :**

1. At the outset, learned Counsel, Ms. Reena Khair seeks leave to withdraw appeal No. E/1582/95-B. Leave granted - appeal is dismissed as withdrawn.

In this case, a duty demand of Rs. 8,47,382.90 has been confirmed on duty paid loudspeakers purchased by the appellants and mounted on wooden/plastic cabinets, holding them to be classifiable under Chapter Heading 85.18 of the Schedule to the CETA 1985, while the assessee's contention is that fitting of duty paid loudspeakers in cabinet does not result any new commercial commodity and, therefore, no duty liability is attracted.

3. The appellants filed a classification list No. 81/93, dated 13-5-1993 claiming that speakers falling under Sub-heading 8518 are purchased on payment of duty and simply fitted inside plastic/wooden cabinet. After fitting, the product is again a speaker. Since no new commodity is coming into existence, the loudspeakers mounted in enclosure would not be dutiable. Vide Memorandum No.6/VC/Final/93/4849-50, dated 30-9-1993, this classification list was approved. (The same memorandum also stated that CL No. 147/92, dated 14-5-1992, and

151/92, dated 20-5-1992, which were provisionally approved earlier, are also finalised). A show cause notice dated 16-11-1994 was issued by the Assistant Collector alleging that the process of mounting duty paid speakers in plastic/wooden enclosure amounts to manufacture of goods falling under Heading 85.18 and raising a duty demand for the period 13-5-1993 to February, 1994. We agree with the learned Counsel for the appellants that the demand is clearly barred by limitation and that the time limit of 1 year laid down in Section 35E(8) for the purpose of review by the Commissioner is not applicable for issue of demand under Section 11A and proceedings initiated under Section 35E cannot extend the time limit for issue of demand under Section 11A. Since the show cause notice has been issued beyond a period of six months and the proviso to Section 11A of the Central Excise Act has not been invoked, we hold that the entire demand is barred by limitation and hence, set aside the impugned order and allow this appeal on this ground alone, without going into the merits of the case.

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