

**Commissioner of Central Excise Vs. Startron Video P. Ltd.**

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

**Decided On :** May-22-2000

**Reported in :** (2000)(120)ELT177TriDel

**Appellant :** Commissioner of Central Excise

**Respondent :** Startron Video P. Ltd.

**Judgement :**

1. This appeal has been filed by the Revenue against the order-in-appeal dated 4-7-1995 vide which Commissioner (Appeals) had reversed the order-in-original dated 12-9-1993 passed by the Assistant Collector disallowing the benefit of exemption Notification No.175/86-C.E., dated 1-3-1986 to the respondents.

3. The respondents are engaged in the manufacture of two-in-one, car cassette players under the brand name 'Bush' and under their own name 'Star & Pioneer'. They filed two classification lists bearing Nos. 27 effective from 1-4-1991 and 29 effective from 25-7-1992 claiming full rate of duty on the branded goods and benefit of the Modvat credit on the inputs to be used in such branded goods and also full exemption up to the aggregate value of clearances of Rs. 20 lakhs simultaneously in respect of the goods manufactured under their own named. They were issued show cause notice dated 5-8-1992 by the Assistant Collector requiring them to show cause as to why the benefit of exemption Notification No. 175/86-C.E., dated 1-3-1986 be not denied to them in respect of goods manufactured under their own brand name and their classification lists be not approved finally accordingly. They contested the correctness of that show cause

notice by pleading that they were entitled to the Modvat credit in respect of the inputs used in the branded goods and were also entitled to the benefit of Notification No. 175/86-C.E., dated 1-3-1986 in respect of the goods manufactured by them under their own brand name simultaneously for want of any legal bar to that effect under any law or in the said notification itself. The Assistant Collector, however, did not accept their version and denied them the benefit of the Notification No.175/86-C.E., dated 1-3-1986 in respect of the goods manufactured and cleared by them under their own brand name mainly on the ground that they had availed the Modvat credit in one of their products.

4. The respondents challenged the order-in-original dated 12-9-1993 of the Assistant Collector by filing appeal before the Commissioner (Appeals) who through the impugned order reversed the same.

6. None has come present on behalf of the respondents. Notice for today's hearing was sent to them on 5-4-2000 but there is no response from them. The matter being old, we proceed to decide the same after hearing Shri Satnam Singh, SDR.6. The facts are not much in dispute. The respondents are engaged in the manufacture of branded goods under the brand name of 'Bush' and non-branded goods i.e. goods under their own name 'Star & Pioneer'. In respect of the branded goods, they had paid the full rate of duty.

However, they claimed the Modvat credit in respect of the inputs used in the manufacture of such goods. Regarding the non-branded goods, that is, the goods manufactured under their own brand name, they had claimed the benefit of exemption Notification No. 175/86-C.E. on the ground that they are registered as SSI units and had not crossed the stipulated limit as prescribed by that notification.

7. The learned SDR has not been able to assail the validity of the order of the Collector (Appeals) allowing the benefit of the exemption Notification No. 175/86-C.E. to the respondents on the ground that the wording of the notification is quite clear and leaves no doubt in one's mind that the benefit of this notification can be availed by the respondents as they had crossed the stipulated limit in their non-branded goods. The availment of Modvat credit by them in respect of the inputs used in the manufacture of " branded goods, did not debar them from availing the

benefit of this notification as they had paid full rate of duty in respect of those goods. Therefore, the benefit of Modvat credit as well of the Notification No. 175/86-C.E., dated 1-3-1986 could be side by side claimed by the respondents. The notification does not in any manner debar any assessee/manufacturer from claiming exemption benefit as an SSI unit on the ground that he had already claimed Modvat benefit in respect of the branded goods.

Therefore, the view taken up by the Commissioner (Appeals) for allowing the benefit of the exemption Notification No. 175/86-C.E., dated 1-3-1986, is perfectly valid and does not suffer from any legal infirmity so as to call for any interference in the appeal.

8. Resultantly, there is no merit in the appeal of the Revenue and the same is ordered to be dismissed.

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