

**Commissioner of C. Ex. Vs. Control Tech Electronics**

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

**Decided On :** May-26-2000

**Reported in :** (2000)(120)ELT369TriDel

**Appellant :** Commissioner of C. Ex.

**Respondent :** Control Tech Electronics

**Judgement :**

1. This appeal has been filed by the Revenue against the impugned order dated 28-2-1994 passed by the Collector (Appeals) vide which he had reversed the order in original dated 15-6-1993 of the Assistant Collector who denied the benefit of exemption Notification No.175/86-C.E., dated 1-3-1986 to the respondents and confirmed the duty demand on them besides imposing penalty of Rs. 25,000/-.

2. The facts giving rise to this appeal may briefly be stated as under :- 3. The respondents are engaged in the manufacture of membrane switches as per the drawings and specifications given to them by their customers. They filed classification lists claiming benefit of exemption Notification No. 175/86-C.E. as SSI unit. Their classification lists were approved by the Assistant Collector but they were issued show cause notice by the jurisdictional Superintendent of Central Excise that they were not entitled to the benefit of the exemption notification as they were manufacturing and clearing membrane switches under the brand name/trade name of their customers. They were called upon to pay the differential duty of Rs. 2,43,607/-. That show cause notice was later on confirmed by the Assistant Collector through the order in original dated 15-6-1993. They, however,

challenged that order of the Assistant Collector in appeal and the Collector (Appeals) set aside the same and allowed the benefit of exemption Notification No. 175/86-C.E. by following the decision of the Tribunal in Ravi Metalloids v. CCE, 1993 (63) E.L.T. 926 (Tribunal), through the impugned order.

15. Feeling dissatisfied with this impugned order of the Collector (Appeals) the Revenue has come up in appeal before the Tribunal.

6. The learned JDR has assailed the validity of the impugned order on the ground that it runs contrary to the ratio of the law laid down by the Larger Bench of the Tribunal in Namtech Systems Ltd., 2000 (115) E.L.T. 238. The respondents had manufactured and cleared the product, membrane switches under the brand name of their customers who were not entitled to the benefit of Notification No. 175/86-C.E., dated 1-3-1986 and as such they could not claim the benefit of this notification. But the Collector (Appeals) has wrongly allowed them the benefit.

7. On the other hand, the learned counsel for the respondents while refuting this contention of the JDR has argued that the goods had been manufactured and cleared by the respondents as per the drawings and specifications given to them by their customers and that the customers had used those goods as inputs for the manufacture of their final products viz. electrical/electronic machinery and equipment and as such the respondents could not be said to have used the brand name of other person in the manufacture of the goods for having never sold the same in the market so as to deny them benefit of exemption Notification No.175/86-C.E., dated 1-3-1986. In support of his contention, the counsel has placed reliance on Globe Circuits India v. C.C.E., New Delhi, 1999 (109) E.L.T. 493 and Devkinandan & Sons v. C.C.E., Chandigarh, 2000 (115) E.L.T. 67.

9. The facts are not much in dispute. The respondents had manufactured the goods known as 'membrane switches' under the brand name of the other manufacturers who gave them the drawings and specifications also, during the period in question. The raw material for the production of these goods was not supplied to them by those manufacturers. They after manufacturing the goods sold the same to those manufacturers who placed the orders with them and supplied drawings and specifications.

Therefore, they undoubtedly, fall within the definition of a 'manufacturer' as given under Section 2(f) of the Central Excise Act.

They have obviously manufactured and sold the goods (membrane switches) under the brand name of other manufacturers/persons and there is nothing on the record to suggest that those manufacturers/persons were eligible to the benefit of Notification No. 175/86-C.E.10. The plea of the respondents is that the goods manufactured and sold by them to the other persons/manufacturers were not further sold by those persons/manufacturers in the market but were utilized captively in the production of their final products, electronic/electrical machinery and equipment and as such the benefit of exemption Notification No. 175/86-C.E. could not be denied to them. Their this plea had been, no doubt accepted by the Collector (Appeals) while reversing the order in original of the Assistant Collector. But in our view, their plea cannot be legally subscribed and the acceptance of the same by the Collector (Appeals) is erroneous. The bare perusal of para 7 of the Notification No. 175/86-C.E. leaves no doubt in one's mind that the benefit of this notification would not be available to a manufacturer of the specified goods, if those are affixed with the brand name/trade name of another person who was not eligible to the benefit of the notification. This very view has been expressed by the Larger Bench of the Tribunal in *Namech Systems Ltd. v. C.C.E.*, (supra).

It is not the requirement of Notification No. 175/86-C.E., dated 1-3-1986 that the goods manufactured under the brand name of another ineligible person must have been sold in the market by the manufacturer himself or by another person at whose instance the same had been manufactured, in order to deny its benefit to him. It is enough for denying the benefit of this notification to the manufacturer, when he had manufactured the goods under the brand name of another ineligible person and sold the same to another trader or a manufacturer. It is not essential that the said trader or manufacturer to whom the goods had been sold must have been further disposed of the same in the market as such. Even if those goods had been used by him captively in the manufacture of his final product, and not sold in the open market, that would not be of any help to the manufacturer who manufactured those goods, for claiming the benefit of Notification No. 175/86-C.E. on the plea that those goods were never sold by him or by the trader/manufacturer

to whom he supplied. The plain reading of this notification leaves no doubt in one's mind that the specified goods manufactured under the brand name of another person who was not entitled to its benefit, the manufacturer of those goods will not be entitled to the benefit of this notification. Contrary view taken by the Collector (Appeals) in the impugned order while allowing the benefit of this exemption notification, to the appellants, must be held to be erroneous and opposed the ratio of the law laid down by the Larger Bench in Namtech Systems Ltd., (supra). Similarly, the law to the contrary in Globe Circuit India and Devkinandan & Sons, (supra) referred by the counsel for the respondents, cannot be relied upon as the same does not hold the field after the decision of the Larger Bench of the Tribunal in Namtech Systems Ltd., (supra).

11. In view of the discussion made above, the impugned order of the Collector (Appeals) is set aside and that of the order in original of the Assistant Collector is restored. The appeal of the Revenue accordingly stands accepted.

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