

Commr. of C. Ex. Vs. Ganga Electronics

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-09-2000

Reported in : (2001)(133)ELT757TriDel

Appellant : Commr. of C. Ex.

Respondent : Ganga Electronics

Judgement :

1. In this appeal filed by the Revenue the issue involved is whether exemption under Notification No. 175/86 is available to the respondents, M/s. Ganga Electronics.

2. Dr. R. Baboo, learned DR, submitted that the respondents were manufacturing car cassette player affixed with brand name 'GANGA TKR' and the Asstt. Commissioner disallowed them the exemption under Notification No. 175/86 in terms of para 7 of Notification No. 175/86; that on appeal the Commissioner (Appeals) set aside the adjudication order holding that the Asstt. Commissioner did not mention in the adjudication order as to who owns the brand name GANGA TKR or TKR. The learned DR further mentioned that brand name TKR is a popular and universally recognised brand name owned by M/s. Clarian Company of Japan and as such using words 'TKR' along with 'Ganga' creates an association of product manufactured by the respondents with brand name TKR. Finally he relied upon the decision of the Tribunal in the case of Namtech System v. CCE, Bangalore, 2000 (36) RLT 35 (CEGAT).

3. On the other hand Shri K.S. Agarwal, representative of the respondents, submitted that 'Ganga TKR' is their own brand name and as such para 7 of the notification will not be attracted. He also submitted that the classification list filed by them for the relevant period had been approved by allowing the exemption under Notification No. 175/86 and RT-12 Returns have also been assessed and as such no duty can be demanded from them.

4. We have considered the submissions of both the sides. We observe that the Revenue, in memorandum of appeal, have clearly averred that brand name TKR is owned by a foreign company M/s. Clarian Company Ltd. This has not been rebutted by the respondents. No doubt, the respondents are using brand name 'GANGA TKR' but use of word TKR along with their own name will amount to use of brand name of another person who is not eligible for benefit of Notification No. 175/86. Larger Bench of the Tribunal has held in the case of Namtech System (supra) that if a manufacturer affixes his goods with brand name or trade name of foreign person or non-manufacturing trader, he will not be eligible for SSI exemption under Notification No. 175/86. Further, Section 110 of the Finance Act, 2000 provides that any notice made on any person under the provisions of Section 11A of the Central Excise Act demanding duty shall be deemed to be for all purposes validly and effectively issued notwithstanding any approval, acceptance or assessment by any Central Excise Officer, during the period from 17-11-80 to the date on which the Finance Act, 2000 received assent of the President. In view of these provisions the demand for Central Excise duty can be validly made even after approval of the classification list and assessment of RT-12 Returns. Accordingly, the Respondents are not eligible for the exemption under Notification No. 175/86 as they were affixing their excisable goods with brand name of an ineligible person and the differential duty as confirmed by the Asstt. Commissioner is payable by them. Accordingly the appeal filed by the Revenue is allowed.