

**Commissioner of Central Excise Vs. Switch N Control Gears**

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

**Decided On :** Jul-10-2000

**Reported in :** (2001)(130)ELT477Tri(Mum.)bai

**Appellant :** Commissioner of Central Excise

**Respondent :** Switch N Control Gears

**Judgement :**

1. The respondent to this appeal was registered with the proper authority of the State Government as a small-scale industries on a provisional basis and the registration will be renewed on provisional basis. The last renewal was valid up to 4-6-1993 (sic). In the classification list filed on 1-4-1993, the respondent sought, and was granted the benefit of Notification 1/93. It availed of the benefit for the financial year 1993-94.

2. Notice was issued to it proposing to disallow the benefit of the notification on the ground that the small-scale registration was not renewed after 6-4-1993 and therefore did not satisfy the condition in the notification that it must be shown registered after this date. The Assistant Collector, after considering the cause shown and hearing the assessee, denied the benefit of the notification and approved the classification list without such benefit. The result was that while the assessee was entitled to clearance in terms of the notification for the value of first Rs. 30.00 lacs for which approval is not required it was denied the benefit of the notification for the clearances later.

3. The assessee appealed this order to the Commissioner (Appeals). That authority in its order which is impugned in this appeal, has held that on the date of which the classification list was finalised, the assessee had a valid small-scale registration and accordingly the benefit of the notification cannot be denied.

4. The departmental representative emphasises the ground in the appeal that the notification for the entire financial year and therefore throughout this period the assessee must be registered with the small-scale industries.

5. The respondent is absent and unrepresented and on the last occasion had requested the decision on merits.

6. The notification is a continuing notification valid for clearance from 1-4-1993 to 31-3-1994. One of the conditions of the notification, where clearances of Rs. 30.00 lacs are involved that the factory must be registered as small-scale undertaking. Except for the first six days of the financial year, the respondent was not so registered. Therefore, the fact that on the date on which it filed the classification list which was registered it will not automatically be entitled to the benefit of the notification. It is significant that on the date on which the classification list came up for approval, it was not registered. In any event, the benefit would be available to the unit which is registered as small-scale undertaking throughout the period when the notification is claimed. The benefit of the notification and the conditions run concurrently with the benefit.

7. The denial by the Assistant Collector of the benefit for the period beyond 6-4-1993 therefore correct. We therefore allow the appeal, set aside the Collector (Appeals) order and restore the Assistant Collector's order.

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