

**Wavetronics Vs. Collector of Central Excise**

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

**Decided On :** Jul-12-2000

**Reported in :** (2000)(71)ECC125

**Appellant :** Wavetronics

**Respondent :** Collector of Central Excise

**Judgement :**

1. The issued involved in this appeal is whether the two-in-one manufactured by M/s. Wavetronics are eligible for exemption under Notification No. 175/86-C.E., dated 1-3-1986.
2. When the matter was called Shri Sanjeeve Kumar sought adjournment without giving any valid reasons. As the appeal pertains to the year 1991 and the matter is coining on board since August, 1999 and being adjourned on the request of the Advocate and as no proper reason has been advanced for seeking adjournment, we refuse the request for adjournment and take up the appeal for disposal after hearing the learned D.R. and perusing the records.
3. The Appellants have mentioned, in their memorandum of appeal, that they are a registered small scale unit, manufacturing two-in-one which are cleared by them by putting a fancy model No. 'National RXC40F'; that Assistant Collector, under Adjudication order dated 2-7-1989, denied them the exemption under Notification No. 175/86-C.E., holding that the brand 'National' was world famous brand of a foreign concern which was not eligible for SSI benefits and as such mischief of

para 7 of the Notification was attracted; that on appeal, Collector (Appeals) also, under the impugned order dated 14-2-1991, rejected their appeal, holding that as per para 7 of the Notification, the exemption shall not apply to the goods affixed with a brand name of another person who is not eligible for grant of exemption; that this para does not restrict itself to any manufacture in India; that 'National' is an acknowledged and well known name in respect of the goods manufactured by the Appellants; that the Assistant Collector was considering the approval of classification list effective from 24-11-1988 which was a fresh proceeding; that demand of excise duty for the period 1-1-1989 to 30-6-1989 demanded under show cause notice dated 21-7-1989 is not time barred as the relevant date for computing the time limit is the date of filing of R.T.-12 return for the particular month and in respect of January, 1989, the return should have been filed by 5-2-1989. The Appellants have submitted that they had not affixed the impugned goods with a brand name of any manufacturer/person/party in India; that the Notification applies to India and the manufacturer in India; that National may be an acknowledged and wellknown name in respect of two- in-one; but the brand name of the Appellant is 'National RX C 40F' and not National; that their classification list dated 28-11-1988 was approved by the Assistant Collector as conveyed by letter dated 5-5-1989 and allowed the benefit of Notification No. 175/86.

3. Countering the submissions made in the memorandum of appeal, Shri A.K. Jain, learned D.R., submitted that the Appellants affixed the impugned goods with brand name 'National' and subsequent words put by them were Model number etc.; that the Assistant Collector is empowered to demand excise duty not levied or short levied by issuing a show cause notice under Section 11A of the Central Excise Act. He finally submitted that the issue whether brand name can be of a foreign unit to attract mischief of para 7 of Notification No. 175/86-C.E. has been settled by the Larger Bench of the Appellate Tribunal in the case of Namtech Systems & Ors. v. CCE, Bangalore & Ors. 2000 (36) RLT 35 (CEGAT).

4. We have considered the submissions of both the sides. It is not in dispute that the Appellants were affixing the two-in-one, manufactured by them, with the brand name 'National RX C 40F'. It is also not rebutted by them that 'National' is the brand name of a foreign company. We do not find any substance in their

submissions that the brand name affixed by them was not National but something more than National. The learned D.R. has explained that the additional words used by them may indicate Model, etc. The use of brand name 'National' itself is sufficient to attract the mischief of para 7 of Notification No. 175/86 which provides that "The exemption contained in this Notification shall not apply to the specified goods where a manufacturer affixes the specified goods with a brand name or trade name (registered or not) of another person who is not eligible for the grant of exemption under this notification. "Further, Explanation VIII to Notification mentions that "Brand Name" shall mean a brand name that is to say a name or a mark such as symbol, monogram, label, signature or invented word or writing which is used in relation to goods for the purpose of indicating, or so as to indicate a connection in the course of trade between the goods and some person using such name or mark with or without the identity of that person. The use of word 'National' does indicate a such connection in the course of trade and as such the benefit of Notification is not available to the Appellants. The Larger Bench of the Tribunal in the case of Namtech Systems, supra, has held that "the benefit of small scale exemption under Notification No.175/86-C.E., dated 1-3-1986 (as amended) and Notification No.1/93-C.E., dated 28-2-1993 (as amended) was not available to the specified goods where the manufacturer affixes the said specified goods with the brand name or trade name of a foreign person and of a non-manufacturing trader." Following the ratio of this decision we reject the appeal filed by the Appellants.

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