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**Commissioner of Central Excise Vs. Ceear Electronics**

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**SooperKanoon Citation** : sooperkanoon.com/18928

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

**Decided On :** Aug-16-2000

**Reported in** : (2000)(122)ELT404TriDel

**Appellant** : Commissioner of Central Excise

**Respondent** : Ceear Electronics

**Judgement** :

1. The issue involved in this appeal filed by the Revenue is whether the Respondents can clear the goods affixed with the brand name of another person on payment of duty and the goods affixed with their own brand name without payment of duty simultaneously.

2. Shri Ashok Kumar, ld. D.R. submitted, that as per the scheme of Notification No. 1/93-C.E., dated 28.02.1993 the assessee is entitled either to avail of exemption of payment of duty on all the goods manufactured or to pay the duty at the concessional rate under the Notification and avail of MODVAT : that in this case the Respondents are clearing some goods without payment of duty and other goods on payment of duty which is not permissible under the Notification. He also mentioned that the duty has been demanded as they were availing of the Modvat credit of the duty paid on the inputs which were used in the manufacture of all the goods whether cleared on payment of duty or without payment of duty.

3. Shri R.P. Singh, Ld. Advocate, submitted that they are not availing of Modvat credit of the duty on the inputs used in the manufacture of excisable goods cleared

without payment of duty; that the goods of fixed with the brand name of other person are not specified goods as the exemption contained in Notification 1/93 is not applicable to such goods. He relied upon the decision in the case of Jaina Detergent P.Ltd. v. CCE, Allahabad, 4. We have considered the submissions of both the sides. The Commissioner (Appeal) has specifically given his findings that in the present matter the Respondents were paying normal rate of duty only on the goods manufactured by them and bearing the brand name of another person which are not covered under Notification No. 1/93 and such goods have different identity from the goods bearing brand name of the Respondents in respect of which exemption from payment of duty is available to them. Neither the Assistant Commissioner in the Adjudication Order nor the Commissioner in the impugned Order have given any findings that the Modvat credit was availed of in respect all the inputs irrespective of their use. As both the goods are different in the sense that goods bearing brand name of another person are not eligible to exemption, the Respondents have to clear them on payment of duty. On the basis of such clearances the Respondents cannot be compelled to clear the goods eligible for exemption also on the payment of duty. Accordingly, the appeal filed by the Revenue is rejected. We, however, would like to make it clear that no Modvat credit will be available to the Respondents on the goods which are used in or in relation to the manufacture of the exempted goods.

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