

**AshwIn Enterprises Vs. Cce**

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

**Decided On :** Nov-17-2000

**Reported in :** (2001)(73)ECC240

**Judge :** R T Lajja, P Bajaj

**Appellant :** AshwIn Enterprises

**Respondent :** Cce

**Judgement :**

1. M/s. Ashwin Enterprises had filed the present application for rectification of mistake (ROM) with reference to the Tribunal's Final Order No. 1153/2000-B dated 17.7.2000. In the ROM application, it has been prayed that the errors in the Final Order as pointed out in para 3 be rectified and appeal be allowed following the West Regional Bench decision dated 18.4.2000. In para 3 of the application, the following points have been made-- (i) The issue involved in the present case, on the basis of which the Hon'ble WRB has allowed the appellant's earlier appeal, was not under consideration in Namtech Systems (supra) at all. Namtech Systems (supra) dealt, basically, with whether, if the brand name affixed belonged to a foreign manufacturer, or to a trader who was not a manufacturer, the job worker who affixed the brand name was thereby disentitled from availing the benefit of Notn. 175/86-CE, or not. The appellant's customers were neither foreign manufacturers, nor mere traders who did not manufacture any goods. As such, Namtech Systems (supra) would not be attracted in the present case at all.

(ii) On the other hand, the actual basis on which the Hon'ble WRB allowed the appellant's earlier appeal, which was identical on facts, did not come up for consideration before this Hon'ble Tribunal in Namtech Systems (supra) at all. This Hon'ble Tribunal had allowed the appellant's appeal on the ground that the goods being cleared by the appellants, being only component, parts, the affixation of the customer's logo thereon would not take the appellant out of the purview of SSI exemption. Reliance, for this purpose, was placed on Circular No. 71/71/94, dated 27.10.94, issued by the Board, in which the Board had clarified that, where the branding were on parts (castings, in that case), which were to later become component parts of other goods, such branding would not defeat the benefit of SSI exemption. To the same effect is the judgment of the Larger Bench of this Hon'ble Tribunal in Prakash Industries v. C.C.E. 2000 (38) RLT 953. It is important to note that this judgment overruled the decision of the earlier Division Bench of this Hon'ble Tribunal in Woods' Glamour case (supra), on which both the lower authorities have placed reliance. Though the reliance of the lower authorities on Woods' Glamour's case (supra) has been noticed by this Hon'ble Tribunal in para 1 of the impugned Final Order, no notice has been taken of the Larger Bench decision in Prakash Industries (supra), which was delivered on 4.5.2000 and certified on 29.5.2000, well before the passing of the impugned Final Order on 17.7.2000. It is also worthwhile to note that the Larger Bench had placed reliance, inter alia, on the decision in C.C.E. v. Bright Engineering Co. 1998 (28) RLT 530, which as (sic) [was] relied on by the Hon'ble WRB while allowing the appellant's earlier.

(iii) That it is relevant to mention that the Larger Bench, in Prakash Industries (supra), placed reliance on the Board's instructions contained in letters F. No. 345/35/87-TRU, dated 29.10.87 and F. No. 213/28/87-CX.6, dated 27.11.87, apart from the Circular No. 71/71/94-CX dated 27.10.94 on which the Hon'ble WRB had placed reliance. All these circulars and instructions clarify that the embossing or affixation of a brand name/logo would not disentitle the job worker from the benefit of SSI exemption where the goods on which such brand name/logo is embossed/affixed are not traded as such but are used in the process of further manufacture.

It is settled law, enunciated by the Hon'ble Supreme Court in, inter alia, Paper Products Ltd. v. C.C.E.2. We have heard Shri C. Hari Shankar, Advocate, for the appellants.

Shri MR Singh, DR, is present for the respondents/Revenue.

3. We have carefully considered the matter. The issue for consideration in the appeal was eligibility of the benefit of small scale exemption under Notification No. 175/86-CE dated 1.3.1986 when the covers of the chokes were affixed with the brand name of ineligible persons, such as, M/s. Bajaj, M/s. Crompton and M/s. Mysore Lamps etc. In the written submissions filed by the counsel, it has been stated that on identical matter, the appeal has been allowed by the Bombay Bench. We find that the Bombay Bench has taken no cognizance of the Larger Bench decision and the matter in the applicants' case vide final order dated 17.7.2000 had been decided after following the above mentioned Larger Bench decision.

5. On going through the written submissions and the points made in the ROM application, we find that no mistake as such has been pointed out but the conclusions drawn and findings recorded have been challenged.

These cannot be made the subject matter of ROM application. In this connection, we may refer to the Larger Bench decision of this Tribunal regarding the scope of ROM in the case of Dfnkar Khindria v. CC, New Delhi .

6. After going through the ROM application and the written submissions, we do not find any merit in this present ROM application and the same is dismissed. Ordered accordingly.

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