

**intertec Vs. Cce**

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

**Decided On :** Nov-23-2000

**Reported in :** (2001)(74)ECC155

**Judge :** A T V.K., P Chacko

**Appellant :** intertec

**Respondent :** Cce

**Judgement :**

1. The common issue involved in all these four appeals filed by M/s.

Intertec is whether the exemption under Notification No. 1/93-C.E., dated 28.2.93 is available to other goods manufactured by them in view of the fact that they had opted to pay Central Excise duty in respect of "Vertical Blinds of Textiles," also 2. Shri G. Shivdas, Ld. Advocate, mentioned that Appellants, a partnership firm, have three factories in which they manufacture aluminium name plates/signage of base metals, vertical blinds of aluminium, aluminium and steel structurals, fabric based vertical blinds, etc., that fabric based vertical blinds are cleared under the brand name of M/s. Interarch Building Products Pvt. Ltd.; that they filed a declaration Under Rule 173B of the Central Excise Rules indicating that they would be clearing the fabric based vertical blinds on payment of full rate of duty without availing of exemption under Notification No. 1/93 but would be availing the benefit of the said Notification in respect of other products; that the Assistant Commissioner disallowed the exemption in respect of all goods on the ground that they had opted out of the said Notification for the fabric based vertical blinds and in terms of Notification No. 1/93, they were liable to pay duty in respect of all specified goods for clearances subsequent to the exercise of option to pay duty; that the Commissioner (Appeals) also, under the impugned Order, rejected their appeal, holding that the evidence on record did not show that the fabric based blinds was a branded goods.

3. The Ld. Advocate submitted that in terms of para 4 of the Notification, the exemption would not apply to the fabric based vertical blinds as these were manufactured and cleared by them with the brand name of M/s. Interarch Building Products Pvt. Ltd. In support he produced copies of two purchase orders which showed the vertical blinds were described as "TRAC/TRAC Luxury Window Covering products. He also submitted that consequently the question of exercising an option to avail or not to avail the benefit of the Notification in respect of branded goods by them does not arise. The Ld. Advocate relied upon the decision in the case of Jaina Detergent P. Ltd. v. CCE, Allahabad 1999 (32) RLT 256 (CEGAT) wherein it was held that the detergent cakes affixed with the brand name of another person are outside the purview of the Notification. He further, submitted that even if it is assumed that the Appellants exercised the option in their classification declaration of paying the duty, it can be an option exercised in respect of the fabric based vertical blinds only and cannot be considered as an option for the other goods as well; that if the manufacturer manufactures more than one specified goods and paying duty by not availing this exemption in respect of one of the product, the clause of the Notification can be made applicable in respect of such product and in respect of other products, he would be eligible to avail the exemption; that in Kamrup Industrial Gases Ltd. v. C.C.E., Allahabad, the Tribunal has held while interpreting the said clause of Notification No. 1/93-C.E. that "Each specified goods has to be

considered separately for the purpose of this clause.

All these specified goods are not to be clubbed together for applying the said non-obstante clause." Finally the Ld. Advocate submitted that the Larger Bench of the Tribunal in the case of Franko Italian Co. Put.

Ltd. v. CCE, Mumbai-II 2000 (40) RLT 295 has held that even in respect of the same goods, simultaneous availment of SSI exemption and Modvat credit is permissible; that in view of this, the demand for differential duty in respect of other products for which exemption has been claimed by them is not correct.

4. Countering the submissions, Shri K.K. Goel, Ld. SDR, submitted that the Appellants have not substantiated their claim that the Vertical blinds were bearing the brand name of another person; that mere mention of the brand name on the purchase Order is no indication that the goods were bearing the brand name of an ineligible person; that both the Adjudicating authority and the lower Appellate Authority had given clear findings that the Appellants were not able to satisfy that the goods were being cleared under the brand name of another person; that this is evident from their classification declaration wherein they had clearly mentioned in respect of Fabric, Vertical blinds 'option of clearance on full rate of duty without availing SSI benefit; that there is no indication anywhere that these goods were cleared under brand name of another person; that on the other hand, the Appellants have clearly mentioned in their classification declaration that "We do not use any brand name of any other person"; that it is thus evident that fabric based vertical blinds were not bearing any brand name and they had exercised their option to pay the excise duty without availing the exemption under Notification No. 1/93-CE; that once they exercise the option of not availing the benefit of exemption, all subsequent clearances of specified goods made after availing option has to be cleared on payment of duty. The expression 'specified goods' means the goods specified in the Annexure to the Notification No. 1/93: that in the said clause specified goods has not been prefixed with the word "the" so as to restrict the application of the provisions of clause only in respect of the goods in respect of which the option of not availing the benefit of exemption was exercised. He finally submitted that the clause in question was not under consideration in Franco Italian case by the Larger Bench of the Tribunal.

5. We have considered the submissions of both the sides. We agree with the Ld. S.D.R. that the Appellants have not adduced any material evidence to prove that the fabric based vertical blinds were removed by them bearing brand name of another person. Their declaration in the classification declaration that they are not using the brand name of another person also goes to show that the defence of 'using brand name' has been taken up by them as an after thought. The Commissioner (Appeals) has given a specific finding in the impugned Order that "the evidence on record viz., the declaration/ Annexure-II filed by the Appellants Under Rule 173B revealed otherwise" and the Appellants have not effectively controverted this findings. In view of this, we hold that the Appellants have not substantiated their claim that vertical blinds were branded goods and consequently the exemption contained in Notification No. 1/93-CE was available to them in respect of these goods also.

6. The following clause was added after Para 4 in Notification No.1/93.

Notwithstanding the exemption contained in Paragraph 1 of this notification, a manufacturer shall have an option for not availing of the benefit of exemption contained in the said paragraph and to pay duty of excise at the rate applicable to the specified goods but for the exemption contained in the said paragraph 1, subject to the condition that such manufacturer shall pay duty at the rate applicable but for aforesaid exemption on all subsequent clearances of specified goods made after availing such option, in a financial year in which such date of option falls.

7. The Appellants have specifically mentioned in their declaration dated 15.5.96 about "option of clearances on full rate of duty without availing SSI benefit". In view of their exercising such an option, the provisions of Clause become applicable to them and accordingly they "shall pay duty at the rate applicable but for aforesaid exemption on all subsequent clearances of specified goods made after availing such option, in a financial year in which such date of option falls." There is nothing in this clause to show that the provisions of this clause

would be applicable only in respect of the product in respect of which the option has been exercised and not to all the goods manufactured by them. This is evident from the language of the Clause itself. Firstly the expression "specified goods" has not been qualified by word "the" which suggests that duty without the benefit of Notification has to be discharged on all the specified goods made after availing such option.

Secondly, the law maker has not used the words 'in respect of which option has been exercised' after the expression "Specified goods".

Thirdly, once an option is exercised of not availing the benefit of exemption notification the manufacturer has to discharge duty at effective rate on the clearance of that particular goods and there was no need to mention that manufacture shall pay duty at the rate applicable.

8. This view expressed by us is at variance with the view taken by the Tribunal in Kamrup Industrial Gases case (one of us, Learned brother Shri PG. Chacko was one of the Member of the Bench). The arguments advanced before us were not before that Bench while interpreting the clause inserted in Notification No. 1/93. The main issue for decision before the Bench in Kamrup Industrial Gases case was whether an assessee can claim exemption in respect of certain products and pay duty in respect of other products and avail of Modvat credit. The said Bench appears to have considered the issue in the light of the decisions on the subject such as Faridabad Tools Pvt. Ltd. .

However, as a coordinate Bench (of which one of us was a Member) has taken a different view, we place this matter before the Hon'ble President for constituting a Larger Bench for referring the following question: If a manufacturer exercises an option for not availing of the benefit of exemption contained in Notification No. 1/93-CE, dated 28.2.93 and to pay duty of excise at the rate applicable to the specified goods, whether he is liable to pay duty at the rate applicable on all subsequent clearances of the specified goods only in respect of which the option is exercised or in respect of clearance of all the specified goods manufactured by him and cleared by him after exercising such option, in a financial year in which such date of option falls.

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