

Control Touch Electronics Vs. Commr. of C. Ex., Pune-i

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-02-2002

Reported in : (2002)(142)ELT649Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Control Touch Electronics

Respondent : Commr. of C. Ex., Pune-i

Judgement :

2. The appeal is against the order of the Commissioner (Appeals) dismissing the appeal before him for failure to deposit the entire duty and penalty demanded from and imposed on the appellant in the order of the Dy. Commissioner.

3. The question before the Dy. Commissioner was whether the membrane switch pads manufactured by the appellant were disqualified for the exemption contained in Notification 1/93 for the reason that the condition contained in paragraph 4 of that notification, that the goods should not bear upon them a brand name of another person was violated.

The appellant made these switches on the order of various persons, who were to use them as components in the electronic equipments they were to manufacture. The switches therefore bore upon them the brand name used by such manufacturers. The Commissioner (Appeals), in demanding full deposit had said that the Tribunal's decision in the appellant's own case was against him reported

in 2000 (120) E.L.T. 369 CCE v.Control Touch Electronics. In that decision the Tribunal had said that the fact that these goods bear upon them the brand name of another person was entitled to exemption disqualified them from the notification. This decision was pronounced on 26-5-2000. However, the same issue was considered by the Larger Bench in Prakash Industries v.CCE -2000 (119) E.L.T. 30. In its order on 22-5-2000, the Larger Bench held that where the manufacturer affixed a brand name of another person in pursuance of an order for supply of goods by that person and the brand name that was affirmed was of the first person for the reason that they were components of the goods, the use of brand name was within the meaning of Explanation VII to the notification. It had relied upon a circular of the Board interpreting that the explanation indicates that the connection between the branded name and the person using the brand name should be "in the course of trade." Therefore the use of the brand name in such a situation would not be in the course of trade. This decision of the Larger Bench is binding and therefore the earlier decision that the Commissioner (Appeals) has relied upon is no longer good law.

4. In these circumstances, we allow the appeal and remand the matter to the Commissioner (Appeals) for deciding the appeal without insisting upon any deposit.

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