

**Jaln Trading Co. and Modi and Modi Vs. Cce**

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

**Decided On :** May-17-2005

**Reported in :** (2006)(193)ELT96Tri(Mum.)bai

**Judge :** A Wadhwa, S T C.

**Appellant :** Jaln Trading Co. and Modi and Modi

**Respondent :** Cce

**Judgement :**

1. Both the appeals are being disposed off by a common order as they are directed towards the same impugned order-in-appeal and involve same facts and issues.

2. Appellants are engaged in the manufacture of valves falling under Chapter 84 of the CETA'85. Apart from manufacturing valves for themselves, they are also manufacturing under the brand name "Prime" which belonged to M/s Prime Industrial Valves Mfg Co. Appellants were availing the benefit of small scale exemption of Rs.30 lakhs.

Department, however, entertained a view that the valves bearing brand name "Prime" which belonged to other manufacturer were not entitled to be cleared under the exemption notification. Accordingly, after due investigations and recording of statements of various persons, proceedings were initiated against the appellants proposing denial of benefit of notification no. 1/93 and 16/97 for the

period 1994-95 to 1997-98 and to confirm demand of duties along with confiscation of seized goods and imposition of personal penalties. Orders were passed in original adjudication and upheld by appellate authority confirming duties and imposing penalties upon both the appellants. The said orders are impugned before us.

3. We have heard Shri N.K. Oza, Ld. Advocate appearing for the appellant and Shri Vimlesh Kumar, Ld. SDR for the Revenue.

4. Undisputed fact on record is that the casting for the valves was being manufactured by other independent foundries as per the design and specification of M/s Prime Industrial Valves Ltd., the owner of the brand name. Brand name was affixed on the patterns by the casting manufacturer which gets embossed on the raw castings bodies of the valves. As such, it is appellants contention that they are not affixing the brand name of any other manufacturer on the valves and simply work in the already embossed castings, in which case, the benefit of the notification cannot be denied to them. For the above submissions, they have relied upon the Board's Circular no. 71/71/94-CE dated 27.10.1994 as also on the Tribunal's decision in the case of Trimurti Weldmesh (P) Ltd. vs. Collector of Central Excise, 1993(64)ELT 419(T), as confirmed by the Supreme Court when the appeal filed by the Revenue was dismissed as reported in 82 ELT A168. Reliance has also been placed upon another decision of the Tribunal in the case of Metal Reconditioning Works Ltd. vs. CCE, 5. In the case of M/s Trimurti Weldmesh (P) LTd., referred supra, an identical situation was for consideration before the Bench and it was held that Brand name already embossed at the forging stage before such forgings are received at the manufacturer's end for further working and the assessee not affixing any brand name on the goods, it cannot be said that they were hit by the exclusion clause of notification no.

175/86 CE. The said decision also stands confirmed by Supreme Court. In the present case also, the appellant's are not affixing the brand name of the main manufacturer, but the same is being affixed at the stage of casting itself which is not being done by the appellant. As such, the ratio of the above decision squarely applies.

6. To the same effect is the Tribunal's decision in the case of Metal Reconditioning Works, 1997(89)ELT 229(Trib) laying down that benefit of SSI exemption is not to be denied where casting already affixed with the brand name of another person are received and the brand name is not being affixed by the appellant.

7. In view of the fact that law on the point is clear, we set aside the impugned orders and allow both the appeals with consequential relief to the appellant.

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