SUPREME COURT OF INDIA

Commissioner of Central Excise, Jamshedpur

Vs.

Superex Industries

C.A.No.1055 of 1999

(S. H. Kapadia, S. N. Variava and Dr. A.R. Lakshmanan JJ.)

03.11.2004

ORDER

1. This Appeal is against the Order of the Customs, Excise and Gold (Control) Appellate Tribunal (in short "CEGAT"), Calcutta dated 21st August, 1998.

2. The Respondents are manufacturers of diesel generating sets. In the process of manufacture of diesel generating sets, they use certain components manufactured by Kirloskar. The diesel generating sets, manufactured by the Respondents, do not bear the name Kirloskar. However, it appears that in the invoices, issued to the purchasers, the generating sets are described as "Kirloskar Generating sets". Merely on this basis it has been held, by the adjudicating authority, that they were not entitled to the benefit of Notification No. 175/86 dated 1st March, 1986. The said Notification reads as follows:-

> "7.The exemption contained in the notification shall not apply to the specified goods where a manufacturer affixes the specified goods with a brand name or trade name (registered or not) of another person who is not eligible for the grant of exemption under this notification. Provided that nothing contained in this paragraph shall be applicable to the specified goods which are component parts of any machinery or equipment or appliances and cleared from a factory for use as original equipment in the manufacture of the said machinery or equipment or appliances and the procedure set out in Chapter X of the said rule is followed."

3. CEGAT has held that the benefit of the Notification would be lost only if the manufacturer affixes the specified goods with a brand name or trade name of the another who is not eligible to the exemption under the notification. It could not be denied that the name Kirloskar is not affixed to the generating sets. CEGAT has held that merely because, in the invoices, the set is passed off as a Kirloskar generating set, the benefit of the Notification would not be lost. We see no infirmity in this reasoning. We, therefore, see no reason to interfere.

4. The Appeal is dismissed. There will be no order as to costs.