

**Ramesh Lal and Sons Vs. Collector of Central Excise**

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

**Decided On :** Dec-10-1996

**Reported in :** (1997)(93)ELT267TriDel

**Appellant :** Ramesh Lal and Sons

**Respondent :** Collector of Central Excise

**Judgement :**

1. In this appeal filed by M/s. Ramesh Lal & Sons (Regd.), Ludhiana, the only issue for our consideration is whether the appellants were obliged to obtain a Central Excise Licence in terms of Rule 174 of the Central Excise Rules, 1944 or they were exempted from the operation of Rule 174 in terms of Notification No. 111/78-C.E., dated 9-5-1978. The Supdt., Technical, Central Excise who adjudicated the matter had held that the appellants were required to file the declaration and were not exempted from the operation of Rule 174 of the Rules. Para 2 from his decision is reproduced below :- "2. I find from the records that the instant offence case against the party was booked for non filing of the declaration as required under notification No. 111/78-C.E. (as amended) to the jurisdictional Central Excise authorities. The Advocate in reply to the show cause notice has contended that they are manufacturer of the sewing machines which are exempt from the operation of the payment of Central Excise duty leviable thereon.

The defence put forth by the Counsel in this regard is not tenable because the party is manufacturing Bag closure Machines, Overlock Machines, Embroidery Machines and parts thereof which are not known as sewing machines in the

market. Therefore, these are not exempt as contended by the Counsel and the party was required to file the declaration as stated in the show cause notice before 15th of April of each financial year. Therefore, the charges framed in the show cause notice are established. I, accordingly, impose personal penalty amounting to Rs. 100/- only (Rs. One Hundred only) under Rule 173Q of the Central Excise Rules, 1944 which should be deposited within one month of the receipt of this order under the head "038-Union Excise duties, fines and penalties" vide TR 6 in the State Bank of India, Ludhiana." 2. On appeal the Collector of Central Excise (Appeals), Chandigarh had held that the bag closure machine, overlock machines and embroidery machines were not covered by the description "sewing machines and parts thereof" in the case of exemption Notification No. 234/82-C.E., dated 10-11-1982 as amended.

3. The matter was heard on 12-12-1996 when Shri Dayasagar Id.consultant stated that sewing machines were exempted under Notification No. 234/82-C.E., and Notification No. 111/78-C.E., dated 9-5-1978 the goods that were exempted from the whole of duty of excise leviable thereon unconditionally were exempted from the operation of Rule 174 of the Rules. The appellants had not filed any declaration and had not applied for licence as their goods were unconditionally exempted from duty. The adjudicating authority has imposed a personal penalty of Rs. 100/- which had been confirmed by the Appellate Authority. It was his contention that there was no malafide and no penalty should have been imposed. In this connection, he referred to the Apex Court decision in the case of Hindustan Steel Ltd. v. State of Orissa - 1978 (2) E.L.T.(J 159) (S.C.) (Excise and Customs Reporter Compilation, AIR 1965 S.C.531 (V-52) in which the Apex Court had held that penalty was the result of a quasi-judicial proceedings and will not ordinarily be imposed unless the party acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of their obligation. He also referred to the Tribunal's decision in the case of Collector of Central Excise, Meerut v. Technochem Engineers -1990 (48) E.L.T. 401 (Tribunal) in which it has been observed that even if an assessee were required or were exempted from having a Central Excise Licence, the failure to take out a licence where there is scope of doubt, does not attract penalty.

4. In reply Shri M. Jayaraman, Id. JDR referred to the order-in-original and the order-in-appeal and submitted that the goods manufactured by the appellants were not unconditionally exempted and a penalty of Rs. 100/- had alone been imposed which in the facts and circumstances of the case was fully justified.

6. The issue before us is whether the imposition of personal penalty of Rs. 100/- was justified. The appellants were engaged in the manufacture of bag closure machines, overlock machines, embroidery machines and parts thereof. During the year 1984-85 the value of clearances of these goods was Rs. 15,96,155.75. They had not filed any declaration or any application for obtaining a requisite licence.

7. Under exemption Notification No. 234/82 sewing machines and parts thereof were exempted from whole of the duty of excise leviable thereon. The Id. Consultant has referred to the clarification issued by the Assistant Collector of Central Excise, Ludhiana that under the new Tariff (1) overlock sewing machines (2) Chain stitch sewing machine (3) flat lock sewing machine and (4) Zig Zag sewing machine were classifiable under heading No. 84.52 of the CETA, 1985. Under Heading No. 84.52 of the new tariff sewing machine other than book sewing machines of heading No. 84.40; furniture bases and covers specially designed for sewing machines; sewing machines needles were covered. We find that description under Notification No. 234/82-C.E. is only "sewing machines and parts thereof." Further, the embroidery machines and bag closure machines are not known in common parlance as sewing machines.

8. The matter was detected on the basis of surprise visit to the factory premises of the appellants on 30-7-1985. They had not obtained any clarification or have not filed any documents to claim that the goods manufactured by them were covered by the exemption. It is seen that they had been specifically asked to file declaration and under their letter dated 15-4-1985 they have taken a stand that they were not required to file any declaration.

9. As it appears that embroidery machines and bag closure machines were not covered by the description "sewing machines" and as it is an admitted position that inspite of asking them to file declaration (refer page 16 of the paper book) no such declaration had been filed, we consider that there is no ground for interference

with the order already passed. The Id. Consultant have also stated that there was no malafide intention on their part and they had a genuine belief that they were not required to obtain any licence or to file any declaration. We find that they were subsequently asked to file declaration but they stated that they should not be permitted to file any declaration. The provisions regarding taking out of the licence are mandatory as they are provided in the Act itself. Any exemption has to be strictly within the framework of the applicable rules and notifications. The requirements of licence during the relevant time was the very basis for levy and collection of excise duty. In the facts and circumstances of the case we confirm the view taken by the Collector of Central Excise (Appeals) and confirm the penalty amount of Rs. 100/- levied and imposed. The appeal is rejected.

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