

**Cc Vs. Universal Cans and Containers**

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**SooperKanoon Citation :** [sooperkanoon.com/14237](http://sooperkanoon.com/14237)

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

**Decided On :** Aug-28-1998

**Reported in :** (1999)(82)LC185Tri(Mum.)bai

**Judge :** J T P.C., S Kang

**Appellant :** Cc

**Respondent :** Universal Cans and Containers

**Judgement :**

1.2. The respondents herein imported certain goods. It was felt by the Revenue that they have paid less' duty than what was due on the goods.

Therefore, it is alleged that a less charge demand notice was issued to the respondents on 9th August, 1982 by Group D of Custom House Bombay.

It is also alleged that reminders were also issued but there was no response from the respondents. Consequently, the demand was confirmed.

1.3. On appeal against the said confirmation of demand by the concerned Assistant Collector the respondents herein succeeded. The Collector (Appeals) has held that from the case records it is seen that a less charge demand was issued by Group D of the Custom House on 9th August, 1982 but he has observed that while the date of issue of the less charge demand was within time, there was no indication that it was served on the respondents before 15th August, 1982. The department did not have any dated acknowledgement showing the receipt of the

less charge demand by the respondents. Further the department has not given the respondents an opportunity of personal hearing and decided the case ex parte. Consequently, the lower appellate authority upholding the violation of the principles of natural justice set aside the confirmation of demand made by the Assistant Collector. Hence this appeal by the Revenue.

2.1. It has now been urged in the memo of appeal that a less charge demand was admittedly issued in time. This has also been recorded by the Collector (Appeals). It is also on record that the respondents were reminded subsequently to pay the less charge demand, sufficient time was granted to them. Only in the absence of response from the respondents the demand was ultimately confirmed for an amount of Rs. 31,915/-. It is urged by the Revenue that the lower appellate authority in the aforesaid facts and circumstances should have decided the case on merits rather than on the basis that the show cause notice has not been served. It is urged that the show cause notice must have been received by the respondents in the normal course of postal delivery. A mere statement by the respondents that they had not received the latter should not have been accepted by the lower appellate authority without verifying the genuineness of the statement.

3.1. Learned JDR, Shri R.S. Sangia, has reiterated the aforesaid pleas taken up in the memo of appeal.

3.2. Opposing the contention, learned advocate Ms. Reena Kher has submitted that even now the Revenue has not submitted any evidence that the less charge demand notice or the show cause notice was at all served on the respondents. It has been very clearly stated by the respondents that no such demand notice has ever been received. She submits that it is the burden of the department to prove that the notice of demand has been served within the stipulated period of six months from the date of payment of duty. Here is the case, she submits, that service of demand notice at all has not been brought on record, leaving apart within the period of six months. She, therefore, submits that the Revenue's contention has no substance and it has not rebutted the ground on which the lower appellate authority has decided against the Revenue. She, therefore, prays for

determining the appeal of the Revenue.

4.1. We have carefully considered the pleas advanced from both sides.

We are indined to agree with the learned advocate Ms. Reena Kher for the respondents. Consequently, we dismiss the appeal of the Revenue.

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