

**Amrit Papers Vs. Commissioner of Central Excise**

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

**Decided On :** Apr-11-2000

**Reported in :** (2001)(130)ELT609TriDel

**Appellant :** Amrit Papers

**Respondent :** Commissioner of Central Excise

**Judgement :**

1. This appeal has been filed by the appellants against the order in original dated 27-8-1999 passed by the Commissioner who had confirmed the duty of Rs. 20,24,780/- and imposed penalty of Rs. 20,25,000/- on them.

2. The facts giving rise to this appeal may briefly be stated as under : 3. The appellants are engaged in the manufacture of newsprint falling under sub-heading 4801.90 of the Schedule to the CETA, 1985. The scrutiny of their monthly returns filed in Form RT 12 for the month of April, 1995 revealed that they had cleared newsprint weighing 1141.179 MT valued at Rs. 4,04,88,556/- without payment of duty under Notification No. 60/88, dated 1-3-1988. But they were entitled to claim the benefit of this notification only if they had produced entitlement certificate issued by the Registrar of Newsprint before the jurisdictional Assistant Commissioner within a period of one month from the date of clearances. They rather failed to produce the entitlement certificate/purchase certificate before the competent authority within that stipulated and as such were not entitled to claim the benefit of Notification No. 60/88, dated 1-3-1988. They were liable to pay the duty to the tune of Rs. 20,24,780/- on the goods cleared by them during the month

of April, 1995 without payment of duty. They were accordingly served with a show cause notice dated 2-11-1995 as to why the duty amount be not recovered from them and penal action also be not taken under Rule 173Q of the Central Excise Rules. They, however, contested the correctness of that notice by alleging that entitlement certificates for the year commencing from 1st April were issued after few months as the office of the Registrar took time to process the case and for that reason they could not produce the certificate within the period stipulated in terms of Notification No. 60/88, dated 1-3-1988.

They even made request for condonation of the delay before the Assistant Commissioner but the same was considered by him, although for the earlier period from December, 1994 to February, 1995 he had condoned the delay in filing the entitlement certificate vide letters dated 30-5-1995 and 19-10-1995. They also averred that similar proceedings were initiated against them for the period March, 1994 and after accepting their submissions, the same were dropped. They further averred that they are entitled to the benefit of the Notification No.60/88 as the entire quantity of the newsprints on which duty has been demanded, was actually supplied to the newspapers and the same were also used by those newspapers in printing the news. The Commissioner did not accept the version of the appellants and he confirmed the duty demand of Rs. 2,02,478/- and imposed penalty of Rs. 20,25,000/- on them through the impugned order.

4. Being dissatisfied with this order of the Commissioner (adjudicating authority) the appellants have come up in appeal.

5. The learned Counsel for the appellants has assailed the validity of the impugned order on the ground that the delay in submitting the entitlement certificates for the month for April, 1995 had been wrongly not condoned by the Assistant Commissioner and that the newsprint supplied by them had been used by the newspapers in printing the news and as such the appellants could not be denied the benefit of the Notification No. 60/88, dated 1-3-1988. Therefore, the impugned order of the Commissioner deserves to be set aside.

6. On the other hand, while refuting this contention of the Counsel, the learned JDR has contended that for having failed to furnish the entitlement certificates

within the stipulated period, as required under the Notification No. 60/88, dated 1-3-1988 before the competent authority, the appellants had been rightly denied the benefit of this notification by the Commissioner and as such the impugned order is perfectly valid.

7. We have gone through the record. The bare perusal of the Notification No. 60/88, dated 1-3-1988 the benefit of which had been claimed by the appellants, shows that the exemption under this notification was admissible on the quantities of the newsprint, as may be authorized by the Registrar of Newspapers for India for publication of newspaper and a certificate to this effect was also required to be produced before the Assistant Commissioner having jurisdiction over the factory manufacturing the newsprint within a period of one month from the date of clearance of the newsprint or within such extended period as the Assistant Commissioner of Central Excise on being satisfied that there was a sufficient cause, may allow. It remains disputed that the requisite certificates were never produced by the appellants within the stipulated period of one month from the date of the clearances of the newsprint. Their prayer for the condonation of the delay was rejected by the Assistant Commissioner and they did not challenge that order of the Assistant Commissioner before the competent authority. Therefore, the benefit of the notification, mentioned above, could not be legally allowed to them.

8. Apart from this, the requisite certificates produced by them in terms of the Notification No. 60/88 (referred to above ) also did not in any manner help them much for claiming the benefit of this notification. They produced three certificates issued by the Registrar of Newspapers for India in order to claim the benefit of this notification. The first certificate of entitlement produced by them was dated 27-7-1995 and it was issued for a quantity of 2394.217 MT of the newsprint. But this certificate was in favour of Bennett Coleman & Co.

against supply of newsprint weighing 2394.217 MT and did not bear the name of the appellants as the scheduled Indigenous News Print Mill from where the supply was to be made. Therefore, this certificate had been rightly not accepted by the adjudicating authority being invalid for allowing the exemption from the payment of duty in terms of the above said notification. The second certificate of entitlement

produced by the appellants was dated 23-6-1995 issued by the Controller of News Print Office of the Registrar of Newspapers for India. This certificate only entitled the owner/publisher to the exemption of Customs duty on the quantities of 1257.266 MT newsprint, supplied on 22-4-1995 and 29-4-1995. This certificate was endorsed to the Commissioner of Customs, Calcutta for the release of the quantities of newsprint, mentioned therein with exemption of Customs duty and as such did not cover the purchase of newsprint from the Scheduled Indigeneous News Print Mill of the appellants. Therefore, on the basis of this entitlement certificate the appellants legally could not claim the benefit of the exemption notification in question.

9. Similarly, the third entitlement certificate dated 6-11-1995 issued for the quantity of 123.118 MT by the Controller of News Print, Office of the Registrar of News Paper for India was in the name of M/s. Amrit Vanaspati Company Ltd., Ghaziabad. This certificate did not bear the name of the appellants. Therefore, by this certificate the appellants could not legally clear the newsprint at nil rate of duty in terms of the exemption Notification dated 1-3-1988 referred to above. Only firm M/s. Amrit Vanaspati Co. Ltd., Ghaziabad could avail the benefit of exemption under this certificate.

10. Thus none of the certificates referred to above, produced by the appellants were in their names so as to enable them to claim the benefit of exemption Notification No. 60/88, dated 1-3-1988 and to clear the goods without payment of duty. The benefit of this notification, as observed above, could be taken only if this valid entitlement certificates were produced by the appellants and not otherwise. The language of the notification is quite plain, clear and mandatory in nature. The conditions referred therein were to be complied with strictly by the appellants before claiming its benefit.

It is well settled that while construing the fiscal statute/notification the plain meaning of the language used therein has to be looked into and there is no room for intendment in the fiscal statute. In this regard reference made to the case Hemraj Gordhandas v.H.H. Dave, 1978 (2) E.L.T. J 350 wherein it has been so observed by the Apex Court also. This principle of law has been reiterated by the

Tribunal in Vikrant Tyres v. C.C.E., Bangalore, 1988 (38) E.L.T. 301 and Indian Iron & Steel Co. Ltd. v. CCE, 11. Having cleared the newsprint without complying with the conditions of this notification, the duty demand of the amount in question (Rs. 20,24,780/-) had been correctly confirmed on the appellants by the Commissioner. The plea of the appellants as put forth by the Counsel that they had reversed the amount of credit availed on the inputs which had gone into the manufacture of newsprint cleared at nil rate of duty and as such were entitled to the adjustment of the duty against the duty payable on the newsprint, has been also rightly rejected by the Commissioner. At the time of clearance of the goods, the appellants did not pay any duty. They cleared the same at nil rate of duty and as such were liable to reverse to Modvat credit availed on the inputs. Rule 57-C of the Central Excise Rules clearly enacts that credit of specified duty paid on inputs used in the manufacture of the final product shall be allowed, if the final product is exempt from the whole of excise duty leviable thereon or is chargeable to nil rate of duty.

The appellants had not taken recourse to the provisions of Section 11-B of the Central Excise Act, for claiming refund of the duty after issue of the show cause notice. Therefore, the adjustment of duty at this stage had been rightly disallowed to them.

12. In the light of the discussion made above and keeping in view the fact and circumstances of the case, the impugned order of the Commissioner confirming the duty demand and imposing the penalty on the appellants is perfectly valid and does not suffer from any illegality.

The impugned order of the Commissioner is accordingly confirmed.

13. Resultantly, there is no merit in the appeal of the appellants and the same is ordered to be dismissed.

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