

**Daylight Plastic Industries Vs. Commissioner of C. Ex.**

**Daylight Plastic Industries Vs. Commissioner of C. Ex.**

**SooperKanoon Citation :** [sooperkanoon.com/18085](http://sooperkanoon.com/18085)

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

**Decided On :** Apr-18-2000

**Reported in :** (2000)(119)ELT592TriDel

**Appellant :** Daylight Plastic Industries

**Respondent :** Commissioner of C. Ex.

**Judgement :**

1. This appeal has been filed by the appellants against the order-in-original, dated 27-7-1992 passed by Collector of Central Excise (Judicial), Bombay I vide which he ordered requantification of the duty and also imposed penalty of various amounts on the appellants.

3. The appellants are manufacturer of excisable goods, namely diffuser covers, regulator covers, plates, louvres, shackle cover, roof light domes, lense holders for weighing scale machines, gift articles like coasters, desk calendars, pen stands etc. On a surprise visit to the factory premises, an irregularity was detected in their claim for Modvat. It also revealed that some of the manufactured items were not even declared by them and no classification list alongwith the effective rate of duty was even filed. They were served with show cause notice. But they contested the correctness of that show cause notice and denied their liability to pay the duty. However, the Collector did not agree with their contention and through the impugned order disallowed the Modvat credit on the inputs and imposed penalties of various amounts on them. Regarding the duty demand he directed the requantification by the Assistant Collector (Preventive).

3. The appellants being dissatisfied with this order of the Collector has come in appeal before the Tribunal.
4. The validity of the impugned order of the Collector has been assailed by the learned counsel on the main ground that no penalty could be imposed without quantifying the amount and that the requantification could not be delegated by the Collector to the Assistant Collector. Therefore, the impugned order is bad in law and deserves to be set aside. Therefore, the case must be sent back to the Collector for deciding the matter afresh in accordance with law. In support of his contention, the counsel has placed reliance on *Pure Drinks Ltd., New Delhi v. CC, New Delhi, 1999 (34) RLT 471* wherein it has been observed by the Tribunal that the quantification of demand has to be done by the adjudicating authority and this cannot be delegated by that authority to a subordinate officer.
5. The learned JDR has, on the other hand, contended that the impugned order of the Collector is perfectly valid and requantification of the duty has been rightly ordered by the Collector.
6. We have gone through the record. The perusal of the impugned order itself shows that without quantifying the duty amount the Collector had imposed the penalties of various amounts, on the appellants. In our view, the penalties could only be imposed after determining the duty amount. The re-quantification of the duty amount was in fact required to be done by the adjudicating authority i.e., Collector himself and he could not legally delegate this function to the Assistant Collector in view of the ratio of the law laid down in *Pure Drinks, Ltd., New Delhi (supra)* cited by the counsel. Therefore, prima facie the impugned order of the Collector is not legally sustainable and deserves to be set aside. The matter in our view must be sent back for deciding the matter afresh in accordance with law on merits. Since the impugned order is apparently bad in law, we restrain ourselves for expressing any opinion on merits and direct the Collector to decide the matter afresh after hearing both the sides.
7. Resultantly, the impugned order of the Collector is set aside and the matter is sent back for deciding the matter afresh in the light of the discussion made above. The appeal of the appellants is accordingly allowed by way of remand.

