

Collector of Central Excise and Vs. Sun Paper Mills Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-01-1984

Reported in : (1985)LC677Tri(Delhi)

Judge : D Lal, H Syiem, S Jain

Appellant : Collector of Central Excise and

Respondent : Sun Paper Mills Ltd.

Judgement :

1. Briefly stated the facts of the case as are apparent on record are that the Respondents are the manufacturers of different varieties of paper. On 12.5.1980, they filed a classification list regarding one of their products 'Violetwove 35 GSM to 44 GSM' showing it to be under Tariff Item No. 17(1) of the First Schedule to the Central Excises & Salt Act, 1944 attracting duty @ 25% ad valorem. That classification list was approved by the Central Excise authorities on 22.5.1980 without any change. Subsequently, on verification, it was found that the paper in question, namely, 'Violetwove 35 GSM to 44 GSM' was used for the purpose other than the one declared by the Respondents and, therefore, Show Cause Notice was issued to the Respondents on 20.11.1980 directing the Respondents to show cause why the paper in question should not be classified under Tariff Item No. 17(2)-CET and why a differential duty for the clearances from 22.5.1980 should not be realized from them. A corrigendum to this SCN was issued to the respondents on 15.1.1981 invoking Section 11A of the Act (hereinafter to be referred to as the Act) for demanding the duty.

2. The Respondents in their letter dated 17.2.1981 requested for the supply of a copy of the Test Report of the Chemical Examiner and the copies of the documents alleged to have been relied upon by the Department to arrive at the conclusion that the paper in question had been used for other purposes. Instead of complying with the requirements of the Appellants, the Department issued a revised show cause notice on 7.3.1981 mentioning therein that the appellants had contravened the provisions of Rule No. 173B of the Central Excise Rules, 1944, inasmuch as in the classification list filed by them on 12.5.1980 the paper 'Violetwove' produced by them had been intentionally classified under Tariff Item No. 17(1) by bringing it under the category of uncoated and coated printing and writing paper (other than poster paper) and thereby paid duty on a lower rate of 25% adv. instead of 40% ad valorem applicable to the paper falling under Tariff Item No.17(2)/It was further mentioned that enquiries made had revealed that a major portion of paper had gone to match factories to use the same for packing and wrapping purposes like blue match paper. Particulars of sales of Violetwove paper gathered from Shri Laxmi Agencies, Siyakasi were also made available to the Respondents to show that the particulars gathered clearly revealed the end use of the paper, that is, for packing and wrapping purposes only and not for the purpose declared in the classification list.

3. On these grounds, the Respondents were directed to show cause to the Assistant Collector of Central Excise, Tirunelveli Division as to why the paper under reference should not be classified under T.I. 17(2) of Central Excise Tariff attracting duty at 40% ad valorem and why penalty should not be imposed on the Respondents under Rule 173Q of the Central Excise Rules 1944, for contravention of Rule No. 173B and why the differential duty arising out of this should not be demanded under Rule 10 of the Central Excise Rules, 1944/Section 11A of the Central Excises & Salt Act, 1944. A corrigendum to this SCN was issued to the respondents on 15.1.1981 invoking Section 11A of the Act for demanding the duty.

4. In their reply, the Respondents submitted that they manufactured variety of paper with the name of 'Violetwove paper' exclusively for printing purposes and, therefore, classified their product under Item 27(1) of the Central Excise Tariff and

the same was approved by the Assistant Collector of Central Excise. The Assistant Collector by his order dated 6.6.1981 rejected the contention of the Respondents and 'Violetwove 35 GSM to 44 GSM' variety of paper manufactured by the Respondents was ordered to be reclassified under Tariff Item No. 17(2) CET. A demand of the appropriate amount of differential duty calculated @ 40% ad valorem applicable to paper falling under the category Tariff Item No. 17(2) from the date of clearance of Violetwove variety of paper cleared at the rate applicable to paper falling under Tariff Item No. 17(1) was also raised under Rule 10 of the Central Excise Rules, 1944 and Section 11A of the Central Excises & Salt Act, 1944. penalty of Rs. 250/- under Rule 173Q of Central Excise Rules, 1944 was also imposed.

5. Aggrieved by the said Order of the Assistant Collector, the Respondents filed an appeal before the Appellate Collector, Madras who by his order dated 8.9.1981 upheld the order of the Assistant Collector reclassifying the questioned goods under Tariff Item No. 17(2) CET but restricted the demand only for six months from the date of the last show cause notice, that is the one dated 7.3.1981. The penalty amount of Rs. 250/- was also waived.

6. The Central Government in exercise of the powers vested in them under Section 36(2) of the Act, as it stood at the relevant time, issued notice dated 2.2.1982 to the respondents, conveying that the Central Government were tentatively of the view that the Order-in-Appeal dated 8.9.1981 passed by the Appellate Collector of Central Excise, Madras was not proper, legal and correct and proposing to set it aside by fresh orders as deemed fit. As the said proceedings were not concluded when the Tribunal came into existence, the same was transferred to the Tribunal as an appeal under Section 35P of the Act.

7. As far as the classification of paper in dispute is concerned the matter stands settled and it is classifiable under Tariff Item No.17(2) CET. The only dispute which requires determination is whether Show Cause Notice dt. 7.3.1981 is in continuation of the original show cause notice dated 20.11.1980 and that the time of limitation would relate from 20.11.1980 or from 7.3.1981? Shri Khanna, the learned departmental representative submitted that the original show cause notice

dated 20.11.1980 was valid as it contained all material particulars of the case which the assessee was to meet. The mere fact that the exact amount of differential duty was not mentioned in that show cause notice is not sufficient to make that notice illegal. He cited a decision of the Delhi High Court in the case of Hindustan Aluminium Corporation Ltd. v. Superintendent of Central Excise, Mirzapur 1981 ELT 642 : 1981 ECR 208D-Delhi in support of his contention that if the amount of duty is not specified in the show cause notice, the show cause notice does not become valid. According to him, the purpose of show cause notice is to indicate the amount of duty payable by the assessee and, therefore, if the show cause notice indicates the difference between the duty demanded and the duty not paid that would be sufficient compliance of Rule 10. But in case, the amount of duty is not specified, the assessee can enquire the amount of duty payable from the Department before giving a suitable reply to the show cause notice. According to Shri Khanna, a perusal of the notice dated 20.11.1980 shown that the rate of duty on the paper in dispute under Item 17(1) and also under 17(2) CET has been mentioned and the assessee knew about the difference of duty. The exact Amount of differential duty the assessee could have enquired from the Department.

Shri Khanna also drew our attention towards a decision of Bombay High Court in the case of JBA Printing Ink Ltd. v. Union of India 1980 ELT J. 121, 1980 Cen-Cus 92D-Bom. in support of his contention that the show cause notice need not indicate the rule under which it was issued as long as it complies with the requirements of that Rule. According to Shri Khanna, for all intents and purposes the original notice dated 20.11.1980 was a valid show cause notice and the revised show caused notice dated 7.3.1981 was issued only to comply with the requirements of the assessee. The Show Cause Notice dated 20.11.1980 is a valid notice and the subsequent notice dated 7.3.1981 is in continuation of the earlier show cause notice. Shri Khanna pointed out that the findings of the Appellate Collector that the demand can be valid only for six months from the date of the last show cause notice i.e.

7.3.1981 are not sustainable in the eyes of law.

8. Shri G. Subramaniam, the learned consultant of the Respondents countered the arguments of Shri Khanna and submitted that in the show cause notice dated 20.11.1980 the details of the case were not given as incorporated in the review show cause notice. According to Shri Subramaniam the show cause notice should comply with the requirements of the rules. The party should know as to what case he has to meet in pursuance of that show cause notice. Show cause notice dated 20.11.1980 did not specify the rules under which the demand was made and the amount payable. Since the amount was not specified the provisions of Rule 10 or of Section 11A were not complied with. The assessee classified the goods in good faith and there was no deliberate concealment on his part. The Appellate Collector rightly restricted the demand for six months from 7.3.1981, the date of the last show cause notice.

9. As far as legal proposition is concerned, it has been held by a Special Bench of this Tribunal in the case of Atma Steel Private Ltd. and Ors. v. Collector of Central Excise, Chandigarh 1984 ELT Page 331, 1984 ECR 1409 that for issue of a show cause notice either for short levy or non-levy, the recourse can be held to the provisions as prevailing at the time of initiation of proceedings and the period of limitation for issue of show cause notice would be the one as permissible under the existing provisions at the time of issue of show cause notice in spite of the fact that short, levy or non-levy referred to the period when different period of limitation was available.

10. There is no dispute about the fact that the ordinary period of limitation for making a demand for short levy or non-levy was six months. In view of the legal proposition as laid down by the Special Bench of this Tribunal in the case of Atma Steel Pvt. Ltd. (Supra) the demand can be valid only for six months from the date of the show cause notice if the Department has not been able to prove that an extended period of limitation is applicable in that case.

11. It is not the Department's case that the extended period of limitation should be made applicable in the facts of the case. The real legal issue is whether the computation of the period of six months would run from 20.11.1980 when the original SCN was issued or from 7.3.1981 when a revised SCN giving full details of

the allegations and evidence in support was issued to the respondents. As a result, the period of short levy going backwards for six months would have to be determined qua either 20.11.1980 or qua 7.3.1981. We have perused the SCN dated 20.11.1980. From the record it is apparent that the assessee, that is, Respondents, submitted that the classification list showing this paper manufactured by them under Tariff Item No. 17(1) of the Central Excise Tariff in good faith and the concerned Excise authorities accepted that classification list subject to the test results of the Chemical Examiner. The only question which requires determination is whether the date of the show cause notice would be 20.11.1980 when the original show cause notice was issued or it would be 7.3.1981 when the detailed show cause notice was issued. If the date of the show cause notice is 7.3.1981, the demand of the short levy would be restricted to six months from 7.3.1981 otherwise it would be for six months from 20.11.1980.

12. A perusal of the show cause notice dated 20.11.1980 shows that it cannot be said to be valid show cause notice. Ignoring its defects that it has not been mentioned under what provision of law it has been issued and what is the exact amount of the differential duty, this show cause notice is defective in material particulars. In this show cause notice it has been mentioned that the classification list filed by the assessee was approved under Tariff Item 17(1) CET subject to the test report of the Chemical Examiner, Madras. No report of the Chemical Examiner, Madras was supplied to the assessee which was an essential document for the purpose of the show cause notice. The ground for changing the classification from Tariff Item No. 17(1) to 17(2) was that the paper in question was used for the purpose other than that declared by the assessee. No particulars were given as to how that paper was used and what was the evidence with the department in that regard. A party is not expected to meet such type of vague allegations contained in the show cause notice and that is why the department had to issue a revised show cause notice on 7.3.1981. This revised show cause notice dated 7.3.1981 is quite different from the earlier show cause dated 20.11.1980. In this show cause notice there is no mention about the test report of the Chemical Examiner, Madras. The enquiries alleged to have been made from Shri Laxmi Agencies Shivakasi are after the date of the original show cause notice dated 20.11.1980. We are unable to accept the contention made by the departmental

representative that the SCN dated 7.3.1981 was merely a continuation of the SCN dated 20.11.1980. The SCN issued on 7.3.1981, as mentioned earlier, for the first time set out in a proper manner the allegations against the respondents and material particulars of evidence on which such allegations have been based. In the show cause notice dated 7.3.1981 the department has mentioned about evidence for using the said paper for other purposes which came to their knowledge after 12.11.1980.

Therefore, the show cause notice dated 7.3.1981 could only be said to be valid show cause notice which the assessee was to meet in accordance with law.

13. The Appellate Collector has correctly restricted the demand only for six months from the date of the last show cause notice dated 7.3.1981 and we find no ground to interfere with these findings of the Appellate Collector. Regarding the order of the Appellate Collector in waiving the penalty imposed, he has given valid reasons for this. The record shows that the Excise authorities had accepted classification lists filed by the assessee twice under sub-Item 1 of Tariff Item No.17 subject to the test report of the Chemical Examiner, Madras. The report of the Chemical Examiner, Madras was never made available to the assessee at any time. We are not at all satisfied with the explanation given by the learned departmental representative that the respondents were guilty of having contravened the provisions of Rule 173B. As a result of our above discussion we find no merit in this appeal and the same is hereby dismissed.

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