# Collector of Central Excise Vs. Garware Paints Limited

**Collector of Central Excise Vs. Garware Paints Limited**

**SooperKanoon Citation** : sooperkanoon.com/2397

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

**Decided On :** Oct-25-1985

**Reported in** : (1986)(8)LC679Tri(Mum.)bai

**Appellant** : Collector of Central Excise

**Respondent** : Garware Paints Limited

**Judgement** :

1. The Collector of Central Excise, Bombay-II, has authorised the Deputy Collector to file the present appeal against the Order No.C-859/BII-192/83 dated 19.4.83 of the Collector of Central Excise (Appeals), Bombay, under which the Collector (Appeals) gave the benefit of Rule 56-A concession to the extent of Rs. 2922.69 to M/s. Garware Paints Ltd. Since the Collector of Central Excise, Bombay-II, received the order of the Collector (Appeals) on 21.4.83 and the appeal on his behalf was filed in the Registry on 30.7.83, there was a delay of 9 days which required condonation before the appeal could be taken up on merits. Accordingly, the Departmental Representative was asked to state what reasons the appellant had in favour of the request for condonation of the appeal, which request was contained in the Deputy Collector's letter addressed to the Registry. The Departmental Representative was also informed as to why no application in proper form was filed for condoning the delay. The Departmental Representative agreed with my views regarding the procedural lapse but made an oral request for condoning the delay on grounds of consultation 'with concerned officers. Sri Divekar for the respondents opposed the request and urged that the reasons

stated by the Departmental Representative for condonation were not valid. He also cited the decision of the Tribunal, ELT 1985 (21) p.709 to say that the request of the appellant should be rejected, following the ratio of the Tribunal's decision in that case.

2. I reserved my decision in this behalf pending arguments by both the sides on merits.

3. The next question which I posed to the appellant was the fact that the amount involved in the appeal was less than Rs.10,000/-, and therefore, I would like to know whether the appeal should be admitted for hearing under the proviso to Section 35-B(1) or whether the appeal to be refused such admission. The Departmental Representative urged that the matter involved an interpretation of law, namely, Rule 56-A, and even though the amount involved was small, the appeal raised an important issue of interpretation of law which will have to be followed by the Central Excise Authorities. He, therefore, urged me to admit this appeal for the purpose of decision on merits. I also reserved my decision in this behalf pending arguments on merits by both the sides.

4. Explaining the merits of the appeal Shri Pattekar stated that special duty of excise was abolished under Notification No. 91/79 dated 1.3.79 on pigments, colours, paints, varnishes etc. falling under item 14 of the Central Excise Tariff. However, the respondents had a sum of Rs. 2922.69 in their R.G.23 account as credit of special excise duty paid on the raw materials. The respondents transferred this credit from R.G.23 account for special excise duty to the similar account for the basic excise duty paid on the raw materials. This transfer was without the Assistant Collector's permission, and therefore, the department raised an objection to this action. The respondents accordingly, retransferred this credit amount to the special excise duty account as in the meanwhile special duty was reimposed under the Finance Bill of 1980. The respondents utilised this credit towards discharging of liability on their goods towards the special excise duty. The Superintendent of Central Excise issued a show-cause notice dated 22.12.80 to M/s. Garware Paints Limited, asking them as to why an amount of Rs. 2922.69 should not be recovered under Rule 10 of the Central Excise Rules, 1944, as the

amount of credit had lapsed in terms of Rule 56-A(2) and (3)(VI)(b). In their reply dated 19.1.81 to the show cause notice the respondents refuted the contentions, but the Assistant Collector confirmed this demand under his order dated 14.5.82. The respondents then filed the appeal to Collector (Appeals) and Shri Pattekar drew my attention to the finding of the Collector in his order that since the credit was available in the records of the respondents, the same had been correctly utilised. Shri Pattekar submitted that this finding of the Collector was not correct. Since there was no special duty leviable from 1.3.79, the credit should have been taken as lapsed and could not have been utilised later on.

Accordingly, he submitted that the order of the Collector (Appeals) should be set aside, and the appeal filed by the Collector of Central Excise, Bombay-II, should be allowed.

5. Opposing the contention of the appellant, Shri Divekar stated that it was erroneous to urge that the credit had lapsed as alleged in the show cause notice issued by the Supdt. on 22.12.80. In this show cause notice attention of M/s. Garware Paints Limited had been drawn to Rule 56-A(2). These provisions do not say that if the duty of excise was removed, the credit should lapse. The show cause notice also relied on Rule 56-A(3) (VI)(b). Shri Divekar also read the sub-rule. He similarly argued that this provision could not also be construed to mean that the credit should lapse. He reiterated the contention on behalf of M/s.

Garware Paints Ltd., that the credit had been correctly utilised and the respondents' action was in accordance with law. He accordingly submitted that the appeal should be dismissed.

6. The first question for consideration is the admission of the appeal.

Even though the amount involved is less than Rs.10,000/-, I am refraining from refusing admission as the appellant has argued that the appeal involves a question of interpretation, of Rule 56A. Accordingly, 1 admit this appeal for hearing and decision on merits. The next question for decision is the delay by the Collector in filing the appeal. In this behalf, the condonation of delay is to be decided on the merits of each case. The ratio of the decision relied on by 'Shri Divekar in pleading rejection of the request of the appellant for condoning the delay cannot apply to the circumstances of the case.

There is a short delay of 9 days and the appellant has been frank enough to concede that the same arose because of the requirement to obtain certain facts from the Assistant Collector. The Assistant Collector's office is situated away from the Collector's office and hence a small delay could arise which is pardonable. Accordingly, I condone the delay in filing the appeal.

7. Coming to the merits of the case, the Collector, Central Excise, Bombay-II, has urged that the credit of special excise duty remaining in the R.G.23 account of M/s. Garware Paints Ltd., should be treated as lapsed when the special excise duty was removed on paints etc. under Notification No. 91/79 dated 1.3.79. In support of this construction of Rule 56-A the Collector has relied on Sub-rule (2) and Sub-rule (3)(VI)(b). Shri Divekar for the respondents had urged that this interpretation of the appellant is wholly incorrect. I find that Sub-rule (2) relates to grant of permission for taking the benefit of the credit available under Rule 56-A. It does not state anywhere that the' credit so availed of would lapse when the goods on which the credit has been taken are exempt from duty. Similarly, reading of Sub-rule (3)(VI)(b) does not also support the contention of the appellant. This provision prohibits the applicant not to utilise the credit unless he has given prior notice to the proper officer before the excise duty paid on raw materials or component parts are received in his factory to enable the proper officer to be present at the time receipt of such material, and it also forbids refund of such credit in cash or by cheque. Therefore, this provision also does not state that the credit lapses when the duty is removed on the raw materials etc., concerned. The special duty of excise is levied under the Finance Acts from year to year and is also a duty of excise for all purposes and has to be administered as such, the only exception being that this is accounted separately from the basic duty. Thus, there is hardly any difference between the basic excise duty and the special excise duty.

Rule 56-A itself permits the credit of special excise duty or regulatory duty or audiliary duty to be utilised towards the payment of duty on any finished excisable goods. When this is the law, it is not understood how the Assistant Collector could come to the conclusion that the credit should have lapsed on 1.3.79. There is no justification for this interpretation. In view of this fact I find that the order of the Collector (Appeals) is correct. There is no substance in the appeal of the Collector, Central Excise, Bombay-II and the same is accordingly dismissed.