

**Corrugating and Paper Processing Vs. Collector of Central Excise**

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

**Decided On :** Oct-29-1985

**Judge :** S Venkatesan, H Chander, P A K.

**Appellant :** Corrugating and Paper Processing

**Respondent :** Collector of Central Excise

**Judgement :**

1. Corrugating & Paper Processing Co. Pvt. Ltd. had filed a revision application under the erstwhile Section 36 of the Central Excises and Salt Act 1944 to the Secretary, Government of India, Ministry of Finance, Department of Revenue, New Delhi, being aggrieved from Order No. 37-B of 1982 passed by the Central Board of Excise & Customs, New Delhi. After coming into existence of the Tribunal, the said revision application was transferred to the Tribunal under Section 35-P of the Central Excises and Salt Act, 1944.

2. Briefly the facts of the case are that the appellant had manufactured and cleared goods (N.E.S.) falling under Tariff Item 68 of the First Schedule to the Central Excises & Salt Act 1944 without obtaining a Central Excise Licence. On 16.11.1978, the Central Excise Officers of MOR-IV, Ghaziabad had seized 1000 boxes made out of corrugated board of the description "40 watts lamps" valued at Rs. 6760/- falling under Tariff Item 68 produced by the appellant, who had manufactured and cleared goods valued at Rs. 10,93,536.43 without obtaining a Central Excise Licence, without accounting the same in the statutory Central Excise records, and without payment of Central Excise duty leviable thereon

during the period from 18.6.1977 to 15.11.1978.

The Revenue had alleged that the appellant had suppressed the fact that the total clearances of excisable goods from the factory at Ghaziabad and Calcutta with the same name and style during the financial year 1976-77 and 1977-78 were more than Rs. 30 lakhs in each year, and the clearances so made were not entitled to exemption in terms of Notification No. 176/77 dated 18th June 1977. A show cause notice dated 22.3.1979 was issued to the appellant, to show cause why penalty should not be imposed on them under Rules 9(2), 173Q and 226 of the Central Excise Rules 1944, and why the aforesaid seized goods i.e. 1000 pieces of corrugated board boxes in respect of which the offence appears to have been committed, should not be confiscated under Rules 173Q and 226 of the Central Excise Rules, 1944, and why duty on the aforesaid goods valued at Rs. 10,93,536.43 cleared otherwise than as provided under the Central Excise Rules, should not be demanded under Rule 9(2) of the Central Excise Rules 1944.

3. In reply the appellant contended that in terms of Notification No.176/77 dated 18.6.1977 the benefit of exemption has been restricted only to those manufacturers whose total value of excisable goods cleared in the preceding year did not exceed Rs. 30 lakhs. Since the words "from one or more factories" have not been used in the proviso, unlike para (1) and second proviso to the notification, the clearances of both the factories pertaining to year 1976-77 cannot be clubbed together for purposes of determining eligibility to avail exemption of Rs. 30 lakhs during the years in question. It was also contended that the demand of duty as proposed too was not tenable, and the amount of Rs. 10,93,536.43 was to be bifurcated financial year wise for the purposes of examining the exemption limit, and could not be clubbed together as was done in the show cause notice. The appellant had also contended that there was no suppression of facts as alleged in the show cause notice, and the fact that the factory at Ghaziabad was a related concern of the factory at Calcutta, was very well known to the Department. The learned Collector did not accept the contentions of the appellant and the factory at Ghaziabad was not entitled for the exemption under Notification No. 176/77-CE dated 18.6.1977 and should have paid duty on all the products falling under Tariff Item 68 and the appellant should pay the proper duty on the goods valued at Rs.

10,93,536.43 for the period from 18.6.1977 to 15.11.1978 amounting to Rs. 37,254.93 and 1000 boxes were confiscated under Rule 173Q and 226 of the Central Excise Rules 1944. However, the appellant was given an option to redeem the same after payment of a fine of Rs. 2,500/ -. The learned Collector also imposed a personal penalty of Rs. 50,000/- under Rule 9(2), and 173Q and 226 of the Central Excise Rules 1944.

4. Being aggrieved from the aforesaid order the appellant had filed an appeal to the Central Board of Excise & Customs, New Delhi. The Honourable Board had confirmed the findings of the Collector but had reduced the penalty from Rs. 50,000/- to Rs. 20,000/-. Being aggrieved from the aforesaid order the appellant had filed the revision application to the Government of India which has been transferred to the Tribunal to be disposed of as an appeal under Section 35-Poi the Central Excises & Salt Act 1944. Shri M.D. Choudhary, the learned Consultant has appeared on behalf of the appellant. He has reiterated the facts. He has pleaded that the appellant had filed an application for permission for the production of additional evidence under Rule 23 of the CEGAT Procedure Rules 1982, and the application was duly supported with an affidavit. The learned Consultant has pleaded that there were two documents for which the appellant is seeking permission of the Tribunal under Rule 23 namely the Classification List No.CL/CB/Corrugating/Processing/1/76 which was approved on 27.5.1976. He has pleaded that the other document is the registration certificate dated 29.11.1978 under U.P. Shops and Establishment Act for 1978-79. He had pleaded that in the interests of justice this additional evidence should be admitted, otherwise the appellant shall suffer an irreparable loss.

5. In reply Shri B.R. Tripathi, the learned SDR has pleaded that the additional evidence should not be admitted at this stage, as the appellant has not been able to establish that he was prevented by sufficient cause in not filing the same earlier. He has pleaded that the powers of the appellate court are very much restricted and the appellant should not be permitted to make out a new case at this stage.

He has referred to Rule 27 of the Order XLI of the Code of Civil Procedure.

6. After hearing both the sides, we hold that the appellant has not been able to establish that he was prevented by sufficient cause for not filing the said documents at the earlier stage. The classification list filed by the appellant is already on record and is not afresh evidence and as such we admit the same. We reject the appellant's request for the admission of the registration certificate dated 29.11.1978 under U.P. Shops and Establishment Act for 1978-79.

7. On merits Shri Choudhary, the learned Consultant has pleaded that in the light of this classification list No. CL/CB/ Corrugating/Processing/1/76 which was approved on 27.5.1976 and the same has been admitted in the nature of additional evidence by the Tribunal, the appellant's case may be remanded. In support of this contention he has referred to a judgment of the Tribunal in the case of the Food Corporation of India, Bombay v. Collector of Customs, Bombay, reported in 1984 ECR 546. In that case a wrong notification was applied upto the appellate stage. It was held by the Tribunal that it was the bounden duty of the assessing authorities to apply the correct notification and the case was remanded to the lower authorities to be decided afresh. He has also referred to two other judgments of the CEGAT in the case of Collector of Central Excise, Allahabad v. U.P.National Manufacturers Pvt. Ltd. Varanasi reported in 1984 ECR 1930 and Hindustan Aeronautics Ltd., Bangalore v. Collector of Customs Madras reported in 1985 ECR 1786. He has pleaded for the remand of the appeal.

8. In reply Shri B.R. Tripathi, the learned SDR has pleaded that since this additional evidence has been admitted by the Tribunal, he has got no objection to the remand of the appeal.

9. After hearing both the sides and going through the facts and circumstances of the case, we would like to observe that the genuineness of the classification list No.CL/CB/Corrugating/Proceessiong/1/76 approved on 27.5.1976 has to be verified. Since this fresh point has been raised before the Tribunal for the first time, we remand the case to the Collector of Central Excise, Meerut for de novo adjudication in the light of this classification list for looking afresh in accordance with law. In the result we set aside the impugned order and remit the case for redecision in the light of the above observations.

