**Bharat Barrel and Drum Vs. C. C. Ex.**

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**SooperKanoon Citation** : sooperkanoon.com/3112

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

**Decided On :** Jan-19-1987

**Reported in** : (1989)(44)ELT366TriDel

**Appellant** : Bharat Barrel and Drum

**Respondent** : C. C. Ex.

**Judgement** :

1. Both appeals are by M/s. Bharat Barrel & Drum Manufacturing Co. (P) Ltd., who are the owners of M/s. Jalan Dyeing & Bleaching Mills. Since it was submitted for the appellants that arguments in both appeals would to a large extent be common, certain additional submissions to be made in appeal No. 332/81 only, both appeals were heard together.

2. M/s. Jalan Dyeing & Bleaching Mills had been receiving textile fabrics from merchants and customers for processing. One such customer was Parkash Cotton Mills. With reference to certain sort numbers received for processing from Parkash Cotton Mills, which had been processed and cleared by the appellants under T.1. 19(l)(ii) CET, they were intimated that the proper classification was under T.I. 19(l)(i) CET and on that basis two show cause notices were issued demanding payment of differential duty.

The contentions raised by the appellants were rejected by the concerned Assistant Collector under two orders, dated 22nd April, 1978 and 12th May, 1978. Under these orders he confirmed the demands raised. He further imposed penalty of Rs.

250/- under each of the said ordrs. The appeals against the said orders were dismissed by the Appellate Collector of Central Excise by a consolidated order dated 16-2-1981.

The revision petitions preferred against the same are the two deemed appeals before us on transfer thereof to this Tribunal.

3. We have heard Ms. S.M. Godbole, Advocate for the appellants and Shri K.C. Sachar for the Department.

4. The main contention in both appeals is that the appellants were never disclosed the ground on which the classification which had been originally approved under Item, 19(l)(ii) CET was later changed to item 19(l)(i) CET and in the absence of such an opportunity the entire proceedings were bad. It is, therefore, this contention that has to be first looked into. As earlier stated, the appellants are processors receiving fabrics from customers and return the same after processing.

The two show cause notices are dated 27th July, 1977 and 23rd August, 1977. The ground stated therein read as follows: Show cause notice dated 27-7-1977 - "As per detailed particular communicated under this office letter No. 06/Challan/77/1697 dated 27-6-1977." Show cause notice dated 23-8-1977 - "As per annexure attached herewith and matter raising under parties letter No. JDB/17/77-C.Ex/1478 dated 26-7-1977." In reply to both these show cause notices the appellants had sought for particulars referring to their earlier correspondence. This earlier correspondence commenced with a letter dated 8-12-1976 from the Superintendent. The first paragraph in the said letter read as follows: "The Superintendent, Central Excise, Range (not clear) Bombay Divn.

I under his letter No. GENS/PCM/76-1671 dated 12-1-1976 reported that the following sort No. declared by (M/s. Prakash Cotton Mills) you as 19(l)(ii) how were as per Assistant Collector, Central Excise, Divn. I they were treated as 19(l)(i)." The second paragraph of the said letter thereupon sought for particulars of clearances in order to enable the Deptt. to issue necessary show cause notice and recover necessary differential duty.

The particulars sought for were given under letter 24-2-1977 and 12-3-1977. This was followed by a letter from the Deptt. to the appellants under which a demand for differential duty was made for Rs. 27386.08 in one case and Rs. 6086.87 in the other case. The appellants replied vide letter dated 27-7-1977 claiming that their classification under item 19(l)(ii) had been approved by the concerned Superintendent, and removals were effected accordingly, but that a fresh demand was being raised as if proper classification was under T.1.19(l)(i) and therefore they may be informed on what basis and on what material the approval of the Assistant Collector is said to have been altered to item 19(l)(i). It is, thereafter that the two regular show cause notices dated 22.7.1977 and 28-8-1977 were issued. The replies thereto were again to seek for the particulars earlier asked for.

5. The complaint of the appellants is that in spite of such specific request for disclosure of the materials on which the approved classification list was sought to be altered, and demand for differential duty was being consequently raised, the Deptt. failed to disclose any such reason and the Assistant Collector confirmed the demand without offering an opportunity to the appellants to state their case why such alteration could not be effected.

6. It is in this connection that the reasons stated by the Assistant Collector in his two orders would be relevant. He points out that before the issue of the regular show cause notice the appellants had been intimated that the classification of the goods by M/s. Prakash Cotton Mills was under T.I.19(l)(i) but that even so the appellants classified the goods under item 19(l)(ii) and hence they were guilty of mis-declaration. The Assistant Collector observed that in spite of knowledge of classification under Item 19(l)(i) by the customer the appellants falsely classified the same goods under item 19(l)(ii) after processing and were therefore liable for the payment of differential duty. It is on this basis that the Assistant Collector in his order confirmed the demand, for differential duty. The Appellate Collector also upheld the order of the Assistant Collector on the same reasoning.

7. But the appellants have produced classification list No. 8/76 of Parkash Cotton Mills to show that hereunder also the classification was under T.I.19(l)(ii) and that therefore the conclusion of the Assistant Collector that in spite of the customer

classifying under item 19(l)(i) the appellants fraudulantly classified under item 19(l)(ii) was not correct 8. To appreciate this contention it will be relevant to read the words in the letter dated 8-12-1976 from the Deptt. to the appellants. The first part of the said letter which is the relevant portion has been extracted earlier. It makes it clear that the Assistant Collector, Central Excise, Divn. I had treated the fabrics as falling under Item 19(l)(i) though Prakash Cotton Mills appear to have classified them under Item 19(l)(ii). Therefore this appears to be a case where even Prakash Cotton Mills classified the goods under Item 19(l)(ii) and got the classification list approved but that subsequently the classification was changed by the concerned Assistant Collector to Item 19(l)(i). It is thereafter that the notice dated 8-12-1976 had been issued and particulars had been called for from the appellants in order to issue the demand for differential amount. As earlier noted, the appellants, immediately on receipt of this letter, gave the necessary particulars of clearance and when, subsequently letters were received quantifying the differential amount and demanding payment thereof they had asked for the basis and material on which the Assistant Collector had altered the approved classification from item 19(l)(ii) to 19(l)(i). On a perusal of the correspondence that ensued, including the issue of the regular show couse notices and letters exchanged thereafter, it is clear that the Superintendent who issued the demand did not at any time disclose to the appellants the material on the basis of which the Assistant Collector, Divn.I (the Assistant Collector for the appellants being up Divn.IV) had altered the approved classification from 19(l)(ii) to 19(l)(i). In the circumstances, it is clear that in raising the demand for payment of differential duty the authorities had failed to disclose to the appellants the basis on which they were altering the classification already approved. The appellants are therefore justified in contending that for this reason itself the orders of the Assistant Collector as well as the order of the Appellate Collector are liable to be set aside.

9. It is further pointed out for the appellants that penalties have been imposed under the orders of the Assistant Collector though the show cause notices themselves did not refer to any proposal to levy a penalty. In addition it is pointed out (so far as appeal No. 332/81 is concerned) that under letter 31-8-1977 in reply to the show cause notice the appellants had prayed for a personal hearing but that no personal hearing was in fact given. It is pointed out that the Assistant Collector

in his order dated 22-4-1978 mentioned "they did not ask for personal hearing even though they were clearly given an opportunity to avail of personal hearing." It is claimed that the order in the said appeal is liable to be set aside for this additional reason also.

10. We are satisfied that in both these appeals the orders of the lower authorities are liable to be set aside for the reason that the orders produced to demand differential duty on the basis of an alteration in the classification already approved but that the appellants were never disclosed the basis on which alteration had been ordered (that is to say) the Deptt. sought to levy duty on the basis of alteration in the classification list of the customer but that the basis for such alteration even in the customers classification list was never disclosed to the appellants though they had specifically demanded disclosure thereof. We are thereof satisfied that both appeals are to be allowed on this ground itself.

11. Accordingly both the appeals are allowed and the orders of the lower authorities in both matters are set aside.