

**Kamarhalty Co. Ltd. Vs. Collector of Central Excise**

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

**Decided On :** May-13-1983

**Reported in :** (1983)LC1320DTri(Delhi)

**Appellant :** Kamarhalty Co. Ltd.

**Respondent :** Collector of Central Excise

**Judgement :**

1. This matter originally was a revision petition which has been transferred to the Appellate Tribunal and is taken up as an appeal for consideration.

2. The origin of the matter is the order passed by the Assistant Collector of Central Excise, Calcutta XII Division, wherein he held that the assessee did not file a classification list and obtain approval for the same. As a consequence, he held that the appellant cleared goods without intimation of permission from the Central Excise Department. The Assistant Collector, therefore, held that the clearances were unauthorised within the meaning of Rule 9(1) of the Central Excise Rules. He also rejected the claim that gunny cuttings were the same as rags and chindies. In respect of broad loom waste also he observed that the price charged from the customers was more than the price usually charged for broad loom yarn and, therefore, did not accept the request to admit their claim and to withdraw the demands.

The Appellate Collector in his order dated 27,8.1979 held as follows :- "In this case I find that the appellant did not submit classification lists and also removed the

goods without approval of the same. This proves that the goods were not properly classified before its removal from the factory. The issue is whether the gunny cuttings removed by the appellant are exempted in terms of Notification No. 71/72 dated 17.3.1972 and whether the gunny cuttings were below 92 cms. in each case. The appellants failed to establish with evidence, documentary or otherwise that the gunny cuttings removed by them were below 92 cm. in each case. As regards waste yarn their contention was also not acceptable since ,they could not produce any evidence to show that during the relevant period the waste yarn was sold in the market at a higher price than that of Broad Loom yarn. Hence their contention, in this respect also, is not acceptable".

3. Before us Shri S.P. Kampani for the Appellant submitted that the appellant company pays big amounts of excise duty and clears huge quantities. In respect of the impugned goods also they issued gate passes and filed RT 12 returns. The Department had at no stage adduced any evidence to support the allegation that gunny cuttings were not rags and chindies. He submitted that Notification No. 57/72 is applicable to them and the goods are totally exempted and consequently no classifications need be filed. He also submitted that the show-cause notice is time-barred and that the Department had at no stage adduced any evidence whatsoever that gunny cuttings removed by them did not conform to the descriptions given in the gate passes as being below 92 centimetres. Shri Kampani submitted that in the absence of any evidence the demand for duty is incorrect. He also pointed out that no penalty was imposed for non-submission of classification list though it has been held that no classification list was filed. To sum up, his submission is that no classification list was necessary and the Department did not prove that the Appellant cleared goods which were not covered by exemption Notification Nos. 57/72 and 70/72.

4. The Senior Departmental Representative, Shri K.D. Tayal, submitted that the aspect of time bar is a new ground raised and the Appellant had to submit a classification list to obtain exemption even when a Notification was there. He opposed the arguments of the Appellant.

5. We have considered the submissions made by both sides. On going through the Order-in-Original and the Appellate Order, we did not see any evidence by way of investigation, statements or other documentary material to support the allegation that what the Appellant cleared was not the same as mentioned in the gate passes and that these goods were not covered by the exemption notifications. There is no material on which the demand for duty can be sustained in these circumstances.

Taking note of all these facts, we allow the appeal.

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