**Collector of C. Ex. Vs. Mayur Printers**

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**SooperKanoon Citation** : sooperkanoon.com/4507

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

**Decided On :** Jul-12-1988

**Reported in** : (1988)(18)LC46Tri(Delhi)

**Appellant** : Collector of C. Ex.

**Respondent** : Mayur Printers

**Judgement** :

1. In this matter, a show cause notice was issued by the department to the respondents, who are manufacturers of printed cartons which were brought under Central Excise control as a result of the Budget of 1982 alleging that they had cleared their goods during the period from 1-4-1982 to 31-10-1983 without approval of classification list and price list. The admitted facts of the case are that the respondents filed a classification list (No. 163 of 1982) as being effective from 1-4-1982 in respect of printed cartons claiming exemption under Notification No. 80/00, dated 19-6-1980, on 13th October, 1982. In other words, the classification list was filed for retrospective effect going back to more than six months. Now, on verification of this classification list, together with the statement of gross sales for the period from 1-4-1981 to 31-3-1983, as furnished by the respondents, the department observed that the value of the clearances of the products falling under Central Excise Tariff Item 17(4) and Central Excise Tariff Item 68, which were also being manufactured and included products of printing industry such as folders, posters, booklets, stickers, visual aids etc., taken together, exceeded in value, Rs. 20 lakhs. In view of this, the Assistant Collector held that the respondents were not

entitled to exemption in respect of printed cartons falling under Central Excise Tariff Item 17(4) for the year 1982-83.

2. When the matter went up in appeal, the learned Collector (Appeals) confirmed the order of the lower authority that the aggregate value of clearances of all the excisable goods of the respondents for home consumption exceeded Rs. 20 lakhs and that, therefore, they were not entitled to exemption under Notification No. 80/80. He, however, accepted the plea that respondents had made a declaration of the facts to the department and had not mis-stated or suppressed the facts.

Accordingly, he waived the penalty imposed by the lower authority and ordered that the demand of duty should be restricted to the period of 6 months under Section 11A of the Central Excises and Salt Act It is against this order that the department has come up in appeal before us.

3. We have heard Shri LC. Chakravarti, JDR for the department and Shri Gopal Prasad, Consultant for the respondents.

4. The learned Departmental Representative has submitted before us that as a result of the Budget of the year 1982, printed cartons became classifiable under Central Excise Tariff Item 17(4), whereas these goods were earlier falling for classification under Central Excise Tariff Item 68. In view of this change, it is urged that respondents should have submitted fresh classification list effective from 1-4-1982, which they failed to do, thereby contravening the provisions of Rule 173B. It is added that respondents also contravened the provisions of Rules 173C, 173F and 173G inasmuch as they cleared the goods without filing proper price list, without determining the duty leviable on such goods and without following the proper procedure laid down. It is submitted before us that had the respondents filed the classification list in time i.e. on 1 -4-1982, the Assistant Collector would have properly appreciated the facts of the case and would have denied to them the benefit of Notification No. 80/80. According to the department, the respondents knowingly and deliberately did not submit the correct classification list as required under the Central Excise law. Accordingly, it is submitted that the respondents are liable to pay duty for thextena period provided in Section 11A of Central Excises and Salt Act, 1944 and the demand is not required under the law to be restricted to

six months, as held by the learned Collector (Appeals).

5. The learned consultant has reiterated the submissions made before the lower authority. It is urged that the respondents applied for a Central Excise licence as soon as the Budget changes came in force. The pre-budget stocks as well as the total turn-over during the previous financial year were also declared. The department did not care to examine whether the respondents were entitled to the exemption or not, it is added. It is also stated that respondents were filing their monthly RT12 returns showing the complete picture of their production regularly.

6. We have carefully considered the facts of the case and the submissions made by both sides. We find that on 27th March, 1982, respondents were issued a licence by the Central Excise authorities for the manufacture of printed cartons. The learned consultant has also filed before us copy of a letter addressed by the respondents to the Superintendent of Central Excise, Bombay on 16th March, 1982, giving complete particulars of printed cartons as well as printed publicity materials manufactured by the respondents from April 1981 to March 1982, together with full information as regards the gross sales.

Respondents requested the department to go through these particulars and to advise them in the matter. The learned JDR fairly concedes that in view of the Central Excise licence issued to the respondents and the letter of 16th March, 1982, the allegation of suppression or mis-statement of facts is difficult to maintain.

7. Obviously, there was a procedural failure on the part of the respondents in their not submitting the classification list in time.

However, in view of their application for Central Excise licence, which was duly granted by the department as well as the letter of 16th March, 1982 giving full information regarding the nature and volume of goods manufactured, the charge of suppression/mis-statement of facts must fail.

8. In the light of the above discussion, we are of the opinion that the learned Collector (Appeals) was right in taking the view that the demand of duty in this case should be restricted to the period of six month The order-in-appeal is upheld