

**Jaymes Products Vs. Collector of Central Excise**

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

**Decided On :** Aug-02-1988

**Reported in :** (1988)(18)LC412Tri(Delhi)

**Appellant :** Jaymes Products

**Respondent :** Collector of Central Excise

**Judgement :**

1. The Issue in the present matter relates to the interpretation of Notification No. 80/80-C.E., dated 19-6-1980. The appeal is against the order of the Collector of Central Excise (Appeals) which has upheld the order of the Assistant Collector in which it was held that the total value of clearances of goods for purposes of Notification No.80/80-C.E. would include the value of goods produced without the aid of power in the other factory of the appellants, and since such value exceeded Rs. 20 lakhs, the limit prescribed in the notification, therefore appellants were not entitled to exemption under the said notification. Appellant's claim that the show cause notice by the department for recovery of refund was time barred, was also rejected.

2. We have heard Shri Satish B. Naik, Excise-In-Charge of the Company and Smt. Dolly Saxena, Senior Departmental Representative.

3. Shri Naik has filed a copy of written submissions on behalf of the appellants. Smt. Dolly Saxena briefly submitted that she reiterated the view taken in the order-In-ap-peal and has nothing further to add.

4. The main submission of the appellants is that goods which are completely and unconditionally exempted from excise duty ceased to be excisable goods and that their value is not to be included in the computation of the total value of clearances for determining whether the assessee is entitled to the benefit of Notification No. 80/80-C.E., dated 19-6-1980. It is urged that this is the view taken by the Madhya Pradesh High Court in the case of *Tata Export Limited v. Union of India* - 1985 (22) ELT 732 and *Madhav Mills Private Limited v. Collector of Central Excise and Ors.* *Techno Chemical Industries v. Collector of Central Excise, Cochin* - 1987 (31) ELT 541. The view taken by the Madhya Pradesh High Court was also respectfully considered. On the other hand, the Tribunal noted the view of the Delhi High Court in the case of *Vishal Andhra Industries v. Union of India* - 1983 (ELT) 2265 which was in favour of Revenue. It was observed that the Karnataka High Court also took a view favourable to Revenue on this issue in the case of *Karnataka Cement Pipe Factory Industrial Estate v. Superintendent of Central Excise and Anr.* - 1986 (23) ELT 313 (Karnataka). This decision of the Karnataka High Court also noted with approval the view, favouring Revenue, of Allahabad, Andhra Pradesh and Madras High Courts. The Tribunal, 'herefore held that even where certain excisable goods are exempted from excise duty by virtue of notification issued by the Central Government, they do not cease to be excisable goods. In the light of the Tribunal decision in the case of *Techno Chemical Industries*, with which we wholly concur the claim of the appellants to the benefit of Notification No. 80/80-CE is rejected.

6. In their appeal, two other points have been made by the appellants.

Although these are not included in the written submissions filed at the time of the hearing of the appeal, in fairness to the appellants, we would like to deal with both these points. Firstly, it is submitted that the Assistant Collector of Central Excise sanctioning the refund had no jurisdiction to issue the notice that the refund was erroneously made and to require the party to show cause why the amount refunded should not be recovered. In support of this submission appellants have cited the decision of the Madras High Court in the case of *Madras Rubber Factory Ltd. v. Assistant Collector of Central Excise, Madras* - 1981 (ELT) 565. The appeal before us especially makes the point that although appellants had cited the

Madras High Court decision In the reply to show cause notice as well as In the appeal to the Collector (Appeals), neither the Assistant Collector nor the Collector (Appeals) have dealt with this point. On this ground alone, It is submitted, the orders of the lower authorities merit to be set aside.

7. Taking the second point first, we observe that, as per statement of facts in the appeal before us, the amount of Rs. 13,608.15 was refunded to the appellants by a crossed cheque dated 12 Feb., 1982. The show cause notice was issued on 09 Aug., 1982. The factual position as regards the date on which the refund was sanctioned is not clear from the records that had been placed before us. The question is which would be the date relevant for determining whether the show cause notice has been issued within the prescribed time limit, that is, whether it would be the date of which the cheque has been issued or the date on which the orders of sanction have been passed. We would, in this connection refer to the decision of the Supreme Court in the case of Geep Flashlight Industries Ltd. v. Union of India and Ors. -1983 ELT 1596 (S.C.). The Supreme Court, construing the words "the date of refund", held that the date would be when the refund was actually taken and not the date when the order for refund was passed. Accordingly, the relevant date in this case would be the date when the refund was actually made by cheque and not when the orders were passed. Whether this date is the 12 Feb., 1982 as contended by the appellants or 15 Feb., 1982 as held in the order of Collector (Appeals), the show cause notice dated 9 Aug., 1982 would be within the statutory limit of six months. The submission that it is barred by limitation is therefore rejected.

8. Coming now to the point that the issue of Show Cause Notice by the Assistant Collector was without jurisdiction. We have seen the decision of the Madras High Court in the case of Madras Rubber Factory Ltd. v. Assistant Collector of Central Excise, Madras and Anr. - 1981 E.L.T.565 (Mad.) in which it was held that the Central Excises and Salt Act, or the Rules, do not confer any powers on the Central Excise Officers to review their own orders, because it is settled law that there is no inherent power of review in an authority while acting judicially or quasi-judicially unless the power of review is conferred expressly or by necessary implication by the provisions of statute. In the case of Sid-heshwar Sahakari

Sakhar Karkhana Ltd. v. Collector of Central Excise, Pune -1987 (27) ELT 79, it was also held that no quasi-judicial authority has the right to review its earlier order unless such a right has been conferred by statute and, therefore, the Superintendent of Central Excise could not demand the amount wrongly refunded to the appellant in that case by an earlier order of his sanctioning the rebate in duty. However, the Supreme Court, in the case of Assistant Collector v. National Tobacco -1978 ELT 416 held, while interpreting the then Rule 10 of the Central Excise Rules held that the Rule presupposed that an assessment could be re-opened on specific grounds within the period specified therein. The Karnataka High Court also held in the case of Sham Sunder U. Nichani v. Assistant Collector of Central Excise, Bangalore -1985 (22) E.L.T. 751 that an assessment could be re-opened for any short levy resulting from inadvertence, error or misconstruction. This Tribunal, more recently, in the case of Fibre Foils (P) Limited v. Collector of Central Excise, Bombay -1988 (Vol.

16).E.C.C. T-95 observed that the High Court of Karnataka. in the case of Sham Sunder U. Nichani v. Assistant Collector of Central Excise, Bangalore and Anr. - 1985 (22) ELT 751 (Kar.) had clearly held that a demand under Section 11 -A could be raised notwithstanding the fact that the classification earlier approved was sought to be reviewed by the said authority. Accordingly, the Tribunal held that there is no legal bar to the raising of demand by the Assistant Collector notwithstanding the fact that it is in respect of a classification which he had himself earlier approved.

9. We concur with this view and hold that the submission of the appellant on this ground is not tenable and has, therefore, to be rejected.

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