

Collector of Central Excise Vs. Atlas Radio and Electronics Pvt.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-12-1988

Reported in : (1988)(18)ECC119

Appellant : Collector of Central Excise

Respondent : Atlas Radio and Electronics Pvt.

Judgement :

1. The respondents manufactured etched aluminium foils out of duty paid plain aluminium foils purchased from the market. Both the plain foils as well as the etched foils fell under Tariff item 27(c) of the erstwhile Central Excise Tariff. The effective rate of Central Excise duty was fixed by exemption Notification No. 77/72-C.E., dated 17.03.1972, as amended from time to time. During the material period, that is, from 01.12.1979 to 08.05.1980, the notification fixed the effective rate at 32% ad valorem. Further, the proviso in this notification gave set off or reduction to the extent of the duty (Central Excise duty or additional customs duty), if any, already paid on the plain aluminium foil out of which etched etc. foils were made.

By the impugned order, the Collector (Appeals) gave benefit of this exemption notification to the respondents. The Appellant Collector wants the impugned order to be set aside on the following two grounds:- (i) since the Collector (Appeals) had held in the same order that the respondents had at no stage disclosed their activity of manufacture of etched foils out of plain foils to the department, they were not entitled to the benefit of the exemption notification; (ii) since the respondents had not applied for permission to work under the proforma credit procedure of Rule

56A, the benefit of set off or reduction given by the proviso in the aforesaid notification could not be given to them.

The Ld. Representative of the department reiterated the above grounds.

2. On careful consideration, we find no merit in either of the aforesaid grounds advanced by the Revenue. The concessional rate laid down in the exemption notification was not dependent on the condition that it would be applicable to only those manufacturers who had disclosed their manufacturing activity to the department and would not be applicable to others in whose case the manufacturing activity was detected later by the department. The rate of duty was quite independent of the questions of taking out a licence or filing a classification list etc. The concessional rate was applicable to all manufacturers who fulfilled the terms of the notification. The fact of non-disclosure would determine the question whether the demand for duty would be restricted to 6 months or it would extend to 5 years. Once the period of the demand is so determined, the rate of duty applicable to the demand would have to be the effective rate applicable in force. We have not been shown any authority in law which says that every assessee held guilty of unauthorised removals would have to pay duty only at the higher tariff rate and that they would stand debarred from availing of the exempted rate, even though otherwise applicable, by the mere reason of their suppressed activity.

3. We also find no condition laid down in the aforesaid exemption notification to the effect that the grant of set off or reduction in duty would be dependent on Rule 56-A procedure being followed. In the absence of such a mandatory condition, in the notification, the Collector cannot insist on the respondents observing Rule 56-A procedure. ' 4. The respondents cited the Supreme Court Judgment in the case of Kiran Spinning Mills -1988 (34) E.L.T. 5 (S.C.). The ratio of this Judgment is that it is not enough if two products have a distinct commercial nomenclature; the tariff entry or sub-entry should also recognise them as two different products. This Judgment would be relevant if the respondents had come up in appeal or if they had filed a cross-appeal.

In that event, they could have made a claim for even greater relief than what was given to them by the Collector (Appeals). But the respondents have done no such

thing. It is the Department which is in appeal before us.

5. Since we find no substance in the department's appeal, we dismiss it.

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