

**Collector of Central Excise Vs. Punj Star Standard Electronics**

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

**Decided On :** Jan-25-1990

**Reported in :** (1990)(31)LC445Tri(Delhi)

**Judge :** R T I.J., G B Deva

**Appellant :** Collector of Central Excise

**Respondent :** Punj Star Standard Electronics

**Judgement :**

1. Review Show Cause Notice dated 15.1.1982 issued by the Central Government of India under Section 36(2) of the Central Excises and Salt Act, 1944 to review the Order No. 336-B of 1981 dated 9.7.1981 passed by the Central Board of Excise and Customs, has been statutorily transferred to this Tribunal as an appeal under Section 35-P(2) of the Act.

2. The facts of the case are neatly set out in the paragraphs 2 & 3 of the Review Show Cause Notice and hence the same are reproduced below: 2. Briefly stated the facts of the case are that the party who are manufacturers of T.V. sets, had been collecting handling/incidental charges and packing and forwarding charges from their customers at the time of sale of their T.V. sets by issuing separate bills or through debit notes. The party had not declared in their price list the fact that they had been collecting such charges on the sale of the T.V. sets. The Collector, Central Excise, Chandigarh after due process of adjudication held that the party thereby suppressed the fact of recovery of handling/ incidental charges and

forwarding and packing charges in respect of T.V. sets cleared during the period from 1.9.1974 to 29.2.1976, accordingly directed the jurisdictional Assistant Collector of Central Excise to work out the exact amount of Central Excise duty short-levied as a result of non-inclusion of the aforesaid incidental and handling charges of Rs. 20/- per set and forwarding and packing charges of Rs. 90/- per set cleared during the aforesaid period and to communicate the same to the party, and required the party under Rule 10A of the Central Excise Rules, 1944 to pay the amount of differential duty so communicated by the jurisdictional Assistant Collector.

3. On the party's appeal, the Central Board of Excise & Customs took the view that in the absence of any fraud, collusion, wilful misstatement or suppression of facts the show cause notice for demand of duties allegedly short-levied should have been issued within a period of six months for the clearances effected after 6.8.1977 and within one year under the old Rule 10 as it existed prior to 6.8.1977 and accordingly allowed the appeal without going into the merits of the case by holding that the demands in question were time-barred in the aforesaid view of the matter.

3. We have heard Shri V.K. Sharma, learned S.D.R. for the appellant and Mrs. Archana Wadhwa, learned Advocate for the respondents.

4 The contention of the Department as per averments made in the Show Cause Notice is that the Board erred in holding that there was no suppression of facts and Rule 10-A was not applicable. It is a case of suppression of facts and Rule 10-A was applicable and not Rule 10 of the Central Excise Rules as it stood at the material time and was relevant for the recovery of such short-levy and demand was very much in time. It was contended by Shri V.K. Sharma that though Rule 10-A was repealed on 6.8.1977 but in view of specific allegation of suppression of facts and essential ingredients in the Show Cause Notice invoking the larger period for the recovery of such short levy was justified as confirmed by the Collector that appellant has suppressed the facts.

5. It was contended by Mrs. Archana Wadhwa that Show Cause Notice dated 12.3.1980 was issued under Rule 10 but not under Rule 10-A as it stood prior to 6.8.1977 and Rule 10A was not applicable as it was not in existence on the date of

issue as rightly observed by the Board in the impugned order. The demand under old Rule 10 was clearly barred by time.

5A. Nextly she strongly contended that though notice was served under Rule 10 and subsequently confirmed under Rule 10A but due to the fact that proceedings were dropped as Rule 10A was not applicable and barred by time under Rule 10, it is not open to the department to recourse to other provision by reviving the charges under the amended provision. In support of her contention, she cited the following decisions: *Rattan Chand & Sons v. Collector of Central Excise, Allahabad*

6. We have considered the arguments advanced on both the sides and perused the records. The points to be considered in the present appeal are (i) Whether Rule 10A was applicable on the date of issue of show cause notice and (ii) whether Department could invoke the larger period for the recovery of the demand as per show cause notice.

7. As regards first issue, it is clear that Rule 10-A was not applicable as Rule 10-A itself was not in existence on the date of issue of Show Cause Notice dated 12.3.1980. It is evident that demand was raised under Rule 10 and confirmed under Rule 10-A as it stood prior to 6.8.1977 alleging suppression of facts in the Show Cause Notice. Prior to 6.8.1977 there were two provisions dealing with the recovery of short-levy, but there was time limit of only one year under Rule 10 read with Rule 173-J as against unlimited period under Rule 10A. None of these rules i.e. 10 & 10A as it stood prior to 6,8.1977 are applicable to the Show Cause Notice as it was issued on 12.3.1980.

The Rules 10 & 10A were replaced by amended Rule 10 which was in force from 7.8.1977 to 16.11.1980 This amended Rule 10 itself consisted of two parts for recovery of short-levy prescribing the period of 6 months for mere short-levy in the absence of allegation of suppression and for a period of 5 years if it was raised on allegation of suppression. In the present case the demand was raised alleging suppression as can be seen from the contents of Show Cause Notice. In view of this the notice which was issued on 12.3 1980 has to be construed as one which was issued under amended Rule 10(i)(c) which was applicable on the date of

issue of show cause notice in view of the ruling laid down by this Tribunal in case of Atma Steel Pvt. Ltd. v. Collector of Central Excise, Chandigarh 1984 (17) ELT-331 : 1984 ECR 1409 (Cegat). The ratio of decision in the case of S.S. Gadgil v. Lal & Co. cited (supra) by the learned Counsel is not applicable to the present case because of the fact that it was under the provisions of the Income-tax Act. But under Excise law following the ratio of the decision in case of Atma Steel cited (supra) provision as on the date of initiation of proceedings is relevant for the purpose of initiating the proceedings.

Secondly, in that case it was further stated that it could not be revived by the subsequent amendment which extended the period of limitation. In this case the period of limitation under amended section has been reduced to a period of 5 years as against unlimited period under old Rule 10A. Second decision in Rattan Chand & Sons's case cited by the counsel is also distinguishable on the ground that show cause notice issued in that case was prior to 6.8.1977 and Tribunal has taken the view that when the proceedings were dropped under Rule 10A, part of the demand was not sustainable under Rule 10. But in the present case, we are holding that notice issued under Rule 10A was wrong as it should have been under amended Rule 10 (1)(c) which was relevant on the date of issue of show cause notice. With this view, we hold that Show Cause Notice dated 12.3.1980 was not barred by time. But in view of the fact that Board has not decided the case on merits as it was considered time barring aspect only under Rule 10-A. We feel that this matter has to be reconsidered on merits by the adjudicating authority as much law has developed regarding inclusion/ exclusion of handling, forwarding and packing charges which are the main subject matter of the appeal.

Accordingly, we are remanding the matter to the concerned Collector with a direction to pass orders in the light of above observations after hearing the matter afresh after giving sufficient opportunity to the appellants.

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