

**Collector of Central Excise Vs. G. Glaridge and Co. Ltd.**

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

**Decided On :** Jun-25-1990

**Reported in :** (1990)(31)LC693Tri(Delhi)

**Judge :** R T I.J., M T D.C., S Maruthi

**Appellant :** Collector of Central Excise

**Respondent :** G. Glaridge and Co. Ltd.

**Judgement :**

1. In the ROM application, the applicants M/s. G. Glaridge & Co. Ltd. have prayed for rectification of the Tribunal's Order Nos. 543 to 546/1989-C on two counts, as stated in paragraphs 1(c), (d), (e) & (f) of the application. Briefly stating, the same are as follows: Show cause notice dated 24.11.1984 was issued by the Department seeking to change the classification of the applicants' products from T.I. 17 to T.I. 68. This show cause notice culminated in order dated 29.1.1985 passed by the Assistant Collector. An appeal was preferred by the applicants against that order and Collector of Central Excise (Appeals) passed Order No. M-1038/PN-169/85 on 10.6.1985 setting aside the Assistant Collector's order and deciding the classification under T.I. 17. No appeal was filed by the department against this order dated 10.6.1985 of Collector (Appeals). It is alleged in the ROM application that in spite of the above facts, the Tribunal proceeded on the assumption that the order dated 10.6.1985 was also under appeal, and dealt with classification, for which it had no jurisdiction. The applicants have prayed that the Tribunal may correct this mistake apparent on record.

By the show cause notice dated 4.5.1984 the Department proposed to demand central excise duty amounting to Rs. 24,84,104.22 under proviso to Section 11-A(1) of the Central Excises & Salt Act for the period from 1.4.1982 to 31.12.1983. By his order dated 28.1.1985.

the Assistant Collector confirmed the demand for six months prior to issue of the show cause notice, i.e., from 4.11.1983 to 4.5.1984, The applicants have stated that the date of show cause notice should have been 24.11.1984 and not 4.5.1984. They have prayed that the sentence: Duty demanded by the Assistant Collector in his order-in-original dated 28.1.1985 for six months prior to issue of show cause notice dated 4.5.1984, i.e., from 4.11.1983, is legal and sustainable.

Duty demanded by the Assistant Collector in his order-in-original dated 28.11.985 for six months prior to the issue of show cause notice dated 24.11.1984 i.e., from 24.5,1984 is legally sustainable.

2. We have heard Shri Lodha for the applicants and Shri Chakraborty for the respondent. At the beginning of his arguments Shri Lodha stated that the applicants had filed appeal before Supreme Court against the Tribunal's order, but in the said appeal they had not raised these issues and hence there would be no bar to the Tribunal's hearing this ROM application and carry out the rectification of the mistakes.

3. We have again considered the records carefully, but we are unable to accept either of the two requests made in the ROM application. The reasons are given below: (i) In our order Nos. 543 to 546/1989-C, we did not deal with the Collector of Central Excise (Appeals)'s Order No M-1038/PN-169/85 dated 10.6.1985 and the Assistant Collector's order dated 29.1.1985.

We dealt with the Assistant Collector's order dated 28.1.1985 and the Collector of Central Excise (Appeals)'s Order No. M-668/PN-85/95 dated 30.4.1985 which were the subject matter of Appeals No. E/1883/1985-C and No. E/2031 /1985-C. By his order dated 28.1.1985, the Assistant Collector confirmed the demand for duty for six months prior to the issue of the show cause notice dated 4.5.1984 and he also decided the classification of "Egg Trays" under Tariff Item 68 of the Central

Excise Tariff. In this connection, we reproduce below the first paragraph of operative portion of the Assistant Collector's order: I hold that 'Egg Trays' manufactured by M/s. G. Glaridge & Co. Ltd., Mundhawa, Pune 411036 are correctly classifiable under T.I. 68 of C.E.T. and not under T.I. 17 of C.E.T. In paragraphs 4 & 5 of his order-in-appeal No. M-668/PN-85/95 dated 30.4.1985, the Collector (Appeals) decided the classification of the applicants' disputed products. In paragraph 5 of his order dated 30.4.1985, he held as follows: In view of the foregoing observations, I regard the packing containers viz. (i) Egg Filler Flats, (ii) Egg Trays, (iii) Apple Trays, (iv) Duck Egg Trays, and (v) Tube light packing trays made out of waste paper as articles of paper and paper board and would be correctly classifiable under T.I. 17(4). Since this was the main issue involved in the instant case, which has since been decided, I do not express any views on the other points raised by the appellants in their appeal petition consequent to the issue of show cause notice by the Superintendent of Central Excise and the decision of the Assistant Collector vide his impugned order appealed against. In the circumstances, I set aside the impugned order of the Assistant Collector and allow the appeal with consequential relief, if any.

Regarding classification of the applicants' "slurry" the Collector (Appeals) held as follows in the last sentence of para 4 of his order dated 30.4.1985: The paper slurry is usually called 'Furnish' as explained above, which is obtained at the intermediate stage in the course of manufacturing process and as such it cannot be called the finished excisable goods emerged having distinctive name, character and use, classifiable under T.I. 68.

(ii) That the Collector of Central Excise (Appeals) decided classification of the products in his impugned order dated 30.4.1985, has been stated by himself in his Order-in-appeal No. M-1038/PN-169/85 dated 10.6.1985. In his order dated 10.6.1985, he followed the classification decided by him in his earlier order-in-appeal No. M-668/PN-85/95 dated 30.4.1985. In his order dated 10.6.1985 he reproduced paragraphs 4 & 5 of his earlier order dated 30.4.1985 and stated as follows: As such based on above decision, I set aside the impugned order dated 29.1.1985 passed by the lower authority and allow the appeal with consequential relief to the appellants.

(iii) Since the classification of the applicants' products was decided by the Assistant Collector in his order-in-original dated 28.1.1985 and by the Collector of Central Excise (Appeals) in his order-in-appeal dated 30.4.1985, which was in appeal before us, we did not exceed our jurisdiction in passing our Order Nos. 543 to 546-1989-C. We, therefore, reject the applicants' prayer on count No. 1 as there is no error in our order on this count.

(iv) The Department issued show cause notice dated 4.5.1984 demand-ing duty for the period from 1.4.1982 to 31.12.1983. There was no suppression of facts etc. by the applicants. We, therefore, correctly held in our order that "Duty demanded by the Assistant Collector in his order-m-original dated 28.1.1985 for six months prior to issue of show cause notice dated 4.5.1984, i.e. 4.11.1983, is legal and sustainable.

There is no mistake apparent on record in our above finding. The applicants' request to modify our order on Count No. 2 is, therefore, rejected.

4. Thus, both the requests made in the ROM application are rejected as there is no case for modification of our order on either of the two grounds made in the application. However, during the hearing before us, the learned advocate for the applicants argued that as the Tribunal had held that the Assistant Collector's order confirming demand for duty for six months prior to issue of show cause notice on 4.5.1984 was legal and sustainable, it was not required to remand the matter to Collector (Appeals) for decision on the point of limitation although he had not given his findings on limitation. He, therefore, requested for suitable modification of paragraph 19 of the Tribunal's order. He also requested that the sentence "The periods covered by these appeals are from 1982 to 28.2.1986 and from 1.3.1986 to 1987 respectively" in paragraph-5 of the order may be modified to read as "The periods covered by these appeals are from 1.4.1982 to 31.12.1983 and from 1.3.1986 to 1987 respectively" and that in paragraph-12 the portion "during 1983-84 to 1985-86" may be substituted by "during 1983-84 up to 31.12.1983." We agree with these requests. Accordingly, we make the aforesaid corrections in paras 5 and 12 respectively of our order and substitute paragraph 19 of our order by the following paragraph: 19. In our foregoing discussions, we have held that

under the erstwhile Central Excise Tariff as in force prior to 1.3.1986, the respondents' final products were classifiable under Item 68 of Central Excise Tariff and not under Item 17(4) or 17(3), as the case may be, of the Tariff. Hence, the exemption under Notification No. 66/82-CE dated 28.2.1982 was not admissible for these goods. Duty demanded by the Assistant Collector in his order-in-original dated 28.1.1985 for six months prior to the issue of show cause notice dated 4.5.1984, i.e. from 4.11.1983. is legally sustainable. The Revenue's Appeal No. E1883/85-C and E/2031/85-C are allowed and the impugned order-in-appeal dated 30.4.1985 is set aside.

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