

**Jayesh Containers Vs. Collector of Central Excise, Baroda and ors.**

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**Court :** Supreme Court of India

**Decided On :** Sep-14-1994

**Reported in :** 1996(84)ELT7(SC); (1998)8SCC666

**Judge :** R.M. Sahai and; N.P. Singh, JJ.

**Appeal No. :** Civil Appeal No. 2837 of 1985

**Appellant :** Jayesh Containers

**Respondent :** Collector of Central Excise, Baroda and ors.

**Judgement :**

ORDER

1. The short question that arises for consideration in this appeal directed against the judgment and order passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi, is whether the Tribunal committed any error of law in upholding the notice issued by the Collector that the appellant, a manufacturer of corrugated boards, was not entitled to claim exemption as the Kraft paper out of which the appellant claimed to have produced the corrugated boards was not cleared as provided in the notification.

2. Relevant provision granting exemption read as under:

'Provided further that if it is proved to the satisfaction of the proper officer that such corrugated board has been produced out of Kraft paper or out of paper and paper

board of the type known as Kraft liner or corrugating medium of a substance equal to or exceeding 65 grammes per square metre, in each case, and on which the duty of excise has been paid at the rate of thirty-seven and half per cent ad valorem then such corrugated board shall be exempted from the whole of the duty of excise leviable thereon.'

The exemption, therefore, depended on whether the Kraft paper used by the appellant was duty-paid or not. When an item is assessable to duty except in the circumstances mentioned then the burden to prove that circumstance is on the person claiming exemption. Corrugated board manufactured by the appellant was a dutiable item unless it was manufactured out of Kraft paper which suffered duty of 37.5%. To get this benefit the appellant wrote a letter to the department intimating it that it shall be using duty-paid Kraft paper for manufacture of the board. It was on this letter that the goods were cleared. When the appellant was required to prove that the Kraft paper used by it was duty-paid then it took up a peculiar plea that the gate pass etc. had been eaten by bookworms. It was not accepted and the authorities found that in fact Kraft paper used by the appellant had enjoyed exemption under other notification. Thus the boards were manufactured of Kraft paper which had not suffered duty of 37.5%. The Tribunal therefore did not commit any error of law in dismissing the appeal.

3. In the result, the appeal fails and is dismissed. But there shall be no order as to costs.

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