

**Alpha Garments Vs. Collector of Central Excise**

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

**Decided On :** Mar-01-1995

**Reported in :** (1996)(86)ELT600TriDel

**Appellant :** Alpha Garments

**Respondent :** Collector of Central Excise

**Judgement :**

1. This appeal arises out of and is directed against the Order-in-Original, dated 9-8-1990 passed by the Collector of Central Excise, New Delhi.
2. The appellants are engaged in the manufacture of 'Leather Garments' falling under Chapter Heading 4201.90. It was charged that they have manufactured 'Leather Garments' without obtaining Central Excise Licence and cleared the goods from the place of manufacture without issuing gate passes, without maintaining proper Central Excise records and without payment of Central Excise duty. Accordingly, the show cause notice was issued. In reply to the show cause notice they have accepted the factual position that they have manufactured the goods without payment of duty but defended their action on the plea that the manufactured goods have all been exported which could be cleared for export without payment of Central Excise duty under Rule 13 or on payment of duty under Rule 12 of the Central Excise Rules, 1944 which duty was refundable to them. In either case no duty was accruable to the Government on the Garments in question. Among other pleas it was pleaded that the Department of Industries did recognise the goods in question as items of handicraft and, therefore, no duty

attaches to them in terms of Notification No. 175/86-C.E., dated 1-3-1986. The pleas of the party were negatived by the Collector as per his order and accordingly, he confirmed the duty of Rs. 81,00,624.69 for the period from 1-3-1986 to 15-11-1988 under Rule 9 (2) of the Central Excise Rules, 1944 read with proviso to Section 11A(1) of the Central Excises & Salt Act, 1944. He also imposed a penalty of Rs. 4,00,000/- (four lacs) for contravention of various Rules of the Central Excise Rules.

3. Shri Gopal Prasad, learned Advocate appearing for the appellants submitted that the main charge against the appellants is that they have exported 'Leather Garments' without following prescribed procedure. He urged that the fact remains that these Garments have been exported and this fact is not in dispute as the duty was demanded based upon the figures in respect of the goods exported outside India. He contended that the failure on the part of the appellants is only of technical nature and in such circumstances such failure was condonable as it was envisaged under Rule 12 that the Collector may allow such claim if he satisfies that the goods have in fact been exported or under Rule 13 as the case may be and in the instant case it is admitted fact that the goods have been exported. He said that the Tribunal has been consistently taking the view that the demand of duty was not justified wherever the goods have been exported even without obtaining licence as it was only technical violation and there was no loss of revenue. He referred to a series of decisions including following decisions in support of his contention. Collector of Central Excise, Guntur v. Binny Ltd., Madras - 1987 (31) E.L.T. 722 (Tribunal). Collector of Central Excise, Chandigarh v. Jain Steel Rolling Mills.

3. American Dry Fruits Stores v. Collector of Central Excise - 1992 (61) E.L.T. 709 (Tribunal).

He contended that the goods were exempted prior to 1-3-1986 and further on 16-11-1988 the Government of India issued a notification by extending unconditional exemption in respect of the goods and accordingly, for a particular period i.e. from 1-3-1986 to 15-11-1988 not only the appellants but entire trade was affected by this anomalous situation and in view of the representation given by the trade

Government of India was also contemplated in issuing a notification under 11C of the Act to exempt the goods but that was not materialised.

The appellants were under bona fide impression that the goods were not subjected to duty and in view of the mitigating circumstances as there was no loss of revenue neither duty was demandable nor imposition of penalty was justified. He submitted that the appellants exported 'Leather Garments' valued at Rs. 6,62,26,527.49 and against which the goods were cleared for home consumption during the period in question is at Rs. 12,933/- and the goods cleared for home consumption was not dutiable in view of the Notification No. 105/80 since the clearance did not exceed Rs. 7.5 lacs and they were also entitled for exemption in terms of several notifications including Notification No. 175/86. He submitted that the value of clearance for home consumption was of Rs. 12,933/- only and was not liable to duty since it falls within the exemption limit even though unit was not registered as SSI unit, referring to the decision of the Tribunal in the case of Tac Cassettes v. Collector of Central Excise, Bombay - 1995 (75) E.L.T. 307. He stated that penalty of Rs. 4 lakh was excessive for technical breach and required to set aside the penalty as there was no intention to evade payment of duty and in fact, no duty has been evaded.

4. While countering the arguments Shri Mohan Lal, learned JDR submitted that it is not a mere technical lapse but gross violation of provisions of the Central Excises & Salt Act as well as Rules in committing number of offences as much as not obtaining licence but manufactured the goods and cleared without payment of duty and without following the procedure as prescribed under the Excise Rules. Entitlement of rebate on exports is not an automatic but subject to fulfilment of conditions as prescribed under the provisions of the Rules but same has not been followed by the party. He contended that the Collector has got a power to condone the non-fulfilment of conditions or conditions under Rule 12 of the Rules where the goods have been suffered duty and goods were exported while granting the rebate. Similarly Rule 13 is applicable where the party has executed a bond in lieu of payment of duty in respect of goods exported. He stated that the case law referred to by the other side is not applicable to the facts of this case as the party in the case of American Dry Fruits Stores (Supra) obtained the licence for the

manufacture of various products but only one product custard powder was not covered by the licence and same has been exported without payment of duty and in other cases the quantity exported was very small. He said that the goods cleared for home consumption was liable to duty since they were not entitled for exemption as it was not SSI unit and furthermore, it is not clear from doubt whether quantity of clearance of export should be taken into consideration in aggregate value in view of the conflicting decisions on this issue. He urged that penalty was justified since they have manufactured the goods without payment of duty and contravened the provisions of the excise law.

5. We have carefully considered the submissions made by both sides and perused the records including citations. On going through the facts with reference to the case law, we find that the Tribunal has been consistently taking the view that grant of rebate was permissible wherever the goods have been actually exported by condoning the procedural lapses on the ground that they were only technical breaches and as there was no loss of revenue as it was rightly argued by the appellants. Following the ratio of the aforesaid decisions, we hold that the demand of duty was not justifiable as the goods have been actually exported in this case and the goods cleared for home consumption was negligible. But as regards penalty there is some force in the arguments advanced by the Departmental Representative that persons should not be allowed to go scot free who have shown scant respect to law and contravening the provisions of the Central Excises & Salt Act and relevant Rules. Giving credence to the submissions made by him, we find that imposition of penalty was justified, but we are of the view that it is excessive and not commensurate with the gravity of offence. In the circumstances penalty amount deserves to be reduced.

Accordingly penalty amount is reduced to Rs. 25,000/- (twenty five thousand) as against Rs. 4 lakhs. But for this reduction in quantum of penalty, Appeal is otherwise allowed.

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