

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

Regional Bench, Court No. 2

Central Excise Appeal No. 22118 of 2014

[Arising out of Order-in-Appeal No. 248/2014 dated 29.04.2014 passed by the
Commissioner of Central Excise (Appeals-I), Bangalore.]

M/s. Poorna Graphics

Ground Floor, Ganesha Temple Compound,
3rd Cross, Singhaianapalya,
Mahadevapura Post,
Bangalore – 560 048.

....**Appellant(s)**

VERSUS

Commissioner of Central Excise,

P B No. 5400, C R Building,
Bangalore, Karnataka - 560001.

.....**Respondent(s)**

Appearance:

Mr. M.A. Narayana, Advocate for the Appellant.

Mr. Neeraj Kumar, Superintendent (AR) for the Respondent.

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)

Hon'ble Mr. Pallela Nageswara Rao, Member (Technical)

Final Order No. 20208 /2025

Date of Hearing: 28.08.2024

Date of Decision: 26.02.2025

Per: P.A. Augustian

The issue in the present appeal is regarding classification of the goods manufactured by the appellant and also whether the demand is barred by limitation.

2. The brief facts are the Appellant was manufacturing printed Collar Band, Chest Band and classified the same under Central Excise Tariff Sub-Heading (CETSH) 49090090 of first schedule of Central Excise

Tariff Act, 1985 and cleared the same as printed sheets. They were also manufacturing 'printed fabric folder' and classifying them under CETSH 49011020 resulting in the clearance of the product without payment of duty as the CETSH adopted by the appellant attracted 'Nil' tariff rate. Thereafter, on verification of the products it is observed that printed 'Collar Band' and 'Chest Band' are manufactured by the appellant by printing on the broad sheets with the brand name or description of the apparel and other information on it using a 4(four) or 8(eight) colour printing machine and laminate the same. Alleging that the products are used for packing shirts and other clothes and they are part of 'clothing accessories' and it was wrongly classified by the appellant, audit objections were raised and thereafter Adjudication Authority as per the impugned Order-in-Original confirmed demand of cenvat duty amounting to Rs. 1,32,608/- including the education cess and SHE cess. The Adjudication Authority also imposed equal amount of penalty under Section 11AC of the Central Excise Act, 1944. However, Adjudication Authority has not imposed penalty in terms of Rule 26 and 27 of the Central Excise, 2002. Aggrieved by said order an appeal was filed before the Commissioner (Appeals) and after considering the issue the Commissioner (Appeals) upheld the impugned order and rejected the appeal. Aggrieved by said order the present appeal is filed before the Tribunal.

3. When the appeal came up for hearing, Learned counsel for the appellant submits that in the present case the demand is for the period from 04/2006 to 12/2008, show-cause notice was issued on 20.01.2011. Learned counsel submits that there is no suppression of facts and the proposed classification is also now reflecting the actual

product manufactured by them. Even, if it is assumed that the appellant has not made a proper declaration regarding the classification as alleged, classification proposed by the respondent is also unsustainable. Learned counsel further submits that the appellant has not suppressed any fact from department. The entire facts were brought out only during audit and fact being so, no allegation can be made that the appellant had deliberately suppressed the fact. Learned counsel draws our attention to the judgments of the Hon'ble Supreme Court in the matter of **M/s. Pushpam Pharmaceutical Company Vs. CCE, Bombay** reported in -1995 **(78) ELT 401 (SC)** wherein it is held as follows:-

"Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression"

4. As regarding classification, the learned counsel submits that the 'Collar Band' and 'Chest Band' manufactured by the appellant are used for giving stability to the chest portion and collar portion of the shirt while packing and even without such printing the goods may be put to the intended use. Since, there is no direct classification relating to goods manufactured by Appellant and thus appellant classified the goods as under CETSH 4909 0090. However, the respondent is alleging that the said goods are falling under the Category of CETSH 4818 5000. and the said classification is also not proper. As regarding 'Printed Fabric Folder' and 'Swatch Cards' classified by the appellant under CETSH 4901 1020 and it was re-classified by the department as falling under CETSH 4820 3000, Learned counsel submits that a plain reading of the heading CETH 4820 clearly indicates that the goods covered there under are all items of stationery as known in the market and sub-heading 48203000 refers to 'Binders (other than book covers), folders and file covers'. It is submitted that the 'folders' in this heading covers only such folders that are ordinarily available in the stationery shops and not all products that may be called as 'folders' with a certain prefix by the manufacturer for ease of his reference. As described supra, the impugned goods are not folders as known in the market and it is not such a product as ordinarily bought and sold as 'folders'. The impugned goods are specifically made according to customer's specification and the word 'folder' is used only to indicate that it can hold the swatches of fabric and hence the name 'swatch fabric folder'. The product being manufactured by the firm is totally different and not comparable to the goods 'folder' as contemplated in the CETSH 48203000. Thus, it is

submitted that the impugned goods are not classifiable under CETSH 48203000 as held in the impugned order.

5. Learned Authorized Representative (AR) reiterated the finding in the impugned order and further submits that CETSH 48185000 includes Toilet paper and similar paper, cellulose wadding or webs of cellulose Fibers.....and similar household stationary or hospital articles, **articles of apparels and clothing accessories** of paper pulp, paper, cellulose wadding or webs of cellulose Fibers" (emphasis supplied) chargeable to duty @ 16% upto 01.03.08, 14% upto 06.12.08 and 10% from 07.12.08. As regarding 'swatch cards' and 'printed folders' have been classified under CETSH 49011020, which is also inappropriate in as much as primary use of the product is not as an articles of printing industry but in as sales promotion accessories to the marketing of apparel and thereby they are appropriately classifiable as clothing accessories under CETSH 48203000. Whether the item folders are classified under heading 48185090 or 48203000 the item is chargeable to duty and remains in Chapter 48 and not in 49.

6. Heard both sides and perused the records.

7. We find that as regarding classification, 'Collar Band, and 'Chest Band' manufactured by the appellant they are rightly classified by the respondent under CETSH 48185000, since the CETSH 48185000 specifically reads 'articles of apparel and clothing accessories' and are chargeable to duty at the rate 16% at the relevant time. However, as regarding the 'printed fabric folder' and 'swatch cards', we find that the Heading 4820 clearly indicates that the goods covered therein are all items of stationary and as known in the market. The product being manufactured by the appellant is totally different and not comparable to

the goods 'folder' as contemplated in the CETSH 48203000. Accordingly classification of the same under CETSH 48203000 is unsustainable.

8. As regarding limitation, we find strong force in the contention made by the appellant. It is an admitted fact that, if there is no proper classification prescribed under the statutes to classify the goods, adopting similar classification as adopted by the appellant cannot be considered as suppression of facts to allege illegality. The issue regarding invoking the extended period of limitation is well settled as per the judgment of the Hon'ble Supreme Court in the matter of **Continental Foundation Jt. Venture Vs. Commr. Of C. Ex., Chandigarh-I reported in 2007 (216) E.L.T. 177 (S.C.)**, wherein it is held that as far as fraud and collusion are concerned, it is evident that the intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word 'wilful', preceding the words "mis-statement or suppression of facts" which means with intent to evade duty. The next set of words 'contravention of any of the provisions of this Act or Rules' are again qualified by the immediately following words 'with intent to evade payment of duty.' Therefore, there cannot be suppression or mis-statement of fact, which is not wilful and yet constitute a permissible ground for the purpose of invoking penal provisions. Similarly, in the case of **Densons Pultretaknik Vs. Commissioner of Central Excise reported in 2003 (155) E.L.T. 211 (S.C.)** it is held that for invoking extended period of limitation under the said provision duty should not have been paid, short-levied or short-paid by suppression of fact or in contravention of any provision or rules but there should be wilful suppression. In the instant case, the show cause notice is issued on

20.01.2011 covering the period between 4/2006 and 12/2008. Thus, the entire period covered in the show cause notice is beyond the period of one year and hence the demand is not sustainable in law. Therefore, the Appellants cannot be charged with willful mis-statement or suppression of facts with intent to evade tax, for invoking extended period of limitation in this case.

9. In view of the above discussion, confirmation of the demand by invoking extended period of limitation is unsustainable. Since entire demand is barred by limitation, the impugned order is set aside and the appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in Open Court on 26.02.2025.)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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