

(1985) 01 AP CK 0005
In the Andhra Pradesh High Court
Case No : Writ Petition No. 6359 of 1981

Golden Press

APPELLANT

Vs

Deputy Collector of Central Excise, Hyderabad and Another

RESPONDENT

Date of Decision : 19-01-1985

Acts Referred:

Apprentices Act, 1961 — Section 18

Central Excises and Salt Act, 1944 — Section 3, 35

Citation : (1986) 9 ECC 317 : (1985) ECR 1001 : (1987) 27 ELT 273

Hon'ble Judges : M. Jagannadha Rao, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : G. Chandrakumar and V. Lakshmid devi, for the Appellant; K. Nagaraja Rao, Additional Standing Counsel for Central Government, for the Respondent

Judgement

Jeevan Reddy, J.—This writ petition is directed against the orders of the Collector, Central Excise, Hyderabad, dated 4-8-1981, passed by him in exercise of his power of review u/s 35A of the Central Excise and Salt Act, 1944.

2. The petitioner is a printing Press. According to it, it carries on business as manufacturer of printed cartons and other Printing Jobs; for the purpose of manufacturing Printed Cartons, the raw material i.e., the card-board, is supplied by the customer who also specifies the content and design of printing. The manufacture of cartons involves printing, cutting, creasing and pasting. The petitioner says that, in this process, printing charges constitute the bulk of the total charges. The manufacture of printed cartons is said to be the main activity of the petitioner. It did not take out a licence under the Central Excises and Salt Act.

3. On 13-12-1977, the officers of the Special Checking Squad, Headquarters, Central Excise Department, Hyderabad, visited the premises of the petitioners and registered a case against it for contravention of Rules 9(1), 174 and 173PP of the Central Excise Rules, 1944, on the ground that, for the period 1-3-1976 to 17-6-1977, the petitioner had employed more than 49 workers; that, for the

period 18-6-1977 to 13-12-1977, the value of the machinery in its unit was more than Rs. 10,00,000/- and hence, its produce was liable to duty and that, the petitioner was also bound to take out a licence under the Act. The statement of the Managing Partner of the petitioner-press was also recorded on the same day.

4. On 9-1-1978 a notice was issued to the petitioner by the 1st respondent (Deputy Collector of Central Excise, Hyderabad), calling upon it to show cause why (i) penalty should not be imposed upon it under Rule 173Q of the Central Excise Rules for contravention of Rules 9(1), 174 and 173PP of the Central Excise Rules; and (ii) duty should not be demanded under Rule 9(2) of the Central Excise Rules on the printed cartons which have been removed without payment of duty, contrary to Rules. It was alleged in the show-cause notice that the petitioner has manufactured excisable goods, i.e., printed cartons, without obtaining a Central Excise licence and removed the same without payment of duty. The petitioner was called upon to submit an explanation, to produce evidence in support of its case, and also to indicate whether it desires a personal hearing. The petitioner submitted an explanation on 18-3-1978. In this explanation, the petitioner claimed exemption under Notification No. 122/75 CB, dated 5-3-1975. It also submitted that the number of workers employed by it did never exceed 49 that, the capital investment on the plant and machinery installed in its factory also did never exceed Rs. 10,00,000/- and that, therefore, it is not liable to take out a licence or to pay duty before removing the goods. The petitioner submitted that printed cartons are products of "printed industry" and, therefore, exempt under Notification No. 122/1975. On 12-2-1979, the Deputy Collector passed orders holding that the petitioner had employed 50 or more workers; that, the value of the machinery in its unit was over Rs. 10,00,000/- and that, printed cartons are not the products of printing industry and, therefore, the petitioner is liable to take out a licence and pay duty upon the said cartons. The Deputy Collector, however declined to impose penalty, because he was of the opinion that the removal of the goods by the petitioner without paying duty was due to ignorance, and under a genuine impression that its products are not chargeable to duty. He only demanded the appropriate duty on the cartons removed.

5. The petitioner preferred an appeal to the Appellate Collector against the order dated 12-2-1979. The appeal was disposed of on 18-5-1979 and the matter remitted to the Deputy Collector for re-examination of the case, and for a fresh determination of the number of workers, classification of printed cartons, and determination of the value of the plant and machinery in the unit of the petitioner, in the light of the position indicated in the order.

6. After remand, the Deputy Collector called upon the petitioner to furnish a certificate from a Chartered Accountant with respect to the value of the machinery and plant in its unit. Accordingly, the petitioner submitted a certificate, and also other documents require of him. On 24-9-1980, the Deputy Collector passed orders holding all the points in favour of the petitioner. He held

that the number of workers did at no time exceed 49; that, the value of the plant and machinery was less than Rs. 10,00,000/- and that, printed cartons are products of printing industry. Indeed, he was of the opinion that, with respect to the classification of printed cartons and the number of workers employed by the petitioner, the appellate order of remand was itself more-or-less conclusive.

7. On 11-12-1980, the Collector of Central Excise issued a notice to the petitioner, u/s 35A of the Central Excise Act, Calling upon it to show cause why the order of the Deputy Collector dated 24-9-1980 should not be reviewed. It was alleged in the show cause notice that, by virtue of the subsequent decision of the Government of India in the case M/s. Vijaya Flexible Containers, Ltd., Bombay 1980 ELT 646 G.O.I. (F.B.) printed cartons must be treated as products of "packaging industry", and not of "printing industry" and, therefore, they are not entitled to any exemption. The said decision overrules the earlier decision of the Government of India in the case M/s. Allibhoy Sharufally & Company 1978 ELT 145 wherein it was held that printed cartons are products of printing industry, and which decision was followed by the Appellate Collector and the Deputy Collector. It was alleged that printed cartons are not products of printing industry and are, therefore, not entitled to exemption. He also proposed to examine the number of workers employed by the petitioner, and the value of the plant and machinery in its unit. The petitioner was called upon to furnish the value of the card-board and the value of the job work in respect of the cartons cleared by it, with a view to arrive at the value of the cartons. It was proposed to subject the printed cartons to duty, and also to levy penalty under Rule 173Q of the Rules for the Petitioner's failure to take out a Central Excise licence. It was indicated that, because the petitioner did not take out a licence, it resulted in avoidance of duty and hence, the five-year period of limitation applies. To this, the petitioner submitted an explanation on 5-1-1981 in which, each of the grounds mentioned in the show-cause notice was disputed. After considering the entire matter, the Collector passed final orders on 4-8-1981, holding that printed cartons are not the products of printing industry; that, the number of workers employed by the petitioner during the period 1-3-1976 to 17-6-1977 exceeded 49; that, the value of the machinery in its unit for the period 18-6-1977 to 13-12-1977 was more than Rs. 10,00,000/- and that, the petitioner is also liable to penalty in a sum of Rs. 50,000/- under Rule 173Q of the Central Excise Rules. It was held that, in the facts and circumstances of the case, the five-year period of limitation prescribed in Rule 9(2) applies, and not the shorter period. The petitioner then approached this Court by way of this writ petition, without approaching the revisional authority, on the ground that, inasmuch as it is challenging the correctness of the Government of India's order in the case of M/s. Vijaya Flexible Containers, Ltd., Bombay 1980 ELT 646 GOI there is not point in approaching the revisional authority because, so long as the said decision stands, the petitioner cannot expect a different decision.

8. Mr. G. Chandrakumar, the learned counsel appearing for the petitioner, urged three contentions before us, viz.

(i) that, printed cartons are the products of printing industry, within the meaning of Notification No. 122/1975 and, therefore, exempt from duty;

(ii) that, the impugned order is unsustainable in law, in so far as it holds

(a) that, the number of workers employed by the petitioner for the period 1-3-1976 to 17-6-1977 exceeded 49,

(b) that, the value of the machinery in its unit for the period 18-6-1977 to 13-12-1977 exceeded Rs. 10,00,000/- and

(c) that, the petitioner is liable to penalty under Rule 173Q of the Central Excise Rules; and

(iii) that, in the alternative, the petitioner is entitled to the benefit of Notification No. 119/1975 according to which duty can be levied only on the amount charged for the job work, but not on the total value of the printed cartons.

9. We may indicate that, if we agree with the learned counsel on his first submission, it would not be necessary to examine contentions (ii) and (iii); only if we do not accept his first contention would it be necessary to examine the second contention. The consideration of the third alternative contention also arises if we hold against the petitioner on any of the points urged under the second contention.

10. Tariff Item 68 was introduced in the First Schedule to the Act with effect from 1-3-1975. It is a residuary Article, and reads thus :-

"68. All other goods not elsewhere specified, manufactured in a Factory.....".

11. Central Excise duty is levied on all excisable goods other than salt, which are produced or manufactured in India. The petitioner did not ever dispute that it is engaged in the manufacture of printed cartons and that, they are leviable to duty under Tariff Item 68. The main contention of the petitioner has been that it is entitled to the benefit of Notification No. 122/1975-CE, dated 5-5-1975, issued under, and with reference to Tariff Item No. 68. It is, therefore, necessary to read the notification. It reads thus :

"Under the Government of India, Ministry of Finance (Department of Revenue and Insurance) Notification No. 55/75-Central Excise, dated the 1st March, 1975, as subsequently amended by Notification No. 114/75-Central Excise, dated the 30th April, 1975, No. 122/75-Central Excise, dated the 5th May, 1975, and Notification No. 62/78-CE dated the 1st March 1978, the Central Government hereby exempts goods of the description specified in the Schedule annexed hereto and falling under Item No. 68 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) from the whole of the duty of excise leviable thereon.

SCHEDULE

Item 12 : All products of the printing industry including newspapers and printed

periodicals".

12. It is the petitioner's case the printed cartons are "products of the printing industry" and are, therefore, exempt from whole of the duty of excise under the aforesaid notification. The question is whether he is right.

13. So far as the Government of India is concerned, first it took the view in its order No. 2057/77 (in the case of M/s. Allibhoy Sharufally & Company) 1978 ELT 145 that, printed cartons are products of printing industry and, therefore, eligible for exemption. But, subsequently, it revised its opinion in case No. 466/1980 dated 23-5-1980, pertaining to M/s. Vijaya Flexible Containers Ltd., Bombay 1980 ELT 646 (G.O.I.). In the subsequent decision, it took precisely a contrary view. So far as the Courts are concerned, only one decision of a learned single Judge of the Karnataka High Court in Rollatainers Ltd. v. Union of India 1948 (18) ELT 217 is brought to our notice holding that, printed cartons are products of printing industry. No other decision, for or against the petitioner's proposition, is placed before us. Learned counsel for the petitioner, naturally, commended strongly for our accepting the view taken by the learned single Judge of the Karnataka High Court, and contended that applying the test of predominance, the cost of printing the cartons is much more than the cost of carton-making. Counsel submitted that the test of "end-use" applied by the Government of India in the case of M/s. Vijaya Flexible Containers Limited, Bombay and in the impugned order is not at all a relevance test under the Central Excise Act, as held by the Supreme Court in Dunlop India Ltd. v. Union of India AIR 1977 SC 597 : 1983 ELT 1566 (SC). He also contended that, an exemption notification should be construed liberally and that, the item "all products of printing industry" in the exemption notification justly and reasonably takes in "printed cartons" as well.

14. On the other hand, it is contended by Shri K. Nagaraja Rao, the learned Additional Standing Counsel for the Central Government, that the correct approach to the adopted in such matters is to see whether a new product with a distinctive name, use and application is manufactured by the petitioner, and not the cost-ratio. He contended that, what one must see is, whether the product, as it emerges, can reasonably be called a product of printing industry. According to the learned counsel, printed-carton is a product of packing industry; in any event, it is not a product of printing industry. Counsel also submitted that, if a person undertakes the manufacture of ordinary cartons, he would be liable to duty; and if the petitioner's contention is accepted, printed cartons would be exempt from duty, which would bring about a very curious and absurd situation, where ordinary cartons are exigible to duty but not the printed cartons.

15. In determining such questions, it is well to remember what the Supreme Court said in Dunlop India Ltd. v. Union of India, viz. AIR 1977 SC 597 : 1983 ELT 1566 (SC) :

"It is well established that in interpreting the meaning of words in a taxing

statute, the acceptance of a particular word by the Trade and its popular meaning should commend itself to the authority.

It is clear that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. But once an article is classified and put under a distinct entry, the basis of the classification is not open to question. Technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance, we then see no difficulty for statutory classification under a particular entry.....".

It is also pointed out in the same decision that

"it is not for the Court to determine for itself under Article 136 of the Constitution under which item a particular article falls. It is best left to the authorities entrusted with the subject. But where the very basis of the reason for including the article under a residuary head in order to charge higher duty is foreign to a proper determination of this kind, this Court will be loath to say that it will not interfere.....".

The same test holds good even for this Court acting under Article 226 of the Constitution. Another point decided in this case, and upon which strong reliance is placed by the learned counsel for the petitioner, is that the "end-use" of the article was totally irrelevant in the context of the entry where there was no reference to the use or adaptation of the article. The Supreme Court was concerned with the classification of "V.P. Latex". "V.P. Latex" was essentially raw rubber; but, the contention of the State was that, inasmuch as it is used in the manufacture of tyres as a bonding agent by cross-linking with fabrics, it must be classified as synthetic resin. It is in this connection that the Supreme Court observed that the end-use of the article is absolutely irrelevant in the context of the entry where there is no reference to the use or adaptation of the article. In other words, the said observation means that, one must ordinarily look to, and determine what a given article is, composition-wise or content-wise, as it may be called. The fact that an article can be put to an altogether different use is not a ground for taking it out of its natural placement. A rubber is a rubber, and must be taxed as such. That some one, for his own reasons or purposes, uses rubber as a bonding agent, does not mean that rubber can be taxed as synthetic resin. Another example that may be given is that, in Andhra Pradesh, coconut oil is used as hair-oil. That a few persons in this State hailing from Kerala use it as a cooking oil, cannot mean that in this State it should be treated as cooking oil. Another principle to be noticed while pronouncing upon the first contention of the learned counsel for the petitioner is to remember that the notification relied upon by the petitioner is an exemption notification. In other words, the said notification carves out an exception. An exception should be strictly construed, and not liberally. While we agree that an exemption notification should be so construed as to effectuate its object and underlying intent, we are unable to agree with the learned counsel for the petitioner that the exemption notification

should be construed liberally. These notifications should not be so construed as to travel beyond their confines, and as covering items which were never intended to be covered by the authority issuing the notification. In this behalf, the scheme of the Act, the tariff entry and the language of the notification have all to be taken into consideration.

16. The object of Notifications No. 55/1975 and No. 122/1975 is obviously to encourage production and cheaper availability of certain products of daily use. If one looks at the Schedule to the notification, this fact would be immediately evident. The schedule includes all kinds of food products, food preparations, Exercise-books, drawing and mathematical instruments, sports goods, handicrafts, animal feed, agricultural implements, scented chunam (lime) Katha, and so on. In between these items is put Item No. 12, which exempts "all products of the printing industry". The idea obviously is to provide encouragement to printing industry. But then, what is the meaning of the words "all products of the printing industry" ? Can it be said, reasonably speaking and applying the commercial or common parlance test, that printed cartons are products of printing industry ? The question is one of drawing the line. If tomorrow a Printing Press undertakes not only printing on metal cans but also the manufacture of cans in which food products or other products are sold, can it be said that printed cans are the products of printing industry ? Can a printer be allowed to say that, because the cost of printing is more than the cost of cutting the metal-sheet and preparing metal cans, it must be treated as a product of printing industry ? Would any common man go to a Printing Press for purchasing printed cartons, or printed cans, as the case may be ? Cartons and cans are more properly products of packaging industry. Cartons, cans, sachets, are all products of packaging industry. They may also involve some printing to identify the goods inside, and also to attract the customer; but, that does not mean that they become the products of printing industry. The learned Additional Standing Counsel for the Central Government gave an example of a manufacturer of fountain-pens, manufacturing fountain-pens with a gold nib; the cost of the gold nib is several times more than the remaining parts of the fountain-pen; applying the cost-ratio factor, can it be said that the manufacture of that fountain-pen is a gold industry and not a fountain-pen making industry ? Ordinarily a Printing Press undertakes printing; but, if it undertakes - whether to attract the customers or for other reasons - certain other jobs of a printer, it ceases to be a printer to that extent. When the notification says "products of printing industry", it must be, reasonably speaking, a product of printing industry, and not of a packaging industry, or some other industry. In this connection, it is not an irrelevant consideration to remember that, ordinary cartons manufactured by a person are subject to Central Excise duty. It would be rather strange if it were to be held that printed cartons are exempt from duty.

17. We must also approach the issue from another angle : admittedly, printed carton is a manufactured product. In other words, a process of manufacturing is involved in preparing the printed cartons. What is that manufacture ? The only

answer must be that the manufacturing involved is that of printing and preparing the cartons. The petitioner is supplied mere card-board. It first cuts them into size, then prints them as desired by the customer, and then cuts and creases the same and also applies the paste or gum, as the case may be. It thus brings into existence a carton, and a printed carton at that. Carton-making is not the job of a printer. Merely because the printer also prints some matter upon the carton, the printed carton cannot, and does not become a product of printing industry. Though at one stage the learned Counsel for the petitioner contended that, even the ordinary cartons are exempt from duty, he could not bring to our notice any provision or exemption notification to substantiate his contention. Printed cartons which a printer may manufacture are not necessarily used for packing the goods of daily or common use by an ordinary citizen. They may also be used for packing costly articles, or articles of luxury. There is no reason, therefore, to place them, by a process of interpretation, under Item 12 of the Schedule to the exemption notification.

18. Strong reliance is placed by the learned counsel for the petitioner on certain text books, which were also relied upon by the learned single Judge of the Karnataka High Court in *Rollatainers Limited and Another Vs. Union of India (UOI) and Others*, . The first text-book is the "Encyclopaedia of How It's Made" edited by Donald Clarke. In that book, the expression "printing" is defined thus :

"Apart from the obvious books, magazines and newspapers, the products of the printing industry are many and diverse. They include posters, bank-notes, telephone directories, postage stamps, record sleeves, wall papers, cartons, plastic containers and many other forms of packaging."

We are of the opinion that this definition is not only wide, but must have been set out for a different purpose. According to this definition, cartons, plastic containers, and many other forms of packaging are also included within the expression "printing" which in our opinion, is going a bit too far. It is difficult to conceive how plastic containers and other forms of packaging like metal cans, tins, etc. become the products of printing industry merely because some or other printing is also involved. The plastic containers must legitimately belong to plastic industry; similarly, the cartons and other forms of packaging rightfully belong to packaging industry.

19. The other text-book brought to our notice is "The Printing Industry" by Victor Strauss, and the third one is a treatise, called "Printing Office Procedure" published by the British Industries Federation." According to the latter, printed cartons fall within the meaning of the term "printing industry" it says,

"Although the typical printer handles a wide variety of work (he is said to be a "general" or jobbing printer), there is a trend towards specialisation. Some firms concentrate on books, and others on periodicals, printed cartons and stationary, while some undertake services to the trade such as setting type for other printers to use."

It is also state that manufacturers of printed cartons in U.K. are also the members of "British Printing Industries Federation". But, as we have observed hereinbefore, one must reasonably draw a line and say that, everything that a printer may choose to do does not necessarily become the job or work of printing industry for the purpose of the exemption notification. For his own purposes, or for reasons of business, a printer may undertake the manufacture of cartons, cans, tins, plastic containers, etc., but all that cannot reasonably be included within the expression "printing industry", nor can they be called the products of printing industry. Nor are we impressed by the argument that the impugned order is wrong because it applies the "end use" test. The end-use test becomes relevant if a printed carton is used for some other purpose and the authorities seek to place the printed carton under some other tariff item, than Tariff Item No. 68 on that basis. Thus, the observations of the Supreme Court in *Dunlop India Limited v. Union of India* (supra) are of no assistance to the petitioner herein.

20. So far as the decision of the learned single Judge of the Karnataka High Court is concerned, the learned Judge appears to have been impressed by the text-books, which say that printed cartons are products of printing industry; but, if one were to go by those texts, even plastic containers and all other forms of packaging would also become products of printing industry, merely because they involve some printing as well, which, we think, would be an unreasonable thing to say. We are, therefore, unable to agree with the view taken by the learned Judge.

21. For the above reasons, we are of the opinion that the cost-ratio test may not be the correct test to be applied in the facts and circumstances of this case. What we have to see is, what is the manufactured product which is dutiable under Tariff Item 68 ? It is carton; and it is undoubtedly dutiable. Merely because the carton is also printed, it does not cease to be a carton; it is only a printed carton; carton-making cannot be called a product of printing industry; the end-use theory has no application herein; the end-use test held irrelevant in the *Dunlop India's* case (supra) is not applicable herein, having regard to the object underlying, and the language used in the exemption notification, we do not think that the Collector of Central Excise was wrong in classifying the printed cartons as not being the products of printing-industry. The most that can be said in favour of the petitioner, is : May be, two views are possible. But, once the authority has taken one view, this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution would not interfere, unless it is shown that the very reasons for classification are foreign to the proper determination of the classification. This court would not act as an appellate authority in such matters. Indeed, the Collector of Central Excise has merely followed a decision of the Government of India, pertaining to printed cartons itself. Accordingly we see no reasons to interfere with the finding of the Collector, Central Excise, that printed-cartons are not products of printing industry.

22. Now coming to the second contention of the learned counsel for the petitioner, it comprises of three sub-contentions, as set out hereinbefore. We shall proceed to deal with them in that order :

(a) The first question is whether, during the period 1-3-1976 to 17-6-1977, the petitioner was employing more than 49 workers, so as to attract the liability to duty under Tariff Item 68. Admittedly, the petitioner was employing 47 regular workers during this period; but, the Collector of Central Excise has come to the conclusion that the petitioner was employing more than 49 workers, by including three apprentices within the category of workers. It is this basis which is challenged before us. The expression "worker" is not defined by the Central Excise Act, nor is the expression "apprentice" defined. Section 18 of the Apprentices Act, 1961, expressly says that, "apprentices" are not workers unless specifically included by any enactment. In the absence of any such special provision in the Central Excise Act including apprentices within the meaning and definition of workers, we see no reason to include apprentices within the meaning and definition of workers; if so, it must be held that the petitioner was employing only 47 workers during the aforesaid period.

(b) The second aspect is the value of the machinery in the petitioner's factory during the period 18-6-1977 to 13-12-1977. While the Deputy Collector held that the value is less than Rs. 10,00,000/-, the Collector has held that it is more than Rs. 10,00,000/-. According to Notification No. 176/1977, which is an exemption notification issued by the Government of India, a manufacturer who satisfies the following two conditions, is exempt from duty. The two conditions are : (i) "the sum total of the value of the capital investment made from time to time on plant and machinery installed in the industrial unit, in which the goods under clearance are manufactured, is not more than Rs. 10 Lakhs". The Explanation which is relevant on this aspect, says "for the purposes of determining the value of any capital investment, only the face value of such investment at the time when such investment was made, shall be taken into account." (ii) (The second condition is that) the total value of all excisable goods cleared by the manufacturer in the preceding financial year should not exceed Rs. 30 Lakhs. In the case of the petitioner, the second condition it is not disputed - is satisfied. The controversy is only about the first condition. On this aspect, the petitioner has furnished a certificate from A. Rama Rao & Company, Tax Consultants/Industrial Advisers, Hyderabad, with respect to the valuation of the machinery. According to the certificate, the total value of the machinery is Rs. 10,58,691.05. Out of this, they have deducted several items, and then brought it down to Rs. 9,93,393.53 ps. The Deputy Collector accepted this certificate as it stands, but the Collector was of the opinion that certain deductions made in the certificate are not permissible, and if those deductions are disallowed, the value of the machinery does definitely go beyond Rs. 10 lakhs. The three items disallowed by him are :

(i) cost of cutting machine (not used for printed cartons) Rs. 1000/-.

(ii) cost of cutting machine (not used for printed cartons) Rs. 11,209.50 ps.

(iii) cost of cutting machine (not used for printed cartons, and one second-hand machine, not capable of being used for printing card-board) : Rs. 24,049.83 ps.

The contention of the learned counsel for the petitioner is that, these three machines are not used for manufacturing printed cartons and must therefore be excluded, his contention is that, while determining the value of the machinery for the purpose of exemption Notification No. 176/1977, the value of only that machinery which is used for the purpose of manufacturing that particular class or line of goods, should be taken into account. His submission is that, the goods classified under each tariff item are different goods, the manufacture whereof requires a different licence and, therefore, if in a given factory, goods dutiable under different tariff items are manufactured, the value of the machinery should be allocated as between them for the purpose of the aforesaid exemption notification. We do not find any warrant for placing such a construction upon the exemption notification. The language of the exemption notification is very clear. It says "the sum total of the value of the capital investment made from time to time on plant and machinery installed in the industrial unit in which the goods under clearance are manufactured is not more than Rs. 10 lakhs." Accordingly, the total value of the entire machinery in the industrial unit should be taken. There is no room or occasion for allocating the machinery between various goods manufactured therein. In fact, such a course may present complicated questions of allocation. Take for example a factory manufacturing goods falling under more than one tariff item, but there is only one generator, or power plant. How is the value of the generator or power plant to be allocated between two items ? Be that as it may, in the face of the clear language of the notification, there is no room for advancing such a contention. It must, therefore, follow that the Collector of Central Excise was justified in holding that the value of the machinery during the aforesaid period exceeded Rs. 10,00,000/- and, therefore, the petitioner is not entitled to the benefit of the exemption Notification No. 176/1977, for the period 18-6-1977 to 12-12-1977.

(c) The third sub-contention pertains to the validity of the levy of penalty in a sum of Rs. 50,000/-. Learned Counsel for the petitioner contended that, penalty should not be levied merely because it is permissible to do so, but that there must be something more-something in the nature of wilfulness or deliberateness, to attract the penalty. Reliance is placed upon the decision of the Supreme Court in *Hindustan Steel Ltd. v. State of Orissa* 1978 ELT 159 a matter arising under the Orissa Sales Tax Act where it was observed :

"Under the Act penalty may be imposed for failure to register as a dealer; Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceedings, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation.

Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out.....".

23. Now, in this case, penalty has been levied only on the ground that, by failing to take out a licence, the petitioner has suppressed its liability and caused loss of duty. It is observed that, because the petitioner failed to take out a licence, the Central Excise officers were ignorant of its liability. This has been treated as evasion of duty, and penalty of Rs. 50,000/- imposed under Rule 173Q. We are of the opinion that the levy of penalty on the above reasoning is not really warranted. The petitioner's case has been that, it thought bona fide that its products were not liable to duty and that, it need not take out a licence. This plea has not been negatived or rejected. Penalty has indeed been levied on the ground of not taking out a licence. This failure of the petitioner to take out a licence, it is observed has led to suppression of its liability, and resulted in loss of duty. In view of the fact that the petitioner's aforesaid explanation has not been rejected, the levy of penalty on the mere ground of not taking out a licence, in our opinion, is not warranted in the facts and circumstances of this case. The Government of India itself was previously of the opinion that printed-cartons are exempted. Subsequently, the Central Government revised its opinion, which has now been followed by the Collector. In this very case, there has been a difference of opinion between the various departmental authorities. All these circumstances show that, the petitioner's explanation that it thought bona fide that it was not liable to take out a licence, is not out of place. We, accordingly, hold that the levy of penalty is bad.

24. Now remains the alternative contention based upon the exemption Notification No. 119/1975 issued under Tariff Item 68. The notification reads as follows :

"Under the Government of India, Ministry of Finance (Department of Revenue and Insurance) Notification No. 119/75-Central Excise, dated the 30th April, 1975, the Central Government hereby exempts goods falling under Item No. 68 of the First Schedule to the Central Excises & Salt Act, 1944 (1 of 1944) manufactured in a factory as a job work, from so much of the duty of excise leviable thereon as is in excess of the duty calculated on the basis of the amount charged for the job work.

Explanation : For the purposes of this Notification, the expression "job work"

shall mean such items of work where an article intended to undergo manufacturing process is supplied to the job worker and that article is returned by the job worker to the supplier, after the article has undergone the intended manufacturing process, on charging only for the job work done by him."

The petitioner's contention is that, the card-board is supplied by the customer; that, it printing and manufactures the carton according to the design and the specifications prescribed by the customer, and the manufactured product is returned to the customer and that, the charges are collected only for the work done by it, viz. printing and carton-making, which is nothing but a job work. It is submitted that, the product manufactured by the petitioner cannot be sold in open market, nor can it be supplied to any third-party; it has to be returned to the same customer who has supplied the card-board. We are of the opinion that this argument merits acceptance. The Collector of Central Excise has not given any reasons for holding that full value of the carton, and not just the charges for the job work of printing, should be treated as the value for the purpose of duty. Only because the petitioner produces a new product, i.e. a printed carton, the Collector was of the opinion that full value should be the basis for levying the duty. He has not expressly considered the language, or the applicability of the exemption Notification No. 119/75. In our opinion in the facts of this case, the said notification fully and squarely applies; and if so, we are of the opinion that the value for the purpose of levy of duty shall only be the charges collected by the petitioner for doing the job work, viz. printing and carton-making; in short, for the manufacture of printed carton.

25. The result of the above discussion is that, the writ petition is allowed in part. We hold (i) that, the finding of the Collector of Central Excise that printed cartons are not the products of printing-industry, is not open to interference by this Court under Article 226 of the Constitution of India; (ii) that, for the period 1-3-1976 to 17-6-1977, the petitioner's products are exempt from duty, under Notification No. 105/1976, dated 1-3-1976 inasmuch as the number of workers employed by the petitioner for the said period, was only 47; (iii) that, the petitioner's claim for exemption for the period 18-6-1977 to 13-12-1977 with reference to Notification No. 176/1977, is unsustainable in law, and has rightly been rejected by the Collector. Its products are liable to duty under Tariff Item No. 68; but, for the purpose of duty, not the full value of the printed cartons, but only the charges collected by the petitioner for the manufacturing (printing and carton-making) undertaken by it, shall be taken as the basis for levying the duty, by virtue of Notification No. 119/1975 dated 30-4-1975; and (iv) the penalty of Rs. 50,000/- levied by the Collector, is set aside. The Bank guarantee furnished by the petitioner towards penalty may be released to the petitioner. There shall be no order as to costs.

26. The learned Additional Standing Counsel for the Central Government makes an oral request for leave to appeal to the Supreme Court in so far as we have decided against him, viz. points (ii), (iii) (partly, in so far as we have held that

the Notification No. 119/75 is applicable for determining the value for the purpose of duty) and (iv). We are, however, not persuaded that the above questions are substantial questions of law of general public importance which in our opinion need to be considered by the Supreme Court. The oral request is, accordingly, rejected.