

**Lakme Ltd. Vs. Cce**

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

**Decided On :** Apr-06-1998

**Reported in :** (1998)(77)LC295Tri(Mum.)bai

**Judge :** U Bhat, S T K.

**Appellant :** Lakme Ltd.

**Respondent :** Cce

**Judgement :**

1. These appeals are directed against the common order in appeal dated 2.1.1992 passed by the Collector (Appeals) confirming the two original orders dated 31.12.1990 and 25.2.1991.

2. The appellant engaged in the manufacturing of cosmetics of various varieties filed price list declaring the wholesale prices and claiming deductions, inter alia, for the cost of secondary packing (corrugated boxes). The price list was provisionally approved denying the benefit of this deduction. Subsequently three show cause notices were issued proposing demand of differential duty on the element of the cost of secondary packing in respect of three different periods. Though the appellant resisted the notices, the Assistant Collector passed two separate orders confirming the demands and these orders have been confirmed by the Collector (Appeals). Hence the present appeals.

3. In respect of an earlier price list, the Collector (Appeals) upheld the claim for deduction of the element of the cost of secondary packing and this order was challenged by the department before the Tribunal in Appeal No. 44/29 of 89 (A). The Tribunal by Final Order No. 13/28 of 1997 (A) dated 21.7.1997 set aside the order and remanded the matter to the adjudicating authority for fresh consideration after analysing factual situation and recording findings on disputed questions of fact.

Earned Counsel for the appellant prayed that the present dispute also may be remanded for fresh adjudication.

4. Averment in the notices and replies appear to be somewhat vague.

According to the appellant cosmetics, except for a small quantity sold to Government Canteen stores, are removed to the depots situated all over the country. Unit articles are packed in plastic or paper as the case may be and a dozen of such articles are packed in thin cardboard boxes on the outer side of which are provided all particulars of the particular product and invariably the products are sold in these boxes of dozens to wholesalers. When a small quantity is delivered to Canteen Stores at the factory gate, the boxes of dozens are packed in corrugated boxes. According to the Earned Counsel this is being done at the specific request of the Canteen Stores. When the remaining goods are removed from the factory to the Depots, to protect the boxes of dozens from damage during transit, they are packed in larger corrugated boxes called "Shippers" which are of uniform size for each product. At the depots, according to learned Counsel, the goods are unpacked by opening the shippers and delivery is effected to wholesalers only in the thin cardboard boxes containing dozen units. According to the departmental representative these submissions are contrary to the averments in the replies to the show-cause notices and in the personal hearing. The Assistant Collector has recorded that during personal hearing it was submitted that the outer covering is not durable and there is no arrangement for return and normally the goods are sold in outer packing through sales depots and even in the factory gate the small quantity sold to Government Canteen etc. are also generally packed in outer packing. According to Earned Counsel of the Appellant the above does not

correctly reflect the stand of the appellant, which according to him, is spelt out before us.

5. We are satisfied that the factual situation requires consideration, with the assistance of the appellant who shall produce before the adjudicating authority all relevant documents including the packing list, if any, purchase orders and invoices for the purpose of verification. If there are other documents throwing light on the factual situation, the appellant shall produce such documents also. The controversy is to be decided on the basis of all the available records and in the light of the decisions in MRF Limited 1995 (77) 433 (SC) : 1995 (58) ECR 385 (SC) and Gcep Industrial Syndicate .

6. We are satisfied that the matter in issue has not been properly considered by the lower authorities. We therefore set aside the impugned orders and remand the cases to the jurisdictional adjudicating authority for decision afresh in accordance with law and in the light of the observations in this order, after granting appellant an opportunity of producing all relevant documents and of personal hearing. The appeals are allowed accordingly.

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