

**Cce Vs. Nova and Co.**

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**SooperKanoon Citation :** [sooperkanoon.com/14034](http://sooperkanoon.com/14034)

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

**Decided On :** Aug-04-1998

**Reported in :** (1999)(80)LC94Tri(Mum.)bai

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

**Appellant :** Cce

**Respondent :** Nova and Co.

**Judgement :**

1. Respondent, engaged in the manufacture of cosmetics and toilet preparations, filed price lists and on approval of the same, cleared the goods on payment of appropriate duty on the approved prices.

Subsequently, four show cause notices dated 27.10.1983, 30.11.1983, 15.6.1984 and 7.12.1984 were issued stating that over and above the approved prices, respondents had collected additional amounts by way of debit notes and collection of such extra amounts had been suppressed from the Department and not declared in the price lists and proposing demand of differential duty on the element of extra consideration. The demand was proposed in respect of the period from April, 1981 to March, 1983, April to September, 1983, September 1983 to April, 1984 and May to September, 1984 respectively. Replying to the notices, respondent stated that the extra amounts were either in regard to freight or in regard to cost of secondary packing supplied at the option of buyers and hence these extra amounts cannot be part of the assessable value.

Respondent also resisted the notices on the ground of limitation, denying suppression of material facts. The Collector of Central Excise considered the merits of the demand proposed in the show cause notices, accepted the contention raised by the respondent and dropped the demand without, however, examining the question of limitation. This order is being challenged by the Department.

2. It appears that the respondent clears goods to local buyers as well as to outstation buyers and in the case of outstation buyers, if transportation of goods is arranged by the respondent, transport charges are collected by separate debit notes. This factual position is not disputed by the Department. Such transport charges cannot be included in the assessable value. The dropping of the demand to this extent was justified.

3. According to the appellant, (sic-read respondent) the excisable products are packed only in brown pack and packing in corrugated boxes or wooden boxes is only on the request of specific buyers and the local buyers do not opt for such secondary packing, while many, if not all outstation buyers demand such packing and since such packing is only optional and since substantial quantity of goods without such packing are delivered at the factory gate in the course of wholesale trade, the cost of secondary packing cannot be included in the assessable value.

This question has not been considered by the lower authority in accordance with the principles explained in MRF Ltd., , nor did the Collector examine the aspect of limitation. In these circumstances, we are of opinion that these questions require fresh consideration, subject to our finding that the element of freight cannot be included in the assessable value.

4. For the reasons stated above, we set aside the impugned order and remand the case to the jurisdictional adjudicating authority for fresh disposal in accordance with law and the observations in this order and after giving the respondent an opportunity of personal hearing.