

ilac Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-12-1998

Reported in : (1999)(80)LC62Tri(Mum.)bai

Judge : U Bhat, S T K.

Appellant : ilac Ltd.

Respondent : Cce

Judgement :

1. Learned Counsel for the appellant has withdrawn from the case.

Appellant is absent in spite of notice of hearing. We have heard Shri R.D. Negi, SDR and perused the papers.

2. Appellant, engaged in the manufacture of PVC resins packed in HDPE hags and PVA emulsion packed in carboys and steel drums, was filing price lists from time to time claiming that the packing materials were durable and returnable and claiming deduction of the element of cost of packing. Some price lists had been approved. When subsequent price lists were filed, the department felt that these packing materials were not durable or returnable and accordingly, show cause notice was issued proposing to reject the claim for deduction. Though appellant resisted the notice, the Assistant Collector confirmed the demand proposed in the notice. This order having been confirmed by Collector (Appeals), the assessee has filed the present appeal.

3. Both the authorities were not prepared to accept that HDPE bags, carboys and steel drums are durable in nature. We fail to see how the lower authorities could have any doubt about the durable nature of carboys and steel drums. By their very nature, they have to be regarded as durable. Whether HDPE bags can be regarded as durable requires thorough examination of the material used. It appears that bulk of the goods are sold by appellant to a sister concern situated within the same compound and some quantity was sold to outsiders, though it is not clear whether outsiders are dealers or industrial consumers or fall in both categories. There is no serious doubt that the packing materials were, as a matter of fact, returned by the sister concern to the appellant and the appellant was all along asserting that packing material so returned was being reused. Though Assistant Collector was not prepared to accept these facts as correct, the Collector (Appeals) did not doubt the correctness of these facts. However, Collector (Appeals) insisted that returnability should be proved with reference to the goods sold to outsiders also. The lower authorities should have scrutinised the relevant documents. We are of the opinion that an opportunity should be given to the appellant to place necessary documents before the Adjudicating Authority.

4. The lower authorities did not advert to another aspect arising from the facts of the case. Assuming that packing materials used in packing goods sold to sister concern were returnable or were being returned and reused, the sister concern may fall in a class of buyers distinct from outsider buyers who are dealers, in which case there can be two prices admissible in law. This aspect also requires examination. The fact that the sister concern was returning almost all the packing materials would necessarily lead to an inference of returnability so far as that buyer is concerned. Thus, the matter was not examined in the correct perspective by the lower authorities.

5. For the reasons indicated above, we set aside the impugned orders and remand the matter to the jurisdictional Adjudicating Authority for decision afresh after scrutinising such documents as may be made available and after giving the appellant an opportunity of hearing.