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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-26-1998

Reported in : (1999)(105)ELT374TriDel

Appellant : Collector of C. Ex.

Respondent : Multipiex Packaging Pvt. Ltd.

Judgement :

1. In this appeal filed by the Revenue, the matter relates to the inclusion of the value of the plastic cap while arriving at the assessable value of the aluminium collapsible tubes. The respondents are M/s. Multiplex Packaging Pvt. Ltd. The respondents have prayed for decision on merits. In their written submissions they have referred to the Tribunal Final Order Nos. 332-333/97-A, dated 25-2-1997 in their own case while disposing of the two appeals bearing Nos. E/3594/87-A and E/4394/89-A. The Tribunal had accepted the plea of the assessee that the cost of bought out plastic caps was not includible in the assessable value of the aluminium collapsible tubes. While arriving at their decision, the Tribunal has relied on their earlier decision in the case of the Col-Tubes (P) Ltd. v C.C.E., Indore as reported in 1994 (72) E.L.T. 342 (Tribunal).

2. Shri K. Srivastava, Id. SDR appearing for the appellant Revenue referred to the Hon'ble Supreme Court decision in the case of Union of India v. Metal Box Co. of India Ltd. as reported in 1996 (87) E.L.T.327 (S.C.). He invited our attention to para 10 of the judgment wherein the Hon'ble Supreme Court has observed that whether cap forms part of the tube cleared and sold by the assessee or not, was a

question of fact to be decided in a given case and no generalisation was possible.

He submitted that in a case where the tubes are cleared with the cap, their cost was to be taken into account in their cost and the capping charges were to be taken into account while determining the assessable value of the tubes. He further mentioned that while the tubes were removed from the premises of the respondents in uncapped condition, the goods were routed through their sister concern on paper only and in fact to the consignee the goods reached in the capped condition.

3. We have carefully considered the matter. The Hon'ble Supreme Court in the case of U.O.I. v. Metal Box Co. of India Ltd. as reported in 1996 (87) E.L.T. 327 (S.C.) had observed that it was a question of fact whether the tubes were removed in capped condition or uncapped condition. We find that the Collector of Central Excise (Appeals), Bombay had given a categorical finding that the assessee did not carry out the work of capping of Aluminium collapsible tubes in their factory. We find that in the grounds of appeal also, this factual aspect of the matter had not been disputed. In para 3 of the ground of appeal, it has been admitted that the Aluminium collapsible tubes were removed in uncapped condition from M/s. Multiplex Packaging Pvt. Ltd. to M/s. Slam Wear Pvt. Ltd. their sister concern. We are not concerned with the relationship as it has been admitted by the Revenue that in so far as the respondents are concerned the aluminium collapsible tubes were removed in uncapped condition. We consider that the Tribunal decision in the respondent's own case vide Final Order Nos.

332-333/97-A, dated 25-2-1997 is squarely applicable to the facts of the case and we do not find anything in the judgment referred to by the Id. DR of the Hon'ble Supreme Court to take a different view.

4. Following the above Tribunal decision, we do not find any ground to interfere with the view taken by the Collector of Central Excise (Appeals). As a result, the appeal filed by the Revenue has no merit and the same is rejected. The cross-objections filed by the respondents are disposed of accordingly.

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