

Collector of Central Excise Vs. Allied Ceramics (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-25-1984

Reported in : (1985)(21)ELT151TriDel

Appellant : Collector of Central Excise

Respondent : Allied Ceramics (P) Ltd.

Judgement :

1. The only question that arises for consideration in this Appeal from the order of the Collector (Appeals), Calcutta is as to whether the value of straw packing for china and porcelain goods manufactured by the Respondent is to be included in their assessable value, notwithstanding that such packing is provided upon request only and not as a rule.

(a) in the price list filed by the Respondent on or about 7-6-1982, effective from that date, the value of straw packing for the goods in question was sought to be excluded from the computation of the assessable value on the ground that it was a secondary packing and provided in stray cases only on request; (b) on a notice dated 8-7-1982 to show cause as to why the cost of such packing should not be included in the assessable value of the goods (Annexure 'D' in the paper book filed by the Respondent), the Respondent replied, inter alia that- (i) normally they sell the goods loose in wholesale and straw packing is resorted to when specially requested; (ii) accordingly, straw packing for china and porcelain goods manufactured by them was neither the usual primary packing nor secondary packing, in view of the usual pattern of their sale in wholesale in a loose condition,

nor a process incidental or ancillary to the completion of their manufacture; (iii) when the price for normal wholesale sale of the goods in a loose condition is available, the cost of special packing is irrelevant for ascertaining the assessable value; (iv) it is, in any view, not to be taken into account as a post-manufacturing expense [Annexure 'C' in the paper book filed by the Respondent]; (c) by an adjudication order dated 30-10-1982, the Assistant Collector held that the packing made use of by the Respondent conforms to the definition of "packing" in Section 4(4)(d)(i) of the Central Excises and Salt Act, 1944, and accordingly, the cost of straw packing is to be included in the assessable value, only in those cases of sales where the goods were removed with packing. He approved the price list subject to the addition of the cost of packing to the price declared where the goods are declared in a packed condition [Annexure 'B' of the paper book]; (d) the aforesaid order in adjudication was reversed by the Collector (Appeals) in his order dated 24-8-1983 on the ground that straw packing was not routine in the pattern of the Respondent's wholesale transactions, and accordingly, cannot be included in the assessable value [Annexure 'A' of the paper book]; (a) the new Section -4 (4)(d)(i) of the Act is an express provision .for the inclusion of the cost of packing in the assessable value; (b) china and porcelain are normally sold packed to prevent breakage and when packing is necessary to make the goods marketable in the wholesale trade, its cost is necessarily to be included in the assessable value, regardless of whether some of the goods were actually sold without the protective packing; [reliance on the decision of the Hon'ble Supreme Court in 1983 E.L.T. 1896 (Union of India v. Bombay Tyres International) and the Tribunal's decision in Appeal No. ED(SB)(T) 3/75-A, Order No. 310/1984-A 1984 (18) E.L.T. 31 (Tribunal)-Panyam Cements and Minerals Industries Limited v. Collector of Central Excise, Hyderabad (c) in any view, it is only on sales effected with packing that the value thereof was included in the assessable value-not where the goods were sold without such packing.

4. For the Respondent, the contentions earlier advanced were reiterated and our attention was invited to Gate-passes to show that packing was provided only upon request.

5. It would appear to us on the submissions made and the perusal of the papers on record that- (a) the factum of sales with packing only upon request is not in controversy. The question for consideration, however, is regardless of that; (b) nor are we concerned in this Appeal with a case where goods are "ordinarily" sold in a variety of different packings. Either the goods are sold "ordinarily" in a packed condition or without any packing whatsoever; (c) it cannot be also disputed that china and porcelain are not, "ordinarily", sold in wholesale without protective packing; (d) this being so, in terms of the ratio of the Supreme Court in the aforesaid decision, it is the cost of "the packing in which it is ordinarily sold in the course of wholesale trade to the wholesale buyer" that has to be included in the assessable value, irrespective of whether, in actual fact, they are so sold or not. [Para 51 of the judgment of the Supreme Court, construing Section 4(4)(d)(i) of the Act]; (e) it is of significance, that in the construction of the said provision, the Hon'ble Supreme Court had stressed the usual or ordinary course of sales in wholesale rather than individual transactions of sale by a manufacturer as the relevant criterion determinative of the inclusion of the value of packing; (f) to a similar effect was our decision in the Panyam Cements' case (adverted to supra) except that "we had occasion to rely upon the observation of the Hon'ble Supreme Court (a little lower down in the same para) indicating the marketable packing for the ordinary consumer as the true test for inclusion of primary packing in the assessable value.

6. We, accordingly, hold that the value of packing has, necessarily, to be included in terms of Section 4(4)(d)(i) of the Act, in the assessable value of china and porcelain, regardless of actual sales in a loose condition, inasmuch as, they are goods "ordinarily" sold in the course of wholesale trade in a packed condition. We are not, however, to be understood to say anything at all that can be construed to be applicable to a case where goods are sold in a variety of different packings.

7. In the premises, we allow the Appeal and set aside the Order of the Collector (Appeals). The order of adjudication is restored. The Appellant is entitled to consequential relief, if any.