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Govindsons Flashlight Indus. (P) Vs. C.C.E. and C.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-31-2001

Reported in : (2001)(129)ELT646Tri(Mum.)bai

Appellant : Govindsons Flashlight Indus. (P)

Respondent : C.C.E. and C.

Judgement :

1.The basic issue involved in this appeal is whether the cost of packing for the appellants' product, namely torches cleared during the period April to June, 1994 was includible in the assessable value of the product for the purpose of discharging duty liability. Both the lower authorities decided the issue against the assessees. Learned Commissioner (Appeals) relied on the Supreme Court's decision in the case of Ponds (I) Ltd., 1989 (44) E.L.T. 185 and in the case of MRF Ltd. 1995 {77) E.L.T. 433. Both the decisions of the Apex Court are to the effect that when the packing is necessary for delivery of the goods in wholesale at the factory gate, the cost of such packing is includible in the assessable value of the packed products. The appellants before us have claimed that the packing for torches manufactured and cleared by them was only secondary in nature and was not essential for making the torches marketable in wholesale trade. The case of the Revenue, as now made out before us by the learned SDR, is that the packing in question was quite essential for delivery of the torches in wholesale at the factory gate and, therefore, the cost of such packing was liable to be included in the assessable value. The question whether the packing in question was essential

for delivery of the torches at the factory gate or was only a secondary packing which was used to make the goods marketable is a question of fact. On this question of fact both the lower authorities have recorded concurrent finding. There must be extraordinary reasons for us in the second appellate stage to interfere with such concurrent finding of fact. The appellants have not shown any reason in this behalf. On a careful examination of the records before us, we find that the available evidence stands in favour of the Revenue's case and the packing used by the appellants for their torches during the period of dispute was quite essential for delivery of the goods at their factory gate. Therefore, the aforesaid decision of the Apex Court squarely applies to the facts of this case and, as rightly found by the lower authorities, the cost of the packing is includible in the assessable value of the product cleared during the relevant period. Therefore, the demand of duty on account of such inclusion is quite sustainable in law and the present appeal only requires to be rejected as bereft of merit. Accordingly, we reject this appeal.

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