Consumer Packaging Services Vs. Commissioner of C. Ex.,

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SooperKanoon Citation : sooperkanoon.com/27704

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-26-2002

Reported in : (2002)(82)ECC114

Judge : S T Gowri, G Srinivasan

Appellant : Consumer Packaging Services

Respondent : Commissioner of C. Ex.,

Judgement :

2. The appeal is against the order of the Commissioner (Appeals) confirming the decision of the Assistant Commissioner holding that the appellant was not entitled to discount on damaged goods and bank charges. The appellant manufactured, as a job worker, detergent powder in a pack suitable for sale to consumers and cleared it to Hindustan Lever Ltd. It adopted as the assessable value the price at which Hindustan Lever Ltd. sold the goods to its dealers. It is the deductions from these prices that are under consideration in the appeal before us.

3. The Commissioner (Appeals) has relied upon the judgment of the Supreme Court in CC, New Delhi v. Vikram Detergent Ltd. - 2001 (127) E.L.T. 641 for his conclusion that the discount on damaged goods should not be given. There is no challenge to the finding with regard to this discount in the appeal. However, the Counsel for the appellant says that in the same judgment the Supreme Court has held that the discount should be available with regard to bank charges. In paragraph 11, the Supreme Court has held that bank charges being in the nature

of post clearing expenses, are clearly deductible from the assessable value of the goods and confirmed the allowance by the Tribunal in the order impugned before the Court of such deduction. The Commissioner (Appeals) was required to follow this order.

4. A penalty has also been imposed on the appellant. The Counsel for the appellant contends that the Tribunal's decision which has been partially reversed by the Supreme Court had allowed the discount on damaged goods and cites seven decisions including Hindustan Lever Ltd. allowing this deduction. No reasons are also advanced by the Assistant Collector for imposing penalty. Having regard to these arguments, we are of the view that penalty is to be set aside.

5. We therefore set aside the Commissioner (Appeals) order demanding duty on the bank charges and imposing penalty.