

Essel Packaging Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-30-2003

Reported in : (2003)(109)LC94Tri(Mum.)bai

Judge : K Kumar, S T C.

Appellant : Essel Packaging Ltd.

Respondent : Cce

Judgement :

1. These three appeals arise from the same order-in-Original passed by Commissioner of Central Excise, Mumbai-III against the appellants confirming a duty demand of Rs. 54,30,713/- and imposing a penalty of of Rs. 41 Lakhs under Rule 173Q of the Central Excise Rules and also directing the appellants to pay interest at the rate of 20% under Section 11AB of Central Excise Act, 1944. The main issue involved is whether the value of Plastic Caps is includible in the assessable value of the Tubes manufactured and cleared by the appellants. In the impugned order, the Adjudicating Commissioner has held that the same is includible. He has also held that the extended period under Section 11A (!) is applicable as there was suppression of facts, with intent to evade payment of duty. It has been submitted on behalf of the appellants that the Tubes manufactured by them are also sold without caps. In the case of supplies to M/s. Colgate, the appellants have fitted caps on the tubes and that in such cases, the caps were supplied to the appellants by M/s. Colgate. It has also been submitted by the appellants that out of the three Show Cause Notices, one Show Cause Notice dt.

3.4.1995 is time barred and interest under Section 11AB is not payable in respect of demand made for the period prior to September, 1996 in view of the Board's Circular No. 655/46/2002-CX dt.

26.8.2002. The following case laws have been relied upon by the appellants in support of their submissions: -Metal Box of India Ltd. v. Collector Apex Court in 1990 (45) ELT (956).

2) Col-Tubes (P) Ltd. v. Collector 194 (72) ELT (342) (T) affirmed by Apex court in 1997 (90) ELT (A63).Polyfab Packaging India Ltd. v. CCE 10) TISCO v. CCE affirmed by Supreme Court in 1997 (95) ELT (A142) (SC) : 1986 (6) ECR 27 (T) 2. It has also been submitted on behalf of the appellants that since there was no mala fide intention on the part of the appellants, no penalty should be imposed on them. They further submit that whatever duty they are paying, the same is taken as modvat credit by the buyers M/s. Colgate and therefore there cannot be any intention to evade duty on the part of the appellants.

3. Shri M.K. Gupta, learned Jt. C.D.R. appearing for Revenue alongwith Shri Ishar singh, learned JDR argues that the cap is only a component of the Tube and therefore, its value has to be included in the value of the tube. He relies on the ratio of the Apex Court judgement in the case of UOI v. J.G. Glass Industries Ltd. . He further states that valuation and classification are entirely different issues and that valuation has to be done following the aforesaid decision of the Apex Court. He also contends that since the appellants have not disclosed to the Department that value of the cap was not included in the assessable value, the extended period for raising demand is applicable in this case.

4. After hearing rival submissions and perusal of case records including case laws, we find that the Apex Court in the case of J.G.Glass Industries Ltd. has decided that printing carried out on plain glass bottles in a different factory would not amount to "manufacture" under Section 2(f) of the Central Excise Act, 1944. However, the Apex Court has held that duty is payable on value of the printed bottles (i.e. including printing charges) if manufacture of bottles and printing thereon are carried out within the same factory because in this case the ultimate product which happens to be excisable item at the factory gate is the printed

bottle. As such, we are of the view that this decision of the Apex Court provides a direct answer to the issue involved in the impugned case. Accordingly where the plastic caps are fitted to the tubes before removal from the appellant's factory, duty is to be paid on the total value of the tubes inclusive of the value of the plastic caps.

5. As regards the question of limitation, we find that the appellants did not disclose to the proper officer the fact that they are not including the value of the cap in the assessable value of the tubes.

Therefore, we hold that the Adjudicating Commissioner has correctly applied the extended time limit for demand of duty.

6. In view, of our findings as above, we uphold the demand of duty confirmed by the Adjudicating Commissioner. However, considering all aspects of the case we are of the view that the penalty of Rs. 41 Lakhs imposed by the Adjudicating Commissioner is excessive and we reduce the same from Rs. 41 Lakhs to Rs. 5 Lakhs. As regards the interest on delayed payment, we find that it has been clarified by the Board in its Circular dt. 26.8.2002 that Section 11AB can be invoked only in respect of clearance effected after 28.9.1996. Since the clearances in the instant case, took place during the period March 1990 to September 1994. On interest can be charged under the said Section 11AB. We order accordingly.

7. The appeals are dismissed except for the modification in respect of penalty and interest as indicated above.

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