

Klj Plasticizers and ors. Vs. Cce

Klj Plasticizers and ors. Vs. Cce

SooperKanoon Citation : sooperkanoon.com/34988

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-20-2004

Reported in : (2004)(94)ECC510

Judge : K Usha, N T C.N.B.

Appellant : Klj Plasticizers and ors.

Respondent : Cce

Judgement :

1. When this application for stay came up for hearing, we find that the appeal itself can be disposed of as the issue raised is covered in favour of the appellant by the decision of the Hon'ble Supreme Court.

The appellants are engaged in the manufacture of plasticizers of various types falling under chapter sub-heading 2917.90 of the schedule to the Central Excise Tariff Act.

2. The appellants clear the finished goods by packing them into tankers or drums, as the case may be, for the sake of convenience at the request of the customer. We are concerned in this appeal with the clearances in drums supplied free of cost by the customers.

3. It is contended that the appellants receive old and used drums from the buyers free of cost. The main products are cleared in these drums to the buyers. In arriving at the assessable value of such clearance the appellants do not add the

cost of packing for the same. As the appellant have not included the cost of old and used drums, supplied free of cost by the buyers, proceedings were initiated in the show cause notice dated 9.5.2002 proposing to include the value of the packing material of the (drum) received free of cost from the buyers.

The appellant contended that in the light of ratio of the decision of the Supreme Court in Hindustan Polymers v. CCE, 1989 (24) ECC 380 (SC) : 1989 (43) ELT 165 and Jauss Polymers Ltd., CCE Meerut, 2003 (157) ELT 626 the value of the packing material namely drum received free of cost from the buyer cannot be added to the assessable value of the goods cleared.

4. In the impugned order the Commissioner refers to the submissions made by the appellant regarding the above-mentioned two decisions of the Supreme Court. The Commissioner thereupon distinguished the decision in Hindustan Polymer on the ground that in the fact of the case before the Supreme Court the clearance of goods were to the extent of 90% in tankers and another 10% clearance was made in drums. Since in the present case the clearance of the goods in drums supplied by the buyers was much more than the quantity of goods cleared in tankers, the Commissioner was inclined to distinguish the decision of the Supreme Court in Hindustan Polymers. But he has not made any effort to distinguish the decision in Jauss Ploymers Limited, 5. We find that the reason given by the Commissioner to distinguish the decision of the Supreme Court in Hindustan Polymers is totally unacceptable. The Commissioner should have followed the ratio of the decision as contained in paragraph 21 of the judgment as follows: "My conclusion is that the answer to the question whether the cost of the container should be included in the assessable value or not would depend upon whether the goods in question are supplied in a packed condition or not. If the answer is yes, three kinds of situation may arise. Where the manufacture supplies his own container or drum but does not charge the customer therefore, then the price of the goods will also include the cost of the container.

There will be no question of separate addition to the sale price nor can the assessee claim a deduction of the cost of packing from the sale price except where the container is a durable one and is returnable to the manufacturer. If the

manufacturer supplies the drums and charges the customers separately therefore, then, under Section 4(4)(d)(i), the cost of the drums to the buyer has to be added to the price except where the packing is of durable nature and is to be returned to the manufacturer. If on the other hand, the manufacturer asks the customer to bring his own container and does not charge anything therefore, then the cost (or value) of the packing cannot be "notionally" added to, or subtracted from, the price at which the goods have been sold by the manufacturer".

6. The Commissioner should have followed the above ratio of the decision. It is relevant to note that in Jauss Polymers Ltd., Supreme Court has followed the above ratio of the decision in Hindustan Polymers.

8. In the light of the binding decision of the Supreme Court, we find no reason to sustain the order impugned. The order passed by the Commissioner is set aside and the appeal stands allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com