

**Anand Duplex Ltd. and ors. Vs. Cce**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Sep-27-2004

**Reported in :** (2004)(97)ECC767

**Judge :** J Balasundaram, Vice, A T V.K.

**Appellant :** Anand Duplex Ltd. and ors.

**Respondent :** Cce

**Judgement :**

1. Appellants herein are engaged in the manufacture of paper and paper board at Meerut. They have two manufacturing units, Unit No. 1 being engaged in the manufacture of kraft paper and Unit No. 2 being engaged in the manufacture of Paper Board. They sell their finished goods on payment of duty to their sales depot located at Delhi from which goods are sold to various buyers. They started selling their finished goods on consignment sales basis from May 1999 onwards, in respect of Unit No. 1 and October 1999 onwards, in respect of Unit No. 2. They appointed a number of consignment agents all over India to whom finished goods were dispatched on payment of duty, and the agents in turn sold the finished goods on commission basis. During 1999-2000 and 2000-2001 there were six consignment agents and twenty-five consignment agents respectively. Appellants paid duty based on the factory gate price of finished goods in respect of transfer of goods to consignment agents. Central Excise authority sought information from the appellants as to the value on which they paid duty at the time of transfer to consignment agents vis-a-vis selling price at which the consignment agents sold

the goods. Details of differential duty payable for the financial year 2000-2001 were furnished and differential duty was shown as Rs. 1,94,744. Subsequently they made a final estimate of duty payable which worked out to Rs. 32,900 for 1999-2000 and Rs. 6,52,917 for 2000-2001 and paid this duty totalling Rs. 6,85,814. Allegation of the Department was that appellants were liable to pay duty on the price at which the consignment agents sold the goods. On this basis differential duty demand amounted to Rs. 69,83,338. Different show cause notices dated 12.11.2002 proposing recovery of differential duty of Rs. 69,83,338 together with interest and proposing penal action against appellants and the Directors of the appellant Company was issued which was adjudicated by the Commissioner of Central Excise, confirming the entire duty demand together with interest and imposing penalty equal to duty on the manufacturer and imposing penalties of Rs. 5 Lakhs each on the other appellants who are Directors/General Manager of the Company. Hence, these appeals.

2. We have heard both sides. The Department has adopted the sale price of Rs. 26 per kg. of Duplex Board of a particular consignment agent, namely, Premier Print Pack (as per Invoice No. 1919 dated 20.12.2000) as price for sale to the consignment agents. Before passing of the impugned order the appellants submitted account sales of all consignment agents for the purpose of working out of the duty liability but could not furnish the particulars of invoices under which goods were ultimately sold by the respective consignment agents to customers.

They have now collected all the invoices under which finished goods were sold by the consignment agent which, according to them, would show that the Duplex Board was being sold by the consignment agent at price ranging from Rs. 15 to Rs. 17 per kg. In these circumstances they prayed that the matter may be remanded for consideration of the invoices of 8 consignment agents in question whose invoices are being now produced by the appellants for the purpose of quantification of duty demand.

3. Learned Departmental Representative fairly leaves the matter for decision by the Bench.

4. We see force in the submission that the price at which the consignment agents have actually sold the goods represent normal transaction value of the goods and have to be adopted for levy of duty.

Since the relevant details of the 8 consignment agents pertaining to the goods are now on record, we set aside the impugned order and remand the case to the Jurisdictional Commissioner for fresh decision on the basis of such invoices and for re-quantification of the duty demand on the above basis. The liability of the appellants to penalty has also to be considered by him afresh. Fresh orders are to be passed after extending reasonable opportunity to the appellants of presenting their defence.

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