

Klin-o-pack Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-12-2005

Reported in : (2005)(192)ELT945TriDel

Judge : R Abichandani, M T K.C.

Appellant : Klin-o-pack

Respondent : Cce

Judgement :

1. The appellants are manufacturer of Collapsible Aluminium Tubes falling under Tariff Item 27(f) of the Central Excise Tariff. They were selling these collapsible tubes without caps to the customers. They were sending these collapsible tubes for capping to M/s. Metcon, another partnership company adjacent to the factory of the appellant on the direction of customer. One of the partners of the appellant company was the power of attorney holder of M/s. Metcon. The allegation of the department is that the aluminium collapsible tubes should have been assessed after adding the value of the caps. Since the duty was paid only without adding the value of the caps, therefore, there has been short levy of duty to the extent of Rs. 2,43,488.45 (basic) and Rs. 24,348.84 (special) for recovery of which notice was issued under Section 11A of the central Excise Act.

2. Shri Gopal Parashad, learned Advocate, appearing for the appellants pleaded that as per definition of containers chargeable to duty under Tariff Item 27(f), it is not necessary that collapsible aluminium tubes should be sold along with the caps.

Aluminium collapsible tube is also container and the appellants accordingly cleared it on payment of duty.

Therefore, if they are asked to pay duty after adding the value of caps, it is not correct in law. He relied on the decision of the tribunal in the case of A.Z. Metal Industries Pvt. Ltd. v. CCE, reported in 1992 (62) ELT-724 where it was held that value of plastic caps fitted to aluminium collapsible tubes not includible while determining assessable value of tubes, aluminium collapsible tubes remaining the same even without plastic caps. He, therefore, pleads that since the issue has already been settled, therefore, the appeal may be allowed.

3. Heard Shri S M Tata, learned SDR. He reiterates the findings of the Collector.

4. We have considered the submissions made by both sides. We find that under explanation 1 to Tariff Item 27(f), "containers" means containers originally intended for packaging goods for sale, including collapsible tubes, casks, drums, cans, boxes, gas cylinders and pressure containers whether in assembled or unassembled condition, and containers known commercially as flattened or folded containers. We find that collapsible tubes without caps remain container and it is not necessary that for payment of duty it should be cleared with cap and the value of the cap should be added in the assessable value. We, therefore, following the ratio of the decision of the Tribunal in A.Z. Metal Industries Ltd. v. CCE (Supra) set aside the order of the Collector and allow the appeal.

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