Collector of Central Excise Vs. Apar (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-18-1989

Reported in : (1989)(25)LC16Tri(Delhi)

Judge : V T K.S., S Maruthi, G B Deva

Appellant : Collector of Central Excise

Respondent : Apar (P) Ltd.

Judgement :

50. The electrodes manufactured by them are first put into polythene bags, which are in turn put into the cardboard cartons. The cardboard cartons are then put into polythene bags. They included the cost of packing upto this stage in the price-list. These cartons in turn are packed into wooden boxes which are nailed or stripped with iron strips in order to protect the goods from damage in transit. The appellant claimed deduction of the cost of wooden packing. The Asstt. Collector disallowed the claim. The appeal to the Collector was allowed. Hence the Government of India issued a notice under Section 36(2) proposing to revise the order of the Collector.

2. The SDR Shri Krishnamurthy contended that the packing in wooden boxes which are. nailed and stripped with iron strips are essential for the purpose of delivery at the factory gate, and therefore, they are includible in the assessable value. He distinguished the decision of the Supreme Court in Godfrey Phillips on the ground that there is no factory gate sale in the said case.

3. As against the above, the respondents contended that the sales are affected outside the factory gate. These things are put in wooden boxes to save the products from being damaged during transport. He also submitted that the Asstt. Collector approved the price list wherein it is clearly mentioned that the cost of special packing which is designed for preserving the goods during transit.

4. The finding of the Collector is that "Thereafter the next packing of these goods into wooden boxes nailed stripped with iron strips for safety purposes which undoubtedly is a secondary packing. The cost of these wooden boxes and iron strips shall not, therefore, be added to the assessable value".

5. In the light of the finding of the Collector, we dismiss the appeal following the judgment of the Supreme Court in Godfrey Phillips according to which secondary packing done for the purpose of facilitating transport and smooth transit of goods to be delivered to the buyer in the wholesale trade cannot be included in the value for the purpose of assessment of excise duty.