Collector of Central Excise Vs. Blue Star Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-18-1991

Reported in : (1992)(39)ECC33

Appellant : Collector of Central Excise

Respondent : Blue Star Ltd.

Judgement :

1. This is an appeal arising on account of the transfer of the proceedings initiated by the Central Government under Section 36(2) of the Central Excises and Salt Act, 1944.

2. Briefly stated the facts are that the respondents are manufacturing water coolers, bottle coolers and deep freezers of various sizes falling under Item No. 29A(1) of the First Schedule to the Central Excises and Salt Act, 1944. Their products were being delivered at the factory gate in standard packing to wholesale dealers. Whenever demanded by any outstation dealer, the goods were being supplied in special wooden cases to avoid damage during transportation. The Assistant Collector disallowed the deduction of the cost of special packing provided at the request of outstation dealers for the purpose of determining the assessable value of the goods under Section 4 of the Central Excises and Salt Act, 1944. The appeal filed by the respondents against the order passed by the Assistant Collector was allowed by the Appellate Collector who held that only the cost of the normal packing used for goods delivered to local dealers would form a part of the assessable value of the goods but the cost of any special packing

provided at the request of outstation dealers would not be includible in the assessable value. As stated earlier this appeal has arisen on transfer of the notice issued by the Government of India under Section 36(2) of the Central Excises and Salt Act, 1944.

3. On behalf of the Revenue, we heard the learned JDR Shri Prabhat Kumar who referred to the decision of the Supreme Court in the case of CCE v. Ponds India Ltd. - 1989 (44) E.L.T. 185 (SC) and stated that the cost of packing in which goods are generally supplied in the course of wholesale trade or which is needed to make the goods marketable at the factory gate would form a part of the assessable value. He suggested that the matter may be referred to the Assistant Collector to find out the nature of packing which is necessary for putting the goods in question in the condition in which they were generally sold in the wholesale market at the factory gate.

4. On behalf of the respondents the learned Advocate Shri R. Ravindran appeared before us. He referred to the order passed by the Collector and stated that it is an admitted fact that normally the goods supplied by the appellants to local and outstation wholesale dealers were packed in crates made of wooden planks and in certain cases closed wooden cases were being used as special packing for the goods for outstation deliveries whenever required by any stockists. He contended that as held by the Appellate Collector only the cost of the normal packing used for goods delivered would form a part of the assessable value of the goods and the cost of any special packing provided on the request of any outstation dealer for the protection of the goods during transaction would not be includible in the assessable value. In support of his case he cited the following case law:-Godrej Boyce Mfg. Co. Pvt. Ltd. v. Union of India - 1984 (18) E.L.T. 172 (Bom.) 5. We have examined the records of the case and considered the submissions made on behalf of both sides. It is seen from the orders passed by the lower authorities that water cooler, bottle cooler and deep freezer units manufactured by the respondents were being supplied to the local wholesale stockists were cleared from the factory in normal packing but whenever requested by any outstation dealer goods were being supplied in special packing in the form of wooden crates. In the case of Hindustan Lever Ltd. v. CCE reported in 1991 (54) E.L.T.420 the

Tribunal after referring to the various decisions of the Supreme Court on the subject of includibility or otherwise of the cost of packing in the assessable value of any excisable article had arrived at the conclusion that only the cost of secondary packing which is necessary for putting the excisable article in the condition in which it is generally sold in the wholesale market can be included in the assessable value of that article. Paras 15 & 16 of the Tribunal's decision are reproduced below:- "Therefore, we are of the view that the consistent view of the Supreme Court beginning with Bombay Tyre International and ending with Ponds India Ltd. is the degree of secondary packing which is necessary for putting the excisable article in the condition in which it is generally sold in the wholesale market at the factory gate is the degree of packing whose cost can be included.

We, therefore, direct the Asstt. Collector to make an inquiry to find out whether the secondary packing is necessary for putting the excisable article in the condition in which it is generally sold in the wholesale market at the factory gate and if so, include the same." 6. It is an admitted fact that the appellants' products were available at the factory gate to all wholesale dealers without any special packing in the form of wooden crates. Hence, on the ratio of the Tribunal's decision quoted above we hold that the cost of extra packing in the form of wooden crates provided by the respondents on the request of outstation dealers-did not form a part of the assessable value of the goods.