Whitco Ltd. Vs. Collector of Central Excise and anr.

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SooperKanoon Citation : sooperkanoon.com/740384

Court : Gujarat

Decided On : Oct-03-1985

Reported in : (1986)1GLR246

Judge : P.R. Gokulakrishnan, C.J. and; S.B. Majmudar, J.

Appellant : Whitco Ltd.

Respondent : Collector of Central Excise and anr.

Judgement :

P.R. Gokulakrishnan, C.J.

1. The only point urged by Mr. Nanavaty, the learned Counsel appearing for the petitioner, in Special Civil Application No. 2738 of 1980 is that the freight of Rs. 6/- paid at the factory gate per unit of the container has to be deducted in determining the excisable value of the goods. The Assistant Collector has included it in determining the excisable value of the goods and levied the excise duty. Questioning the same this Special Civil Application has been filed. In the decision in Union of India and others etc. v. Bombay Tyre International Ltd. and etc. : 1983ECR653D(SC) the Supreme Court had occasion to consider the nature of such a freight in paragraphs 51 and 52 of its judgment. It is specifically held that the assesses will be entitled to deduction on account of the cost of transportation of the excisable article from the factory gate to place or places where it is sold. It is further held that the cost of transportation will include the cost of insurance on the

freight for transportation of the goods from the factory gate to the place or places of delivery. Continuing the Supreme Court had observed:

Whereas freight is averaged and the averaged freight is included in the wholesale cash price so that the wholesale cash price at any place or places outside the factory gate is the same as or the wholesale cash price at the factory gate, the averaged freight included in such wholesale cash price has to be deducted in order to arrive at the real wholesale cash price at the factory gate and no excise duty can be charged on it.

2. Reading these observations of the Supreme Court, Mr. Shah, the learned Counsel appearing for the respondents, states that the matter is fully covered by the Supreme Court decision and as such the freight charges of Rs. 6/- which was included by the Assistant Collector in determining the excisable value of the goods cannot be sustained. In view of the Supreme Court decision and in view of the submission made by Mr. Shah, Special Civil Application No. 2738 of 1980 is allowed to the extent that the respondents cannot add the freight charges of Rs. 6/- per unit of the container in determining the excisable value of the goods. Rule is made absolute to that extent referred above. No order as to costs.