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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-06-1995

Reported in : (1996)(82)ELT233TriDel

Appellant : Collector of Central Excise

Respondent : Modern Mills Limited

Judgement :

1. The question falls for consideration in this Appeal is whether the price of the containers in which the buyer supplies for the respondents for delivering the vegetable product to the buyer can be included in the value of the vegetable products manufactured and sold by the respondents to the buyer for the purpose of determining the value as well as excise duty to be paid by the respondents. It was argued on behalf of the Department that irrespective of the fact that whether product supplied by the buyer or not value of the container is to be included in the assessable value of the product manufactured and cleared by the respondents.

2. Shri P.K. Jain, the Learned SDR contended that if the goods are normally sold in packed condition as in the instant case, the question as to who has incurred the cost of packing material is immaterial since the value of containers [forms] the part of assessable value of the product cleared by the Assessee. He submitted that Section 4(4)(a)(i) does not make any provision for excluding the cost of packing which is supplied by the buyer to the assessee and accordingly the value of the container is to be included in the assessable value of the goods.

3. Shri C.S. Lodha, the Learned Advocate arguing for the respondent submitted that the issue involved in this case has been squarely covered by the decision of the Supreme Court in the case of Hindustan Polymers v. Collector of Central Excise reported in 1989 (43) E.L.T.165 (SC). He said that Supreme Court has clearly held in that case the cost of cylinders/drums cannot be included in the assessable value of the gas manufactured by the assessee since the item was manufactured without the cylinders and furthermore no cost was incurred by the assessee since drums had been supplied by the buyers. He said that similar view was taken by the High Court of Bombay in the case of Govind Pay Oxygen Ltd. v. Assistant Collector of Central Excise, Panaji and Ors. -1986 (23) E.L.T. 394 as well as the High Court of Karnataka in the case of Alembic Glass Industry Ltd. v. Union of India and Ors.

reported in 1986 (24) E.L.T. 23 and this view was affirmed by the Supreme Court in the case of Hindustan Polymers. He submitted that the stand taken by the Government and Learned Attorney General in the case of Hindustan Polymers was similar to the arguments of the Learned D.R.as can be seen from the judgments wherein it was argued that since the Act provides only one exception i.e. non-inclusion of the cost of such packing where the packing is durable in nature and is returnable by the buyer to the assessee in all other cases the cost of the packing would have to be included in the assessable value of the excisable goods where such goods are delivered at the time of removal in packed conditions and this contention was negatived by the respective High Court and Apex Court holding that Section 4(4)(d)(i) of the Act does not make any provision for [including] the cost of packing which was supplied by the buyer to the assessee for the obvious reason that the assessee did not spend for such packing which was for this simple reason the legislature had not thought it fit to exempt such packing from of excisable goods.

3A. Shri P.K. Jain, the Learned Departmental Representative submitted that emphasis in the decision referred to by the other side was with reference to durable nature of packing but in the instant case since new different sizes of items were supplied by the buyers and it was observed by the Assistant Collector in his order that the containers used by the respondents are not durable.

4. We have carefully considered the matter. It is an admitted position that tins in the instant case in which vegetable product is delivered to the buyer belong to the latter and not to the respondent. Whenever the buyer brings or supplied tins to the factory of the respondents, the vegetable product packed in such tins as agreed and the tins were returned to the buyers with the vegetable products, it was the contention of the party they had supplied only vegetable product and not the container and hence cost of the container cannot be included in the assessable value of the vegetable products. On the other hand, Department was of the view that notional value of the container is to be included in the value of products manufactured by the respondents since the levy is on the goods cleared from the factory including cost of the container irrespective of the fact that cost of container met by the buyer since it is not excluded under Section 4(4)(d)(i) of the Act.

As can be seen from the fact that the manufacturer in these circumstances, sells to the buyer is only the vegetable products since the container or tin in which the vegetable product is delivered admittedly belongs to the buyer. What is sold by the manufacturers to the buyer is the vegetable products alone without the tin since tin admittedly belongs to the buyer. It was clearly held in the case of Govind Pay Oxygen that there is no question at all of including the price of drums or cylinder in the value of the gas for the purpose of determining the exisable duty in similar circumstances. While interpreting the Section 4(4)(d)(i) it was observed by the Karnataka High Court in the case of Alembic Gas Industry that the term value defined in Section 4(4)(d)(i) provides for exclusion of price of packing material which was of durable nature and can [be] returnable by the buyer to the assessee. Hence there was no logic or reason for not excluding the value of packing material supplied by the buyer itself which is of durable in nature and is returnable to the assessee [by] the buyer. Similarly in the case of Govind Pay Oxygen it was observed that Section 4(4)(d)(i) does not make any provision for excluding the cost of packing which is supplied by the buyer to the assessee for the obvious reason that the assessee does not spend for such packing and therefore, its cost cannot be included in the value of excisable goods and this view was affirmed by the Apex Court as it was rightly pointed out by the Learned Counsel for the respondents. We are not convinced with the argument advanced by the Learned Departmental Representative that containers and tins supplied by the buyers were not of durable in nature in the absence of any evidence placed on record. In the view we have taken we do not find any substance in the Appeal filed by the Department and accordingly, Appeal is dismissed.

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