

(2015) 03 SC CK 0166

In the Supreme Court Of India

Case No : Civil Appeal No. 6071 of 2001 and C.A. No. 1951 of 2003

Commissioner of Central Excise

APPELLANT

Vs

Addisons Paints and Chemicals Ltd.

RESPONDENT

Date of Decision : 09-03-2015

Acts Referred:

Central Excise Tariff Act, 1985 — Section 4, 4(4)

Citation : (2015) 318 ELT 17

Hon'ble Judges : A.K. Sikri, J; Rohinton Fali Nariman, J

Bench : Division Bench

Advocate : K. Radha Krishnan, Senior Advocate, Arijit Prasad, Rupesh Kumar and B. Krishna Prasad, for the Appellant; A.T.M. Sampath, T.S. Shanthi, Krishna Kumar R.S., Rajesh Kumar and K.S. Mahadevan, Advocates for the Respondent

Final Decision : Allowed

Judgement

Civil Appeal No. 6071 of 2001:

1. The Respondent herein is a manufacturer of paints and varnishes falling under Chapter 32 of the Central Excise Tariff Act, 1985 (for short the "Act")- It is the case of the Respondent that the finished products manufactured are packed in tins and plastic containers which are then put in carton boxes and sold to the wholesale dealers for the purpose of transportation. The Respondent had filed a claim of refund for Rs. 1,22,740/- in the year 1989 claiming that the duty paid on the cost of cartons cannot be included in the assessable value of the final product i.e. paints as held by the Supreme Court in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., AIR 1986 SC 806(1) : (1986) 8 ECC 26 : (1985) 5 ECR 1989 : (1985) 2 SCR 123 Supp .

2. A show cause notice dated 4th May, 1989 was served on the Respondent asking as to why the refund claim should not be rejected. After eliciting reply, the Assistant Collector of Central Excise passed order dated 5th September, 1989 rejecting the refund on merits and also on the ground that it was time-barred.

Being aggrieved, the Assessee/respondent filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) affirmed the order of the assessing authority and dismissed the said appeal. Undeterred, the Respondent approached the Central Excise Gold (Control) Appellate Tribunal and this time the Respondent succeeded in its attempt as the appeal of the Respondent has been allowed, holding that the value of the carton boxes could not be included for the purpose of calculating the assessed amount.

3. Learned Counsel appearing for the Appellant has drawn our attention to the judgment of this Court in Commissioner of Central Excise, Allahabad, etc. Vs. Hindustan Safety Glass Works Ltd., etc., (2005) 99 ECC 33 : (2005) 181 ELT 178 : (2005) 2 JT 465 : (2005) 3 SCC 468 : (2005) 2 SCR 229 . On the basis of this judgment submission of the Appellant is that once the packaging is done to make the goods saleable in the market then the cost of the packing is to be included for the purpose of calculating the excise duty. He has referred to para 13 of the said judgment where the Court took note of its earlier decision in the case of Government of India and Others Vs. Madras Rubber Factory Ltd. and Others, (1995) 51 ECC 1 : (1995) 77 ELT 433 : (1995) 4 JT 512 : (1995) 3 SCALE 299 : (1995) 4 SCC 349 : (1995) 3 SCR 1143 and noticed the test laid down therein, namely, whether a particular packing is done in order to put the goods in the condition in which they are generally sold in the wholesale market at the factory gate in certain packed condition, whatever may be the reason for such packing, the cost of such packing would be includible in the value of the goods for assessment to excise duty.

4. The position in law is summed up in the following manner:

"We are in complete agreement with the above conclusions. The question is not for what purpose the packing is done. The test is whether the packing is done in order to put the goods in a marketable condition. Another way of testing would be to see whether the goods are capable of reaching the market without the type of packing concerned. Each case would have to be decided on its own fact. It must also be remembered that Section 4(4)(d)(i) specifies that the cost of packing is includible when the packing is not of a durable nature and returnable to the buyer. Thus, the burden to show that the cost of packing is not includible is always on the Assessee. Also Under Section 4(a) the value is to be the normal price at which such goods are ordinarily sold in the course of wholesale trade for delivery at the time and place of removal."

5. No doubt, as per the aforesaid judgment, the test is whether packing done in order to put the goods in marketable condition and whether the goods are capable of reaching the market without the type of packaging concerned. At the same time, the Court has also emphasised that each case will have to be decided on its own facts and the crucial aspect to be kept in mind is that the goods are generally sold in the wholesale market at the "factory gate".

6. When we apply the said test to the facts of the present case, we find that the

Collector of Central Excise (Appeals) has categorically stated in his order that these containers were placed in paper cartons of various sizes for transportation "from the factory gate" for sale to individual customers or as stock transfers. Therefore, on the facts of this case, we find that the test laid down in the aforesaid judgment in the case of Hindustan Safety Glass Works Ltd. (supra) would not be applicable. Even otherwise, the amount involved is only Rs. 1,22,740/-.

7. Learned Counsel for the Respondent Mr. A.T.M. Sampath submits at Bar that his client has not even taken this amount from the Department. In view of the above, we find no merit in this case. It is, accordingly, dismissed.

Civil Appeal No. 1951 of 2003

Insofar as this case is concerned, here also it is found that Respondent is a manufacturer of parts of the sheet glass without wooden packing and the wooden packing is required only for safety during transport. It is not a requirement for sale at "factory gate". In view of the order passed in C.A. No. 6071 of 2001, we find no merit in this case also, it is, accordingly, dismissed.