

(2011) 11 SC CK 0075

In the Supreme Court Of India

Case No : Civil Appeal No's. 5043-5045 of 2003

Essel Propack Ltd.

APPELLANT

Vs

Commissioner of Central Excise, Mumbai-III

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Central Excise Rules, 1944 — Rule 173Q

Central Excises and Salt Act, 1944 — Section 11AB, 2, 35L, 4

Citation : (2011) 11 SC CK 0075

Hon'ble Judges : Anil R. Dave, J; A.K. Patnaik, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. These appeals are filed u/s 35L(b) of the Central Excise Act, 1944 (for short "the Act"), against the order dated 30th January, 2003 of the Customs, Excise & Gold (Control) Appellate Tribunal (for short "the Tribunal"), West Zonal Bench at Mumbai.

2. The Appellant manufactured plastic tubes in its factory and supplied the same to M/s Colgate Palmolive (I) Ltd. (for short "Colgate"). After considering the reply to the show cause notices, the Commissioner of Central Excise, Mumbai III, passed an order dated 17th July, 1997, confirming the demand of excise duty amounting to Rs. 54,30,713/- and imposing a penalty of Rs. 41,00,000/- under Rule 173-Q of the Central Excise Rules, 1944 and also directing the Appellant to pay interest at the rate of 20% u/s 11-AB of the Act, on delayed payment of duty for the relevant periods, saying that the plastic caps, which were put on the plastic tubes, were not included in the assessable value of the plastic tubes manufactured and cleared from the factory of the Appellant.

3. Aggrieved, the Appellant filed appeals before the Tribunal and by the impugned order, the Tribunal confirmed the demand of duty and modified the penalty and interest imposed by the Commissioner. The reason given by the Tribunal in the impugned order is that this Court in Union of India (UOI) and

Others Vs. J.G. Glass Industries Ltd. and Others, , had held that printing carried out on plain glass bottles in a different factory would not amount to "manufacture" u/s 2(f) of the Act, but, if manufacture of bottles and printing thereon are carried out within the same factory, then the ultimate product, which happens to be excisable item at the factory gate, is the printed bottle. Applying the decision of this Court in J.G. Glass Industries Ltd. (supra), the Tribunal took the view that where the plastic caps are fitted to the tubes before removal from the appellant's factory, duty is to be paid on the total value of the tubes including the value of the plastic caps.

4. Mr. A.R. Madhav Rao, Learned Counsel appearing for the Appellant, submitted that the plastic caps, which are fitted to the tubes manufactured and removed from the Appellant's factory, are not actually manufactured by the appellant in its factory and these are being supplied by Colgate to the Appellant and are fitted to the tubes before removal of the same from the factory of the Appellant. He relied upon the decision in 1983 ECR 1551D], in which the Tribunal has held that where the caps made of plastic had been separately manufactured for the aluminium collapsible tubes and were not part of the manufacturing process of Metal Box of India Limited, such caps have to be treated separately while charging the weight based portion of the duty of excise on aluminium as envisaged in Item 27 of the Central Excise Tariff. He submitted that although an appeal was preferred against the aforesaid decision of the Tribunal to this Court, the appeal was dismissed on 20th November, 1989, as reported in Collector v. Metal Box of India Ltd. 1990 (45) E.L.T. A33 (S.C.). He submitted that in 1994 (72) ELT 342 , the Col. Tubes (P) Ltd., which was manufacturing aluminium collapsible tubes, was clearing its product from its factory along with a plastic cap manufactured elsewhere and the Tribunal, by a majority decision, held that cost of plastic cap, a bought-out item and labour charges for fixing it are not includible in the assessable value of the aluminium collapsible tube u/s 4 of the Act. He submitted that the Collector, Central Excise preferred an appeal to this Court, but the appeal was dismissed following its decision in Collector v. Metal Box of India Ltd. (supra).

5. Mr. Rao further submitted that considering these authorities, in the very case of the appellant, for a subsequent period, the Tribunal has now taken a view that the caps, not being integral part of a toothpaste tube, cannot be included in the assessable value of the toothpaste tube removed by the Appellant from the factory.

6. He submitted that in its decision, for a later period, the Tribunal has distinguished the case of the Appellant from the case in J.G. Glass Industries Ltd. (supra), saying that in that case printing on the bottles was integral to the bottles whereas in the case of the Appellant, the cap was not integral to the tubes but was only an accessory.

7. Ms. Aruna Gupta, Learned Counsel appearing for the Respondent, on the other hand, submitted that it is not clear from the facts as found by the Tribunal

whether the plastic caps are manufactured in the factory premises of the Appellant or are being supplied by Colgate and in the absence of any finding on this aspect, it is difficult for this Court to take the view that the plastic caps were not manufactured in the factory of the Appellant and were supplied by Colgate and, therefore, were not an integral part of the tube and could not be includible in the assessable value of the tubes.

8. We have considered the submissions made by Learned Counsel for the parties and we find that the consistent view of the Tribunal as well as this Court has been that if the caps are manufactured separately and not in the same factory in which the tubes are being manufactured, the caps cannot form integral part of the assessable value of the tubes, manufactured and cleared from the factory. This is the view that the Tribunal and this Court have been taking in *Metal Box of India Ltd., Calcutta* (supra) and *Col. Tubes (P) Ltd.* (supra). Thus, if in the present case, the caps are not manufactured in the factory of the appellant but are being supplied by the customers of the Appellant, the value of the caps will not form part of the assessable value of the tubes manufactured by the Appellant.

9. On a reading of the reply to the show cause notice in the present case, we find that the appellant has stated in Para 3.3 that the Appellant manufactures tubes on orders received from their customers and whenever the customers order, the appellant fixes plastic caps to the tubes and in such cases the value of the tubes fixed with caps are also included in the assessable value of tubes, but in case such caps are supplied by the customers free of cost, such tubes are cleared without including the value of the caps in the assessable value of the tubes. The Commissioner has not recorded any clear finding as to whether for the tubes that were cleared by the Appellant during the relevant periods in respect of which show cause notices were issued, the caps were supplied free of cost by the customers of the Appellant and such caps were fitted to the tubes manufactured in the factory of the Appellant. As we have already held, in respect of the tubes for which caps have been supplied by the customers free of cost, the assessable value of the tubes will not include the value of the caps. The Commissioner, therefore, will have to record a clear finding as to whether for the tubes cleared during the three relevant periods, the caps were supplied by the customers of the Appellant free of cost and accordingly pass a fresh order.

10. In the result, the appeals are allowed to the extent indicated above; the impugned order of the Tribunal as well as the original order passed by the Commissioner are set aside. The matter is remanded to the Commissioner for fresh decision in accordance with the observations made in this order. No costs.