(2003) 09 SC CK 0054

In the Supreme Court Of India

Case No : Civil Appeal No. 7313 of 2001

Jauss Polymers Ltd. APPELLANT

Vs

Commissioner of Central Excise, Meerut RESPONDENT

Date of Decision : 18-09-2003

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35, 4

Citation : (2003) ECR 5 : (2003) 157 ELT 626 : (2005) 10 SCC 672

Hon'ble Judges : S. Rajendra Babu, J;G. P. Mathur, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The question raised for consideration in this appeal is whether the cost of cartons and labels supplied by customers is to be included in the assessable value of the plastic pet jars manufactured by the appellant.

2. The matter was carried in appeal to the Tribunal by the appellant after having suffered various orders at the hands of the Department and the Tribunal after adverting to the decision of this Court in Government of India and Others Vs. Madras Rubber Factory Ltd. and Others, took the view that the necessary test for including the packing charges in the assessable value is; whether packing, the cost whereof is sought to be included in the packing in which it is ordinarily sold in the course of a wholesale trade to the wholesale buyer or to put it another way, whether such 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. If it is, then its cost is liable to be included in the value of the goods otherwise not and on that basis dismissed the appeal filed by the appellant. Hence this appeal.

3. Learned Counsel for the appellant after adverting to the various orders passed by the Tribunal and this Court submitted that in M/s. Hindustan Polymers Vs. Collector of Central Excise, this Court has clearly held that if the manufacturer

asks the customer to bring his own container and does not charge anything therefore for packing, then the cost of packing cannot be added to or subtracted from the price at which the goods have been sold by the manufacturer.

4. In reply learned Senior Advocate appearing for the department submitted that the Tribunal has adopted the test, to which we have already adverted to and which was set out in Government of India v. Madras Rubber Factory Ltd. (supra) and that the test adopted by the Tribunal is good and no interference is called for.

5. The situation arising in this case is exactly the same as what was considered by this Court in Hindustan Polymers v. Collector of Central Excise and in that decision Justice Ranganathan; who delivered a separate but concurring judgment analysed Section 4(4)(d)(i) of the Act and stated that three kinds of situation may arise and stated as follows :

".......Where the manufacturer supplies his own container or drum but does not charge the customer therefore, then the price of the goods will also include the cost of the container. There will be no question of separate addition to the sale price nor can the assessee claim a deduction of the cost of packing from the sale price except where the container is a durable one and is returnable to the manufacturer. If the manufacturer supplies the drums and charges the customers separately therefore, then, u/s 4(4)(d)(i) the cost of the drums to the buyer has to be added to the price except where the packing is of durable nature and is to be returned to the manufacturer. If on the other hand the manufacturer asks the customer to bring his own container and does not charge anything therefore then the cost (or value) of the packing cannot be "notionally" added to, or subtracted from, the price at which the goods have been sold by the manufacturer."

6. In that decision it is clearly set out that if the manufacturer asks the customer to bring his own container and does not charge anything therefore, packing cost cannot be added to the price at which the goods are sold by the manufacturer. This position was not detracted to in the decision in Government of India v. Madras Rubber Factory Ltd. (supra). In fact this position was adverted to in Para 42 of the judgment it is noticed as follows :

"Verma, J. agreed with the reasoning of Ranganathan, J. and held that since the drums were supplied by the buyer and were not supplied by the manufacturer, their cost cannot be included. The decision in this case thus turned upon the particular facts of the case, viz. the drums being supplied by the buyer and not by the assessee."

7. That position in law has not been eroded at all. The Tribunal was not justified in adopting the test which did not arise for consideration in the context of the facts arising in this case. Therefore, we set aside the order made by the appellate authority and quash the demand raised. The appeal is allowed accordingly.

