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(1994) 06 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition No. 1104 of 1980

Shalimar Tubes and Industries Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 10-06-1994

Acts Referred:

Citation : (1994) ECR 660 : (1994) 74 ELT 520

Hon'ble Judges : M.L. Dudhat, J;B.P. Saraf, J

Bench : Division Bench

Advocate : Shri D.K. Subhedar, for the Appellant; Shri H.V. Mehta, for the Respondent

Judgement

Dr. B.P. Saraf, J.—The only controversy in this case is regarding inclusion of the cost and charges of the plastic caps fitted to extruded aluminium tubes for the purpose of determining the assessable value for levy of excise duty.

2. Learned counsel for the petitioners submits that the above controversy stands concluded by a decision of this court in OOCJ Appeal No. 887 of 1988 in Writ Petition No. 1249 of 1980 Union of India v. M/s. Impact Containers Pvt. Ltd. dated 27th September, 1991 and the decision of the Appellate Tribunal reported in 1983 ECR 1551D , Calcutta appeal against which has also been dismissed by the Supreme Court on 20-11-1989 Civil Appeal No. 1930 of 1984 filed by the Collector of Central Excise, Calcutta.

3. Learned counsel for the respondents relies on the decision of the Supreme Court in Union of India v. Bombay Tyres International Ltd. 1983 (14) E.L.T. 1896. We have considered the rival submissions. We find that the controversy involved stands fully concluded by the decision of this court referred to above and the decision of the Supreme Court dated 20-11-1989 in Civil Appeal No. 1930 of 1984 by which the appeal filed by Collector of Central Excise, Calcutta against the order of the Appellate Tribunal was dismissed. The Appellate Tribunal, in its order, had held that the fitting of plastic caps on aluminium collapsible tubes did

not amount to manufacture. It further held that aluminium collapsible tubes were liable to duty without the plastic caps because these caps are manufactured separately.

4. In view of the above we hold that the value of plastic caps fitted to the aluminium collapsible tubes cannot be included in the assessable value of the extruded aluminium tubes. Rule is made absolute in the above terms. The respondents are directed to consider the claim of the petitioners for refund of duty paid on the plastic caps and included in the assessable value of the extruded aluminium tubes manufactured by the petitioners and to dispose of the same in accordance with law within four months from today. The petitioners shall appear before the Assistant Collector, Central Excise, in the first week of July 1994 and shall supply such information as may be required for determination of the claim of the petitioners for refund.

5. The petition is disposed of accordingly.

No order as to costs.

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