

K. Radha Krishnaiah

Vs

Inspector of Central Excise and Others

Petition for Special Leave to Appeal (Civil) No. 4287 of 1986

(V. B. Eradi, M. M. Dutt JJ)

04.11.1986

ORDER

The only question which arises in this special leave petition is as to what is true meaning and scope of the word "returnable" in Section 4(4)(d)(i) of the Central Excises and Salt Act, 1944. If the packing is durable and returnable then its cost is liable to be excluded in computation of the assessable value of the goods for the purpose of excise duty. So far as the question of durability is concerned, there cannot be such controversy about it, but a question has been raised as to what is the meaning and connotation of the word "returnable". Does it mean physically capable of being returned or does it postulate an arrangement under which the packing is returnable. While interpreting this word, we must bear in mind that what Section 4(4)(d)(i) excludes from computation is cost of packing which is of a durable nature and is "returnable by the buyer to the assessee". The packing must be one which is returnable by the buyer to the assess and obviously that must be under an arrangement between the buyer and the assessee. It is not the physical capability of the packing to be returned which is the determining factor because in that event, the words "by the buyer to the assessee" need not have found a place in the section they would be superfluous. What is required for the purpose of attracting the applicability of the exclusion clause in Section 4(4)(d)(i) is that the packaging must be returnable by the buyer to the assessee. The question which has to be asked in each case is : Is the packing in this case returnable by the buyer to the assessee and obviously it cannot be said that the packing is returnable by the buyer to the assessee unless there is an arrangement between them that there was any such arrangement for return of the packing by the wholesale buyers to the petitioner not is there any evidence to that effect. The excise authorities were, therefore, right in not excluding the cost of packing in determination of the assessable value of the goods. The special leave petition will, therefore, stand rejected.

Court Master

</html