

SUPREME COURT OF INDIA

Collector of Central Excise, New Delhi

Vs.

Malwa Vanaspati and Chem. Company Limited

C.A.No.8888 of 1996

(P. Venkatarama Reddi and S. H. Kapadia JJ.)

14.01.2004

ORDER

1. The Issue raised in this appeal is whether the cost of metal/tin containers used in packing of manufactured goods, viz. vegetable products is includible in the assessable value of the goods. The contention of the learned senior counsel for the appellant is that the security deposit equivalent to the cost of the said packing material has been collected and there was no occasion on which the durable packing materials were returned and security deposit refunded. Therefore, it is submitted that under sub-clause (i) of clause (d) of Section 4(4) of the *Central Excise Act, 1944*, as it stood at the relevant point of time, the cost of the said packing material has to be included in the assessable value, not with standing the contract between the parties stipulating the return of the containers. It is contended that the contract was never acted up on, as there was no instance of the return of tin containers under the terms of the contract. The contract, it is con- tended, was a mere subterfuge to avoid duty.

2. The CEGAT, by the impugned order, allowed the appeal without going into the factual aspects of the case observing as follows:

"We find now that this issue has been settled and when once the packing material is durable and returnable though in fact has not been returned, the value thereof cannot be included in the assessable value."

3. The Tribunal has not referred to any decided cases wherein the proposition enunciated by it was laid down specifically. Be that as it may, for the purpose of appreciating the controversy at issue, we feel that a perusal of the relevant documents which were placed before the concerned authorities, such as contract, the certificate of the Chartered Accountant referred to in Paragraph 40 of the Memo of Appeal filed in the Tribunal may be necessary. Not even the show cause notice and the adjudication order is placed on record. We are not inclined to accede to this belated request of the learned counsel for the appellant to grant time to file the relevant papers now, especially for the reason that the appeal is quite an old one and the dispute dates back to 1979. In the absence of the relevant material, we are

handicapped to deal with this appeal. We express no view on the legal issue raised for our consideration.

4. In the circumstances, the appeal is dismissed with the above observation. No costs.