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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Date 19/06/2009

Appeal No. E/6149/2004 - EX[DB]

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S HINDALCO INDUSTRIES LTD.
RENUKOOT,DISTT.SONEBHADRA(U.P)

Appellant

M/S HINDALCO INDUSTRIES LTD.

Vs
Respondent

C.C.E.ALLAHABAD

I am directed to transmit herewith a certified copy of **Final order** No. 412/2009-**EX[DB]** dated 15-6-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
C.C.E.ALLAHABAD
38,M.G.MARG,CIVIL LINES ALLAHABAD U.P
2. Adv. / Consult SH. A. R. M. RAO, ADV.,
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N. DELHI-29
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~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
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Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

E/6149/04

(Arising out of Order-in-Appeal No.621-CE/Appl/Alld/04 dt.6.9.04 passed by Commissioner(Appeals), Allahabad)

M/s. Hindalco Industries Ltd. Appellant

Versus

CCE, Allahabad Respondent

Appearance
S/Sh. A.R.M.Rao with R.K.Hasija, Advs. For Appellant
Sh. P.K.Singh, Authorised Departmental Representative(DR) For Respondent

Coram: Hon'ble Mr. D.N.PANDA, JUDICIAL MEMBER
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of decision: 8.6.09
Final Order No. 412/2009-Ex

Per D.N.Panda:

Ld. Counsel Shri A.R.M.Rao submits that any abnormal packing charges not being normal in nature shall not form part of assessable value. Similarly, he submits that financial charges not relatable to removal of the goods shall not form part of assessable value. Drawing attention to page 5 of the appeal folder dealing with the SCN he submits that revenue made out a case against the appellant in respect of the listed price goods. In respect of very minor quantity of sales made from the places of consignment agents, there was a separate charge called repacking was made to ~~met~~ meet a particular situation. This is well known to the department from the agreements under which the consignment agents were operating. Such repackings are done to remove unusable goods from usable goods. Therefore, he submits that when such sales practice being well within the knowledge of the department, the present levy is uncalled for since the appellant shall also succeed on limitation itself. He argues that on merits when majority of the goods were sold without repacking, the solitary sales made upon repacking can not disturb the assessable value in view of price fixation done in consignment agent agreement. Therefore, the additional charges not being relatable to the price fixed, that is collected separately and that shall not form part of assessable value. The intention of the consignment agent being to make sale under a price fixed system, and nothing is chargeable beyond the scope of agreement, abnormal circumstance of repacking shall not contribute to determine assessable value. This is the case where the sale price was known to the department except the additional charges collected for peculiar circumstance of the case without making the goods distinct for marketability. Therefore a generalised rule cannot be made to deal abnormal circumstance for universal application.

2. So far as the finance charge is concerned, his argument is that, where, in stray cases such a charge made for peculiar reasons and circumstance to make good of financial losses, such realization cannot be attributable to the assessable value. Therefore, the appellant shall succeed both on merit as well as on limitation.

3. Ld. DR submits that when the goods being repacked, marketability of such goods was made practicable. Repacking having facilitated the marketing, that shall form part of the assessable value. Further, in the case of repacking, the goods when go out of the original packing, the repacking itself makes the goods removable for assessability. So far as the finance charge is concerned, Ld. DR submits that such a charge is realized from the buyer only towards the sale price for which that should also form part of assessable value.

4. Heard both sides and perused the records. When we look to page 5 of the appeal folder dealing with SCN, we are unable to notice any specific instance brought by revenue to appreciate the nature of repacking. In absence of a proper allegation, Tribunal is not expected to answer the question of academic interest.

Therefore, the appellant should succeed in respect of realization made separately to suit to the requirement of repacking when packing was normal activity for removal of goods from factory for sale at the consignment agent's end. This is not brought out in the SCN to be a special packing for marketability. Therefore, the repacking in contigent events cannot disturb the assessable value for no cogent reason brought out in the SCN. Similarly, the appellant having operated under certain agreements with the price stipulated for the goods in normal circumstance, that should remain untouched in view of the agreements within the knowledge of revenue apparent from para 2 of the SCN at page 5. We are unable to disturb the assessable value adopted by the appellant for no cogent disturbing elements coming to surface. Revenue fails on such count in absence of specific nature of the allegation not present in SCN which is a foundation to grant opportunity of defence. An allegation may result in civil liability and evil liability like penalty. When the SCN itself fails to bring the appellant to charges without granting any opportunity to lead defence, the proceedings should be halted. Accordingly, we hold that the appellant should succeed in respect of repacking charges not attributable to removal nor shall form part of assessable for the reasons stated above and demand relating to charges for repacking is unsustainable.

5. So far as the financial charges are concerned it is not demonstrated by SCN how that was attributable to the removal of the excisable goods. So also the financial charge whether had any nexus to removal was not exhibited. When no nexus is visible that should not contribute for assessable value. Accordingly, in absence of a clear allegation to so how the nexus was present to bring the financial charge to add to assessable value, we are unable to approve the cause of the litigation raised by revenue. Accordingly, the appellant should also succeed in respect of the financial charges collected, without attributing the same to the assessable value. We, therefore, allow the appeal setting aside the impugned order.

Order dictated in the open Court.

(D.N.Panda)
Judicial Member

(Rakesh Kumar)
Member Technical

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