

Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad
REGIONAL BENCH- COURT NO.3

Excise Appeal No.12928 of 2013

(Arising out of OIA-SRP-97-98-DMN-2013-14 dated 12/06/2013 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN)

Pvn Fabrics

Survey No. 336/2-B, 337/1a,
Bhimpore,
DAMAN, U T OF DADRA & NAGAR HAVELI

.....Appellant

VERSUS

C.C.E. & S.T.-Daman

3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

.....Respondent

WITH

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.....Respondent

APPEARANCE:

Shri S J Vyas, Advocate for the Appellant
Shri Rajesh Agarwal, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L. MAHAR

Final Order No. A/ 11112-11113 /2023

DATE OF HEARING: 03.04.2023
DATE OF DECISION: 03.05.2023

RAMESH NAIR

The issue involved is that whether the cost of cylinder which is manufactured, sold to the buyer of packing material but retained and used within the factory of the appellant for manufacture of packaging material is

liable for payment of duty on the cylinder as such or otherwise. Whether the appellant is liable to pay excise duty on the freight collected by the appellant over and above the sale price from their customers.

02. Shri S J Vyas, learned counsel appearing on behalf of the appellant at the outset submits that as regard the issue regarding duty on the freight element in the present case there is a duplication of demand as on the same amount the separate show cause notice was already issued and the learned Commissioner (Appeals) has taken a note and in the impugned order it was stated that while re-computing the demand the aspect of issuance of other show cause notice on the freight may be considered.

2.1 As regard the demand on the duty on the cylinder, he submits that though the cylinder was sold by issuing sale invoice to the customer of packaging material but it was retained and used in the factory for manufacturing of packaging material therefore, there is no clearance of cylinder out of the factory hence, no duty can be charged on the value of cylinder.

2.2 He further submits that its amortization has already been included in the value of the packaging material sold to the customer therefore, no separate demand on the cylinder as such will sustain. He also submits that there is revenue neutrality in as much as the duty if at all, is required to be paid the same is available as cenvat credit to their customer. In support of his submission, he placed reliance on the following judgments:-

- CCE, PUNE Vs. COCA COLA INDIA PVT. LTD.- 2007 (213) E.L.T. 490 (S.C.)
- P.T.C. INDUSTRIES LTD. Vs. CCE, JAIPUR- 2003 (159) E.L.T. 1046 (Tri.-Del.)

03. Shri Rajesh Agarwal, learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

04. We have carefully considered the submissions made by both the sides and perused the records. As regard the duty demand on the freight the learned Commissioner (Appeals) in his operating portion of the order stated as under:-

11. As regards the demand in respect of extra collection of the freight, I find that the appellant has contested that the same was covered under the show cause notice dated 20.08.2010 issued by DGCEI for the excess freight recovered. No evidence has been produced in that regard; therefore I am constrained to advance any conclusive finding

on that. However, if the contention of the appellant is true, then obviously, they shall not be liable for duty, interest and equal penalty on that account.

In view of the above, it is clear that the learned Commissioner (Appeals) has taken care of the issuance of the other show cause notice dated 20.08.2010 issued by the DGCEI therefore, the demand needs to be recomputed. The aspect of duplication of demand shall be kept in mind by the adjudicating authority therefore, we need not to give any further finding on this.

4.1 As regard the demand of duty on cylinder used for printing of packaging material, we find that though the invoice was issued for sale of cylinder but the same was not cleared from the factory and the same was used within the factory since it is used for manufacture of packaging material for the customer, no duty can be demanded on the value of the cylinder as such. However, for the purpose of valuation of the packaging material the amortization cost of the cylinder needs to be included in the proportionate manner depending upon the number of product manufactured by using the cylinder therefore, the demand made directly on the value of the cylinder is not sustainable. However, the adjudicating authority shall recompute the duty on the packaging material by taking amortization cost in the overall value of the packaging goods and if there is a short fall, there shall be recovery of the same, however, if it is found that the amortization cost of the cylinder is already included in the value of the packaging material or even paid separately, no further demand will sustain.

05. Accordingly, we modify the impugned order to the above extent. The appeals are allowed by way of remand to the adjudicating authority for passing a fresh order considering our above observation.

(Pronounced in the open court on 03.05.2023)

**(RAMESH NAIR)
MEMBER (JUDICIAL)**

**(C.L. MAHAR)
MEMBER (TECHNICAL)**