Collector of Central Excise Vs. Pure Drinks (Cal.) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-16-1996

Reported in : (1997)(90)ELT393TriDel

Appellant : Collector of Central Excise

Respondent : Pure Drinks (Cal.) Ltd.

Judgement :

1. In this appeal filed by the Revenue, the only issue for our consideration is the classification of the product 'ice boxes'. The respondent M/s. Pure Drinks (Cal.) Ltd., Calcutta had classified their product under sub-heading No. 8312.19; the Revenue in this appeal filed against the order of the Collector, Central Excise (Appeals) had sought to classify the product u/s.h. No. 8312.90 of the new Central Excise Tariff. The matter was posted for hearing on 16-12-1996. For the appellant Revenue, Shri M. Jayaraman, JDR is present. No one is present for the respondent M/s. Pure Drinks (Cal.) Ltd., Calcutta. Notice for today's hearing had already been served on them and there is no response from them; there is no request for adjournment, and as this is an old matter, in which the show cause notice was issued as early as in the year 1987, we are proceeding to deal with the matter on merits after hearing Shri M. Jayaraman, JDR who is present for the appellant/Revenue.

2. Shri M. Jayaraman, JDR submitted that sub-heading Nos. 8312.11, 8312.12 and 8312.19 will cover the containers ordinarily intended for packaging of goods for sale. These boxes made of base metal were used in shops and houses to keep

the ice free from melting or to keep aerated bottles chilled. It was used only for keeping the aerated water and other products cool.

3. We have carefully considered the matter. There is no dispute that the ice boxes (cooler) were manufactured out of the base metal. Under Heading No. 83.12 of the new Tariff containers of base metal were classifiable. As submitted by the ld. DR under sub-heading Nos.

8312.11, 8312.12 and 8312.19 only those containers which were ordinarily intended for packaging of goods for sale were classifiable.

The containers of aluminium were covered by subheading No. 8312.11 while other containers of base metal (other than aluminium) which were produced with the aid of power were classifiable under sub-heading No.8312.12. From the scheme in the tariff, it is clear that under sub-heading 8312.19, only those containers which were produced without the aid of power and were made of base metal other than aluminium were covered. The ice boxes are not intended for packaging of goods for sale. They are made of base metal. Sub-heading No. 8312.90 covered containers of base metal other than those covered under sub-heading No.8312.11, 8312.12 and 8312.19.

4. As the containers were made of base metal and were not covered by sub-heading Nos. 8312.11, 8312.12 and 8312.19 they were rightly classifiable under sub-heading 8312.90 of the New Central Excise Tariff.

5. In view of the above position, the view taken by the Collector, Central Excise (Appeals) is not correct. We set aside the impugned order. As a result, the appeal filed by the Revenue is allowed. Ordered accordingly.