

**Collector of C. Ex. Vs. Hindustan Metal Processing Works**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Apr-03-1997

**Reported in :** (1997)LC685Tri(Delhi)

**Appellant :** Collector of C. Ex.

**Respondent :** Hindustan Metal Processing Works

**Judgement :**

1. This Revenue Appeal is directed against Order-in-Appeal dated 11-3-1987 passed by the Collector of Central Excise, Bombay.

1.2 The issue relates to classification of steel ammunition boxes of different varieties used by the Ministry of Defence for the purpose of packing of the ammunition. Collector (Appeals) held that chapter Heading 83.12 relates to containers intended for packing of goods for sale and since the impugned goods are meant only for storage of ammunition these are classifiable under C.T.A. Chapter 7308.90.

2. Arguing for the Revenue the Id. DR submits that Collector (Appeals) erred in holding the chapter Heading 83.12 is for those containers of base metal which are intended for packing of goods for sale and since these products are used by the Defence Department for storing ammunition which are not meant for sale these are not dutiable under the heading. The chapter heading is further sub-divided as "containers ordinarily intended for packing of goods for sale", including collapsible tubes, drums, caps, boxes, gas cylinders and pressure containers, whether in

assembled or unassembled condition and, containers known commercially as flattened or folded containers of aluminium, and of aluminium whether plain, lacquered and printed or lacquered or printed under chapter sub-heading 8312.11, and "containers of base metal" other than aluminium in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power, are classified under chapter sub-heading 8312.12 and other containers are classified under chapter sub-heading 8312.19. The chapter sub-heading 8312.90 covers "containers of base metal", other than those covered under sub-heading Nos. 8312.11, 8312.12 and 8312.19. The Collector of Central Excise (Appeals), Bombay therefore ought to have classified the said products under 8312.90.

3. Arguing on behalf of the Respondent, the Id. Counsel submitted that the Heading 83.12 is for containers ordinarily intended for the packaging of goods for sale. This is the proper heading and it is not sub-heading. Since the ammunition boxes are not intended for sale but for only storage these cannot be classified under Tariff Heading 83.12.

4. We have heard both sides. For the sake of clarity we reproduce the description of the headings as given in Central Excise Tariff working schedule as on 30-4-1986.-----83.12

Containers of base metal - Containers ordinarily intended for packaging of goods for sale, including collapsible tubes, casks, drums, cans, boxes, gas cylinders and pressure  
8312.11 - Of aluminium, whether plain, lacquered or printed 20% or lacquered and printed  
8312.12 - Of base metal other than aluminium, in or in 20% relation to the manufacture of which any process is ordinarily carried on with the aid of power  
8312.19 - Other Nil  
8312.90 - Containers of base metal, other than those covered 20% under sub-heading Nos. 8312.11, 8312.12 and We are of the view that the Heading 83.12 is for "containers of BASE METAL". The description indicates, under Heading 83.12, that containers ordinarily intended for packaging of the goods for sale is preceded by a single dash. It is, therefore, a sub-classification of the article or group of articles covered by 83.12. 83.12.11, 83.12.12 and 83.12.19 are preceded by two dashes. The articles covered by these sub-headings are therefore sub-classification of the articles or group of articles, which are preceded by a single dash, that is, "Containers ordinarily intended for the

packaging of goods for sale." The description of goods under Heading 83.12.90 on the other hand is preceded by a single dash which indicates that the goods covered by this heading are sub-classification of the article or group of articles, covered by the Heading 83.12 which refers to "Containers of base metal." In other words, 83.12.90 is sub-classification of the 83.12 which covers "Containers of the Base Metal." The condition relating to "Ordinarily intended for packaging goods for sale" would therefore be attracted in the case of goods falling under Headings 83.12.11, 83.12.12, and 83.12.19 only. Since 83.12.90 is by virtue of simple dash sub-classification of "containers of base metals" without any condition relating to the packaging of goods for sale the impugned goods would be classifiable only under Heading 83.12.90.

4. In view of this we find considerable merit in the Revenue Appeal.

We, therefore, set aside the impugned order and allow the Revenue Appeal.

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