

**Metal Box of India Ltd. Vs. Collector of Central Excise**

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

**Decided On :** Mar-09-1983

**Reported in :** (1983)LC1551DTri(Delhi)

**Appellant :** Metal Box of India Ltd.

**Respondent :** Collector of Central Excise

**Judgement :**

1. This appeal is directed against the order of Appellate Collector of Central Excise, Calcutta dated 20-3-1978. Originally the appellant had filed a statutory revision petition before the Government of India against the order of the Appellate Collector but after transfer to this tribunal it has been registered as an appeal.

2. The facts leading to this appeal are that the Asstt. Collector issued a show cause Notice on 31-1-77 calling upon the appellants to pay duty short-levied for the weight of plastic caps attached to collapsible tubes cleared by the appellants during March, 1975 to February, 1976. The Asstt. Collector confirmed the demand for duty by his order dated 22-3-77. The Appellant felt aggrieved from the said order and preferred an appeal before the Appellate Collector. In this appeal, the order of the Asstt. Collector was confirmed. The present appeal is against that order of the Appellate Collector.

3. We have heard arguments of both the sides. The Learned Counsel for the Appellant has submitted that the appellants do not manufacture the plastic caps; they buy plastic caps, already duty paid, from the market. They simply attach

these caps to the aluminium collapsible tubes manufactured by them and the bottom of the aluminium tubes still remains open so that the customer can fill in the tube and then seal the bottom. The Appellant also asserts that the cap is made from plastic and not of aluminium and that for this reason also its weight should not be added to the weight of aluminium collapsible tubes for the purpose of assessing the specified rated tariff of the Central Excise duty. In answer to the contention put forth by the learned counsel for the appellant, Shri Mahesh Kumar has submitted that the definition of containers as embodied in the Explanation (1) of Item 27 of the Central Excise Tariff shows that the caps have to be included while considering the duty payable on the container. The definition of "containers" is in the following terms : - "Container" means containers originally intended for packaging goods for sale, including collapsible tubes, casks, drums, cans, boxef, gas cylinders and pressure containers whether in assembled or unassembled condition, and containers known commercially as flattened or folded containers." It is an admitted fact that the caps are made from plastic, while collapsible tubes from aluminium. The plastic cannot be deemed to be aluminium to bring them within the ambit of Item 27. There can be three contentions about the supply of caps along with aluminium tubes. The caps may be supplied on different dates to a customer and actually they will not be produced along with the tubes. Secondly, they may be produced at the same time before the Excise Officer for assessing the Excise duty payable but in different packages or bundles. The duty paid caps cannot be assessed to excise duty again on its weight. That seems to be the simple answer in this regard. There is the third situation, when the plastic caps on which duty has already been paid, is fitted on the collapsible tubes. In our view the mere fitting of the cap would not change its nature, i.e., it would not become aluminium cap from plastic one, only by the mechanical process of fitting.

4. Shri Kumar has convassed that without the cap the collapsible tube is not a costless container and, therefore, it cannot be treated separately and has to be considered as a part of the container. While examining the samples shown to us, we find that the bottoms of all the collapsible tubes are open. Obviously they have to be so as the stuff which is to be injected inside has to be through this part and then the bottom has to be sealed. In other words, we feel that even by putting the cap on the side of the tube, the container remains incomplete as anything put

therein would fall out, We are, therefore, unable to agree with the arguments put forth by Shri Kumar. The interpretation of the definition of containers cannot be stretched to such an extent as is sought to be the case. It is not a case where any other metal has been used as an alloy along with aluminium. If the aluminium has been predominantly used while making the alloy, then Explanation (2) of Item 27 would come into play. These facts do not exist in the instant case.

Nor that is the case of the Department.

5. We cannot enlarge the scope of the definition of containers as has been contended by Shri Kumar. Even without the plastic cap on, the aluminium collapsible tube still remains aluminium collapsible tube within the inclusive definition of 'containers' given in Explanation (1) to Item 27. Considering the nature of the goods and also the fact that the caps made of plastic had been separately manufactured and excise duty paid, they have to be treated separately while charging the weight based portion of the duty of Excise on aluminium as envisaged in Item 27 of the Central Excise Tariff.

For the above reasons, we hold that the order of the Appellate Collector cannot be sustained. The appeal is thus accepted and the impugned order is set aside,

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