

Collector of Central Excise Vs. Steelage Industries Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-08-1985

Reported in : (1985)(5)LC1634Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Steelage Industries Ltd.

Judgement :

1. The respondents manufacture steel, furniture, safes, etc. The point of dispute before us is whether the Firesafe Record Cabinet manufactured by them should be classified as an article of steel furniture under Item 40 of the Central Excise Tariff or as a safe under Item 48 thereof.

2. The fact of the case in brief are that steel furniture and safes were liable to the same rate of central excise duty, though under two different tariff headings, till 28-2-1979. The respondents had submitted classification lists classifying their Firesafe Record Cabinet under Item 48 as a safe which was approved by the Department.

The Budget of 1979 increased the duty leviable on safes to 35% ad valorem while the rate on steel furniture was fixed at 25% ad valorem.

Thereafter, in August, 1979, the respondents filed a fresh classification list requesting for classification of their Firesafe Record Cabinet under Item 40 as steel furniture. The Assistant Collector, who adjudicated upon the matter, upheld

the classification under Item 48 as per the previous practice. The Appellate Collector, however, held that the said cabinet was not a safe but an article of steel furniture falling under Item 40. He, therefore, allowed the respondents' appeal on classification. The Central Government was tentatively of the view that the order of the Appellate Collector was not legal, proper and correct and, accordingly, issued a show cause notice under the then Section 36(2) of the Central Excises and Salt Act, 1944 proposing to restore the earlier classification under item 48. The matter was heard by a Bench of the Central Government on 6-11-1981. The respondents at that stage submitted affidavits of certain banks and their other customers in support of their case that the Firesafe Record Cabinet was not a safe but only a filing cabinet for keeping records and documents safely. The Central Government took the affidavits on record and sent them to the Collector of Central Excise for inviting his comments thereon. At this stage, the proceedings pending before the Central Government were transferred to this Tribunal and they have been taken up by this Bench as the present appeal of the Department.

3. We have heard both sides, examined the record and carefully considered the matter. Relying on heading 83'03 of the CCCN, the case of the Department is as follows. The function of a safe is to provide reasonable protection against theft and fire. The Firesafe Record Cabinet manufactured by the respondents fulfils this requirement of a safe as seen from the following special features incorporated therein :- (1) The cabinet has a double wall construction. The average space between the inner and outer case is 50 mm. This space is filled with special fireproofing compound in order to make the cabinet resistant to fire.

(2) Further, the cabinet has air tight doors working on tongue and groove principle, with asbestos strip liner fitted in the groove.

This asbestos strip gets compressed by the tongue when the door is locked shut.

(4) In addition, the cabinet has eight shooting bolts, each of 20 mm. diameter, three on each vertical side and one each on the top and the bottom side. The trade catalogue of the cabinet further states that "if desired combinations can be provided at extra cost".

The Department asserts that the above special features are normally provided in safes and not in ordinary steel cupboards. The trade catalogue of the cabinet also refers to the cabinet as a "safe" at one place. Tariff Item 48 which covered safes, strong boxes etc. was, therefore, more specific and appropriate for this cabinet as compared to the general Item 40 relating to steel furniture. The respondent; had also classified this cabinet as a safe all along till August, 1979. The Department referred to the respondents' reliance on the ISI specification and stated that sub-standard goods which did not conform to ISI specifications did not go out of the tariff entry merely for the reason of their inferior quality.

4. The respondents relied on the Indian Standard Specification for safes (second revision- IS : 550-1979) to say that their Firesafe Record Cabinet falls far short of the minimum requirements for a safe as noted below :- (1) Minimum thickness of the outer plates prescribed by ISI For safes is 5 mm. Thickness of the outer plates used for Firesafe Record Cabinet of the respondents is 2.5 mm.

(2) Minimum thickness of the inner plates prescribed by ISI for safes is 3.15 mm. whereas the thickness of the inner plates of the respondents' cabinet is 1.6 mm.

(3) Whereas the ISI specifications for safes require a drill-proof layer of minimum 3.15 mm. thickness over the lock, the aforesaid cabinet is not designed to withstand burglary and is neither drill-proof nor even drill-resistant and it does not have any drill-resisting layer or cover whatever over the lock or on any part of the entire cabinet.

(4) The cabinet has no burglary resistance to speak of. Its lock can be broken by hammering.

Secondly, the respondents assert that their Firesafe Record Cabinet is known in the trade, and described in their literature, only as a cabinet. As seen from the affidavits of certain banks and their other customers filed by them, it is not designed for storage of cash, jewellery and other valuables and their buyers use it only for keeping more important files and documents. The description of the cabinet as a "safe" at one place in their trade catalogue was not by the respondents but. by the Central Building Research Institute, Roorkie. This Institute

had tested their cabinet for fire resistance and issued a certificate. The respondents incorporated that certificate on page 4 of their trade catalogue. This certificate referred to the article tested as a "cabinet" at three places and as a "safe" at one place. The respondents state that the Institute probably used the word "safe" as an abbreviation for Firesafe occurring in the beginning of the name of their cabinet (Firesafe Record Cabinet). This does not mean, the respondents argue, that their cabinet became a safe. Nor could their past classification of the cabinet as a safe, they argue further, be held against them. They state finally that the Department was not justified in placing reliance on certain optional requirements of heading 83.03 of the CCCN, while ignoring the essential requirements of a safe. As a matter of fact, they assert, no reliance could be placed on the CCCN while interpreting the Central Excise Tariff as this Tariff, unlike the Customs Tariff Act of 1975, was not based on the CCCN.⁵ On careful consideration of the matter, we agree with the respondents that though their Firesafe Record Cabinet is not an ordinary steel cupboard, it nevertheless falls far short of the minimum requirements of a safe as understood in the trade and as set out in the ISI specification. The structure of the cabinet is not like that of a safe nor is its body strength near anywhere that of a safe. The thickness of its plates is practically half of those of a safe. It has no guard plate and drill-proof layer. Its lock is not burglary resistant. We are conscious that sub-standard or inferior quality goods do not go out of the Tariff entry just for that reason. But the point is that the Firesafe Record Cabinet, the classification of which is before us, is neither designed nor recognised in the trade and industry as a safe. On this point, the large number of affidavits filed by the respondents have remained uncontroverted by the Department. The various banks and other customers of the respondents have stated unanimously that they do not use the cabinet for storage of cash, jewellery and other valuables-which are the storage functions of a safe- but use it only for keeping their more important documents and records, i.e., the function of a filing cabinet. We notice from the record that the Appellate Collector went through a large number of invoices of the respondents and examined the original indents of their customers. He found that the cabinet had been referred to in them only as a cabinet and not as a safe. The words "steel furniture" and "safe" are words of everyday use. It is settled law now that their classification for the purpose of

Central Excise duty should be based on their trade understanding. We, therefore, agree with the respondents that their Firesafe Record Cabinet is correctly classifiable as steel furniture under Item 40 of the Tariff. Despite its fire resisting quality and dual control key lock with eight shooting bolts, it still basically remains a filing cabinet.

6. Incidentally, we observe, as mentioned by the respondents and as admitted by the Department, that the comparable cabinet manufactured by M/s. Godrej & Boyce Manufacturing Co. (Pvt.) Ltd., a competitor of the respondents, is assessed by the Department as steel furniture under Item 40 only and not as a safe under Item 48.

7. In the result, we confirm the order of the Appellate Collector and discharge the show cause notice issued by the Central Government.

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