

**Collector of Central Excise Vs. Warden and Co. (i) Pvt. Ltd.**

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

**Decided On :** Aug-19-1985

**Reported in :** (1996)(85)ELT114TriDel

**Appellant :** Collector of Central Excise

**Respondent :** Warden and Co. (i) Pvt. Ltd.

**Judgement :**

1. This is an appeal filed by the Collector of Central Excise, Thane, against Order No. M-2648-2649/TH-221-222/84 passed by the Collector of Central Excise (Appeals), Bombay. This order of the Collector (Appeals) has disposed of two appeals No. 101/83 and 102/83 by a common order.

Since the facts in the two appeals disposed of by the Collector are identical and the issue involved is the same, we are also disposing of this matter by this common order.

2. Shri A.S. Sunder Rajan, JDR appears on behalf of the appellants and Shri J.R. Gagrat, Advocate on behalf of the respondents.

3. The appellants say that the respondents M/s. Warden & Co. (I) Pvt.

Ltd., Thane are engaged in the manufacture of fibre drums. The cylindrical portion of the drums is made up of paper and its bottoms and tops are made up of plywood reinforced with mild steel rings and clamps. Prior to budget 1982 this product was classified under Tariff Item 68. However, consequent upon the

amendment of tariff description of Central Excise Tariff Item No. 17 as a result of the 1982 budget, the respondents filed classification list on 4th March, 1982 claiming that their product was classifiable under the new Tariff Item No. 17(4) and entitled to exemption under Notification No. 66/82, dated 28th February 1982. This classification was approved on 29th March, 1982.

Later, on further consideration of the matter, the department felt that the goods would be classifiable not under Tariff Item No. 17(4) but under Tariff Item No. 68. Accordingly, the assessee was asked to file a revised classification list by the range Superintendent under his letter dated 14th April 1982. Two show cause notices were also issued one on 26th June, 1982 and the other on 12th July, 1982 demanding duty on the clearances of fibre drums affected since March, 1982 as per classification under Tariff Item 68. The Assistant Collector as a result of the adjudication proceedings confirmed the classification under Tariff Item 68 and the demand of duty amounting to Rs. 48,588,30.

The party went in appeal before the Collector(Appeals) Central Excise, Bombay who set aside both the orders-in-original of the Assistant Collector relating to the above classification and demand of duty and held that the product fibre drum is classifiable under Tariff Item No.17(4). It is against this order that the appellants have come up in appeal before us.

4. Appellants have stated that the product is not exclusively made up of paper and it cannot be called as an article of paper. It is pleaded that it is in fact a composite article. It is pointed out that the product is also sold and invoiced as a fibre drum and not as a paper drum. Tariff Item No. 17(4), it is stated, deals with only articles of paper and paper board. Composite articles such as fibre drums which are having bottoms and tops of different material i.e. of plywood reinforced with mild steel rings and clamps cannot, therefore, claim classification as an exclusive article of paper or paper board.

5. The following case law has been cited by the appellants in their favour -Indian Textile Paper Tube Company Ltd., Madras v. Collector of Central Excise, Madurai - 1984 (18) E.L.T. 35.Solar Electric Trading Company v. Collector of Customs, Bombay 3. Decision of the High Court of Allahabad in the case of Geep Flashlight

Industries Ltd. v. UOI and Ors. - 1985 (19) E.L.T. 68. Kasturi & Sons Ltd., Madras v. Collector of Customs, Madras 6. It is stated on behalf of the department that the issue in this matter has been finally disposed of by a CEGAT order in the case of Indian Textile Paper Tube Co. Ltd., Virudhunagar, Madras v. Collector of Central Excise, Madurai-1984 (18) E.L.T. 35. This decision of CEGAT has been upheld by the Supreme Court by dismissing appeal against it in Civil Appeal No. 3650 of 1985 decided on 3rd December, 1984. It is pleaded that the appeal in this case should also be allowed in the light of the foregoing CEGAT decision.

7. On behalf of the respondents, it is pointed out that none of the decisions cited by the appellants in their favour relate to the impugned goods in this case namely fibre drums. It is, therefore, urged that the classification of this product should be considered on its merits independently of the various decisions cited by the appellants.

Respondents have especially emphasised the importance of going by trade understanding and common parlance criteria in determining the correct classification of the product. It is maintained that fibre drums are commercially known as articles of paper. In fact, Range Superintendent had verified the classification list No. 1/82 earlier filed by them and approved of classification of the product as an article of paper under Item 17(4) of Central Excise Tariff. Prior to the 1982 changes in the Central Excise Tariff, the product in question was, in fact, classified under Tariff Item No. 68. The department approved change in classification under the revised Central Excise Tariff Item No. 17(4) after due satisfaction about the composition of the product and the wording of the revised Tariff Item 17. The classification list No. 1/82 was thereafter approved by the Assistant Collector. So far as the trade understanding as well as correct classification as per determination of local excise authorities is concerned, respondents have furnished copy of Trade Notice No. 33(MP)/Paper(4)/1984 dated 7th July, 1984 in which it has been held that fibre drums whether made entirely out of mill board, straw board, kraft paper, liner or corrugating medium whether or not reinforced with circular, metal bands of tin plate or other materials and whether with or without reinforcing circular metal bands in which the lid may be of metal or other material, would be classifiable as an articles of paper under

Tariff Item 17. It is emphasised by the respondents that in terms of percentage content, paper constitutes 51.18% of the finished product and accounts for nearly half the cost, the plywood content is about 23.57% and rings and clamps about 19.5%. It is urged that there is no warrant in the relevant Tariff Item for applying the exclusive paper content criteria for determining whether the article in question is a paper product or not. As regards trade understanding, appellants have referred to copies of certificates which they have obtained from the All India Paper and Allied Products Manufacturers Association as well as certain other companies to show that the fibre drums produced by the respondents are known as paper products in the trade circles.

8. The respondents have also stated that in the CEGAT decision cited by the appellant, emphasis was laid on 'natural and popular meaning' for determining correct classification and not merely composite character criteria. Again referring to the Geep Flashlight case, it is said that the decision in that case does not apply to the facts of this case because there the view taken was based on the Allahabad High Court interpretation of the scope of Central Excise Tariff Item 15A.9. The two further points that have been made by the respondents are that an approved classification cannot be changed by the department without discharging the onus of proving that this is warranted by some new, or hitherto unknown, facts, changes in law or tariff etc. Further, it is stated that any decision as regards change in classification, if otherwise upheld, cannot apply retrospectively. It can have only prospective effect.

10. The following case law has been cited by the respondents in their favour - Dunlop India Ltd. & Madras Rubber Factory Ltd. v. Union of India and Ors.

-1983 (13) E.L.T. 1566.J.K. Steel Ltd. v. Union of India and Ors.

3. Decision of the High Court of Bombay in the case of Advani- Oerlikon Ltd. and Anr. v. Union of India and Ors. - 1981 (8) E.L.T. 4. Decision of the Government of India (Revision Case) in the case of Navin Industries, Bhavnagar -1981 (8) E.L.T. 958.Entremonde Polycoaters Pvt. Ltd., Nasik v. Collector of Central Excise, Pune

11. We have carefully considered the submissions made by both sides and the facts and evidence on record. As the appellants have shown, this Bench has

already taken a view as regards classification of a composite product claimed to be classifiable under Central Excise Tariff Item No.17(4) in the case of Indian Textile Paper Tube Co. Ltd., Virudhunagar, Madras v. Collector of Central Excise, Madurai Order No. 307/84, dated 25th May 1984 [reported in 1984 (18) E.L.T. 35 (Tri)]. The view taken by this Bench has been upheld by the Supreme Court. It is true, as stated by the respondent, that in this matter as well as other cases cited by the appellants in their favour, the impugned product was not the same.

While the product was not the same, the issue clearly was the same, that is to say as to what should be the basis for classification of a composite product, which was claimed to be classifiable under Item 17(4). In the case of Indian Textile Paper Tube Co. the product in question was Vim Containers and Defence Containers which were stated to be made out of kraft paper with aluminium foil pasted thereon. It was not denied that the products also included metal components. It was urged, however, that kraft paper pre-dominated in content, and the metal component, made out of tin plate or black plates, and the printed aluminium foil were only used to strengthen the paper containers. In that case also the point was made that the department had already taken a view in favour of the assessee as regards correct classification and that it could not depart from the earlier stand without cogent reasons such as fresh facts, change in process of manufacture or modifications in tariff or amendment of law etc. So far as the validity of the proceedings initiated in this matter for revising classification of the impugned goods is concerned, there are various decisions of this Tribunal which have held that there can be no estoppel in the matter of classification of goods and the fact that there is already an existing classification will not come in the way of further consideration and re-determination of correct classification by the proper officer provided that proceedings are initiated in accordance with law and the assessee is given due opportunity to make his submissions in the matter. So far as the nature of the product is concerned, we feel that while the goods in the case of M/s. Indian Textile Paper Tube Co. Ltd. Madras were different, namely, Vim Containers and Defence Containers whereas in this matter we are to determine the correct classification of fibre drums, but the issue was the same, namely, correct classification of composite containers made of paper board and metal components. It had been held by this Bench in the case of M/s. Indian Textile

Paper Tube Co. that a clear distinction has to be made between packing containers of paper and paper board fitted merely with reinforcing circular bands of other materials such as textile packings, wooden support, string handles, metal or plastic corners, and products which have metal components such as lids and bottoms etc. For our benefit here we can only reproduce the operative part of the findings in the Indian Textile Paper Tube Co. Ltd. case - "In this case before us, the paper tubes are prepared first and then other material components like lids, and bottoms which are made of tin plates and black plates and printed aluminium foils are added to the paper tubes. Without these components, like lids and bottoms made out the tin plates and black plates and printed aluminium foils, these articles, i.e. Vim Containers and Defence Containers cannot come into existence and, therefore, paper/board is only one of the raw materials and the other material components like lids and bottoms and printed aluminium foils are the other important materials and, under these circumstances, it cannot be said that the paper/paper board gives the essential character of the product in question. Besides this, the principal essential character of an article for classifying the same under Customs Tariff has no application in Excise Tariff classification. In the Excise Tariff classification, the words mentioned in the tariff itself must be given their natural and popular meaning. Tariff Item 17(4) speaks of articles made of paper and paper board. This evidently suggests articles made of paper with all essential parts of the same material. Thus, there are boxes, cartons etc. for shoes, cigarettes, sweetmeats and a host of other goods made of paper/board in all essential parts. At most, they may have metal staples to hold the corners i.e. for reinforcement, but these articles i.e. Vim Containers and Defence Containers cannot be said to be articles of paper or paper board. These are composite containers made of paper, paper board and other metal components. The metal components perform roles as essential as the paper tube viz. that of containment. Their correct classification is under Tariff Item 68 C.E.T. and not under Item 17(4) C.E.T. The authorities below have rightly classified these articles under Item 68 C.E.T." 12. We feel that the ratio of decision in the case of M/s. Indian Textile Paper Tube Co. Ltd., Virudhunagar, Madras fully applies to the facts of this case. We fully concurring with that decision, we agree that the impugned goods are rightly classifiable under Item 68 of Central Excise Tariff.

13. One point that survives for consideration relates to the submission made by the respondents that any change in classification cannot have retrospective effect. In support of this point, appellants have cited the decision of the Government of India in revision case relating to Naveen Industries, Bhavnagar -1981 (8) E.L.T 958 as well as subsequent decision of CEGAT in the case of Entremonde Polycoaters Pvt. Ltd., Nasik v. Collector of Central Excise, Pune - 1984 (16) E.L.T. 389. In view of decisions above-cited, as well as others it is beyond doubt that any modification in the classification list or subsequent revocation of approval given earlier can be only prospective and not retrospective. However, there would be no bar to the raising of demand by the department in pursuance [of this] revised classification within the period of limitation provided in Rule 10 of Central Excise Rules 1944. In this particular case, we notice that the show cause notice was issued on 26th June, 1982 and the period relating to demand of duty is from 28-2-1982 onwards. It is also observed by us that the respondents were under notice by the Range Superintendent regarding proposed change of classification through a letter dated 14-4-1982 although the show cause notices were issued on 26-6-1982 and 12-7-1982. In view of these facts it has to be held that the demand for duty in this matter is not hit by limitation.

14. Accordingly, we set aside the order of the Collector of Central Excise(Appeals) Bombay and allow the appeal.

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