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Rekha Industries Vs. Central Board of Excise and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-29-1983

Reported in : (1983)(13)ELT1163TriDel

Appellant : Rekha Industries

Respondent : Central Board of Excise and

Judgement :

1. The Department's case, as seen-from the records, is that the appellants manufactured during the period 6-2-69 to 16-4-77, a quantity of 1,01,81,375 pieces of pilfer-proof caps (hereinafter referred to as P.P. Caps) falling under Item No. 42 of the 1st Schedule to the Central Excises and Salt Act (hereinafter referred to as CET) without taking out a Central Excise licence and removed the said goods from the factory premises without payment of central excise duty leviable thereon. By a Show Cause Notice dated 6-10-77, the appellants were asked to show cause to the Collector of Central Excise why duty at the appropriate rate should not be demanded from them on the said quantity of P.P. Caps under Rule 9(2) of the Central Excise Rules, 1944 (hereinafter referred to as the Rules) and why a quantity of 2,23,645 pieces of P.P. Caps seized from them should not be confiscated under Rule 173-Q(1) and why penalty should not be imposed on them. On completion of adjudication proceedings the Collector held that the seized goods were liable to confiscation under Rule 173-Q but in their absence (they having been released against a bond), he forfeited a sum of Rs. 500/- from the security deposit; he also ordered recovery of central excise duty at the appropriate

rate on 59,06,859 pieces of P.P.Caps under Rule 9(2) as it existed during the material period. However, he did not impose any penalty on the appellants. On appeal, the Central Board of Excise & Customs held that the Collector's orders demanding duty on the goods as P.P. Caps under Item No. 42 of the CET were correct and dismissed the appeal. It is against this order of the Board that the appellants had preferred a Revision Application before the Central Government which has come to this Tribunal on transfer under the provisions of Section 35-P of the Central Excises and Salt Act, 1944 for disposal as if it were an appeal presented before it.

2. The contention of the appellants, in so far as the classification under the CET of the subject goods is concerned, is that they were tab seals, that they were used as tab seals for drums and not as pilferproof caps. In order for a cap to be a P.P. Cap it required a flange, a plug and a seal; the subject goods were merely tab seals without any flange or plug which, by itself, could not be used for any packages and could not serve the purpose of a P.P. Cap. It is also contended that even assuming the goods were P.P. Caps, the manufacture of these goods by the appellants had been allowed by the Department without any objection till 1974 though the Department was aware of the nature of the goods manufactured. The Central Board of Excise & Customs had examined the question of classification of P.P. Caps in 1975 and it had clarified that a cap could be called a P.P. Cap only if it had flange, plug, seal or a fastener which together were designed to prevent leakage, contamination, tampering, etc. In this context reference was made to the Pune Collectorate Trade Notice No. 149/75, dated 26-10-75 on similar lines. It was further contended that the cap seals or tab seals produced by the appellants could not, by themselves, be fitted on containers as they had no threads and, being made out of very thin tin, could be broken by pressure of hand and that merely fitting of such caps on containers could not safeguard the contents against pilferage. It was also contended that manufacturers of similar goods were neither required to take out Central Excise licence nor pay duty on their goods as P.P. Caps-M/s. Petrox Pvt. Ltd. and M/s. Meena Screen Printers. In the case of Trisure (India) Ltd. in the Bombay Collectorate, they were asked to pay duty only from the time their product was held to be excisable as P.P. Caps and not for the back period.

3. On adjudication the Collector of Central Excise held that the total clearances of cap seals/P.P. caps during the material period were 59,06,859 pieces as against the quantity mentioned in the Show Cause Notice. He held that the cap seals or tab seals had a clear tear line in its body which splits while opening the same and the 2 pieces fall apart and, therefore, they were P.P. .Gaps. Since it is fixed over a drum closure, over the mouth of a drum, it is also a cap/cover and that it was nothing but a P.P. Cap. It was capable of being used only once and. to get to the contents, the cap had to be torn open. In the circumstances the Collector held that the subject goods were P.P. Caps.

The Board, in its Order-in-Appeal, also held that the subject caps were used for keeping the lid otherwise fixed on the drums in position and also for the purpose of identification of the product with reference to embossing or painting on such caps. Nevertheless, considering the manner in which the cap was used, the object of making the contents pilferproof was also achieved. It was not necessary that such caps should be fixed on the opening of a container only with the help of a thread. The fact that the subject tab seals were pressure sealed would not disqualify them from being classified as pilferproof caps. Insofar as the contention that other manufacturers of similar caps were not being charged to duty, the Board held that the contention has not been substantiated and that in any case even if it were so, it could not justify the appellants from avoiding the payment of duty.

4. In the Memorandum of Revision Application (Appeal) the grounds traversed are substantially the same as those adduced before the lower authorities. During the hearing of the appeal Shri H.C. Jain, the learned Counsel for the appellants, framed the following 3 issues for determination by this Tribunal :- (i) Whether the goods produced by the appellants were P.P. Caps within the meaning of Item No. 42-CET (ii) Even if they are, would not the Dept. be estopped from raising and enforcing demands for duty from the appellants in respect of past periods when manufacturers of similar goods were not paying duty? 5. Turning to the issue of classification of the subject goods under Item No. 42 of the CET, Shri Jain submitted that Item No. 42 of the CET, which reads as follows:- "Pilfer-proof caps for packaging, all sorts, with or without washers or other fittings of cork, rubber, polyethylene or any other material", does not contain a definition of the expression

"pilferproof cap". A sample of the goods was produced before the Bench for inspection. It is a circular cap with 2 ears and it bears instructions in the following terms for its operation : On the top the cap bears the name of the customer, which, in the case of the sample, is "Indian Oil". The Counsel explained that when the subject cap is removed in accordance with the instructions, the central portion of the cap along its diameter would be torn off and the two remaining portions would fall apart. However, he explained that a machine was required for pressing the cap on to the lid of the container; again a machine was required for gripping the ears of the cap and tearing the cap. Once the cap was torn, it could not be used again. In the submission of the Counsel, these considerations alone would not make the subject cap or what the appellants call tab seal or cap seal a P.P. Cap. In this connection he referred to the Standard published by the Indian Standards Institution, namely, IS-1394 : 1973 which defines P.P. Caps as :- The Counsel submitted that the cap seal produced by the appellants did not have threads on them with the help of which they could be screwed on to the container and further that they did not have integral pilferproof arrangements. The goods were merely in the nature of parts of drums. In support of his stand, he referred to the purchase order placed by the customers, namely, Burmah Shell Oil Storage and Distributing Co. of India, Bombay and Indian Oil Corporation Ltd., Bombay, copies of which are available in the file at pp. 103 to 108 in which the goods have been described as "tab seal" or "cap seal". These documents would show that the subject goods were known in the trade as "cap seals" or "tab seals" and not as "P.P. Caps". It would also be seen from the order of the Indian Oil Corporation that there was no excise duty on finished cap seals. It was further submitted that such seals could, by themselves, never act as pilferproof caps. He also referred to IS: 784-laying down specification for Screwed Closures for Drums.

6. Turning next to the question whether, even assuming that the goods were P.P. Caps, the Department was not estopped from raising demands in respect of the past periods and further whether the demand raised against the appellants was not time-barred. Shri Jain referred to the adjudication proceedings held by the Collector and, in particular, to the cross examination of Shri Sahasrabuddhe and to the correspondence which the appellants had with the Central Excise authorities on the subject of excisability of the subject goods as pilperproof caps. In this

correspondence, the appellants had brought to the notice of the Inspector, Central Excise, Dombivili that 2 other manufacturers were supplying similar cap seals to the India Oil Corporation without payment of excise duty. All these went to show that the Department was aware of the manufacture of the subject goods by the appellants and that nothing was done by the appellants without the knowledge of the Central Excise authorities.

7. In this view of the matter and haying regard to the fact that in the case of M/s. Trisure India Ltd., the Excise authorities had declared similar goods as non-excisable, the Department should be estopped from pleading against the appellants, particularly in respect of the past periods. On the question of time-bar, Shri Jain referred to the Show Cause Notice dated 6-10-77 which contained a notice of demand for duty in respect of the period from 6-2-69 to 16-4-77. In any view of the matter, Shri Jain submitted that part of the demand would be time-barred having regard to the provisions of Rule 10.

8. Appearing on behalf of the Respondent, Shri K.D. Tayal, submitted that the cap seals in question clearly acted as a device against ready access to the contents of the container and, therefore, they would be properly classifiable as pilferproof caps. The absence of threads on the cap seals would not detract from this position.

9. On the question of estoppel urged by the appellants, Shri Tayal submitted that the Superintendent of Central Excise had, as far back as 16-9-74, made known to the appellants that the cap seals manufactured by them had been held by the Assistant Collector to be P.P. Caps assessable to duty under Item No. 42 of the CET. The goods produced by M/s. Trisure India Ltd, were not available for inspection and no inference could be drawn as to the comparability with the subject goods. Shri Tayal resisted the plea of time-bar having regard to the fact that, though the Department had made known its stand on the excisability of the product under Item 42-CET as early as 1974, the appellants continued to clear the goods without payment of duty.

10. We have given careful consideration to the submissions of both the parties. We have inspected the sample of the goods whose classification is in dispute. It is

clear from the description of the goods as set out earlier in this judgment that they do act as a check or barrier against ready and easy access to the contents in the container or drum over which the cap seal or tab seal is affixed. The cap seal contains a gasket type of lining. The fact that the seal does not have threads in them and that, therefore, they cannot be screwed on to the lids or closure of the drum would not, in our opinion, make any difference to the position that they do act as a check or barrier against ready or easy access to the contents. Further, if someone were to attempt to reach the contents, he would have to perforce remove the cap seal and for this purpose he would have to grip its ears and tear across the diameter and, in the process, the remaining portion of the cap seal would fall into 2 pieces. In the result, the cap seal would be destroyed and would not be re-usable.

11. Having regard to this admitted position, there is no doubt as to the true function of the cap seal, i.e. to act as a check or barrier against pilferage. Since Item No. 42 of the CET does not contain a built-in definition of the expression "pilferproof cap", we have to go by the plain meaning of the expression and in this light there is no denying that the subject cap seals are nothing but pilferproof caps.

12. Reliance placed by the Counsel for the appellants on IS : 1394-1973 would not, in our view, settle the matter of classification of the subject goods, though Indian Standards are entitled to the highest consideration, It is clear from the perusal of the definition of the term "Pilfer-proof caps" as given in this Standard (the definition has been reproduced earlier) and the specification for Screwed Closures for Drums as given in IS ; 1784-1977 that these Standards set out the essential dimensions of bungs and their minimum requirements for ensuring interchangeability and satisfactory performance in the rough handling of the drums for which they are intended. In other words, these are in the nature of quality specifications. Closures not conforming to these specifications would be liable to be rejected as "off Standard".

13. Insofar as the Central Excise Tariff Item No. 42 is concerned, it takes in pilfer-proof caps for packaging, all sorts. There being no definition of the term "pilfer-proof cap" in the said Tariff item, it has to be given the widest meaning, particularly

in the context of the qualifying words "all sorts". In other words, the tariff item takes in even pilfer-proof caps which may not come within the meaning assigned to the term in the Indian Standard. That this is so, would be clear from the fact that whereas the Indian Standard lays down that the Screwed Closure for Drums comprises of a bung, flange, washers, cap seal and a sealing ring, the Tariff Item takes in pilfer-proof caps with or without washers or other fittings. In the circumstances, our finding on the first issue framed by the learned Counsel for the appellants, namely, whether the goods produced by the appellants were P.P. Caps within the meaning of Item No. 42-CET is in the affirmative.

14. Now turning to 2nd and 3rd issues, which we consider could be usefully dealt with together, the issues being whether even assuming that the goods were P.P. Caps, would not the Department be estopped from raising and enforcing demand for duty on the appellants in respect of past period when manufacturers of similar goods were not paying duty and further was not the demand issued by the Department against the appellants time-barred we have to note that the appellants have not led any evidence in support of their contention that the appellants goods have been discriminated as against exactly similar goods manufactured by other manufacturers. When the appellants allege discrimination vis-a-vis other manufacturers who, according to the appellants, are similarly placed, the onus is on the appellants to establish that, in fact, they had been discriminated against.

15. We have perused the adjudication proceedings and the deposition of witnesses. The appellants had no doubt referred to other manufacturers who, according to the appellants, were producing similar goods, but whose goods were not being charged to duty as P.P. Caps, but they had not added any corroborative evidence. This onus on the appellants, in our view, has not been satisfactorily discharged by them.

16. On the other hand, the Collector has discussed in his order the cases of 4 other manufacturers whose names had been furnished by the appellants and recorded his findings with reference to each of them, as ascertained from official records.

17. In short, the Collector's findings were that the products of M/s.

Dashing Tin Works were held as not falling under Item 42-CET; that M/s.

Tecknowcraft Corporation were manufacturing P.P. Caps and had been licensed since 1965; that M/s. Issa Jamal Group did not manufacture any Cap Seals from 1969 to 1974 and that the product of M/s. Trisure India Ltd. had been classified as P.P. Caps from 1975, but later on their product was considered as not falling under Item 42-CET, and the licence was cancelled and that the product of Trisure was somewhat different from that of the appellants. The products made by these 4 manufacturers are not before us and we have nothing to go by on the basis of which the appellants' uncorroborated contentions can be accepted in the face of the Collector's findings.

18. The correspondence exchanged between the appellants and the Central Excise authorities in the shape of a letter dated 6-8-1974 from the Inspector, Central Excise to the appellants conveying the Assistant Collector's decision that the Cap Seals made by the appellants fall under Item 42-CET, and instructing the appellants to apply for Central Excise Licence and comply with Central Excise formalities, the appellants' response letter dated 31-8-74, the letter of the Superintendent of Central Excise dated 16-9-1974 reiterating the Assistant Collector's decision about the Cap Seals manufactured by the appellants falling under Item 42-CET, and that the appellants should comply with Central Excise formalities and the further letter of the appellants dated 2-10-74 all go to show that the Department's stand was made clear to the appellants right from 6-8-1974, The correspondence, if any, after the appellants' letter of 2-10-1974 is not available before us but the letters already referred to and on record show that, though the Department may have been slack in the matter of follow-up of the instructions given by them to the appellants, the appellants had been clearly made aware of the position that the goods manufactured by them fell under Item No. 42-CET, as P.P. Caps.

19. In the circumstances, the appellants should have either paid duty on the Cap Seals under protest exercising their right of agitating the matter at the appropriate forum, or agitated the matter straightway by way of appeal, etc. Having not done either of these things the appellants cannot now seriously urge that the

Department was estopped from proceeding against them. Since the appellants had manufactured and cleared Cap Seals or tab seals, which we have held are P.P. Caps falling under Item No. 42-CET, without payment of duty and without compliance with excise formalities, the question of time-bar would not arise. The fact that they had contested the decision 6f the Assistant Collector as communicated to them by the Inspector and later reiterated by the Superintendent would not absolve them from their responsibility under the Central Excise Rules, especially when they were specifically asked to take out a licence, observe formalities and pay duty.

20. In the present case, the Show Cause Notice had invoked the provisions of Rule 9(2) and at the relevant time i.e., when the subject goods were manufactured and cleared without payment of duty and without observance of excise formalities, there was no time-limit for raising demands for duty on goods which had been cleared without observance of Central Excise formalities. In the result, we have to answer the 2nd and 3rd issues in the negative.

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