

**Collector of Central Excise Vs. Asmi Industries**

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

**Decided On :** Dec-01-1995

**Reported in :** (1996)(85)ELT313TriDel

**Appellant :** Collector of Central Excise

**Respondent :** Asmi Industries

**Judgement :**

1. These are appeals filed by the department with reference to the orders of the Collector (Appeals).
2. A notice for today's hearing was duly issued by the Registry to the Respondent by Registered A.D. However, neither they have caused any appearance nor is there any other communication requesting adjournment or otherwise before us.
3. In the circumstances, we allowed the Id. D.R. to proceed with his submissions on merits.
4. Ld. D.R. stated that the issue relates to the classification of aluminium foil seals of various sizes made from duty paid aluminium coils.
5. The assessee had filed the classification list claiming classification under item 27(b) and asking for the benefit of Exemption Notification No. 292/77.
6. Initially the A.C. had approved the classification list but subsequently he issued a corrigendum classifying them under T.I. 42.

7. The assessee filed appeals before Collector (Appeals) praying for classification of the products under T.I. 68.

8. Collector (Appeals) set aside the order of the A.C. but classified the products under 27(b) and allowed them the benefit of Exemption Notification No. 292/77.

9. In this connection he would like to draw attention to the tariff item 27(b) which covers only the manufacture of the aluminium namely blades, sheets, circles, strips, shapes and sections in any form or sizes and does not cover seals and caps.

10. In the instant case the product has assumed the shape of Pilfer Proof Caps classifiable under T.I. 42.

11. It was also their contention that the product cannot be classified under T.I. 68 as it is residuary item which covers only those products which are not specified elsewhere. The Collector (Appeals) observations with reference to T.I. 68 are also not correct.

It is therefore, their prayer that the matter may be remanded for de novo consideration.

12. In response to queries from the Bench the Ld. D.R. stated that the department has not filed any technical write up or detailed product description or catalogue.

13. The Respondents have also not appeared and have not filed any such material. We have however gone through the order of the A.C. and the Collector.

14. The Collector (Appeals) is right in stating that once the A.C. has approved the classification finally, he could not have modified the same and it could only be reviewed/revised or modified by the higher competent authority. A corrigendum can of course be issued but only to correct clerical or typographical error(s) or other error apparent on the face of the record; but a substantive change in decision could only be made in accordance with law.

15. The Ld. Collector (Appeals) is however not correct in restoring the classification to T.I. 27(b) which covers only the type of manufactures specified

therein.

16. It is also not clear how the Collector (Appeals) has given the benefit of Notification No. 292/77, dated 12-9-1977 which applies only to shapes and sections of aluminium falling under item 27(b) and not the type of products in question. He has therefore, apparently erred in this respect also.

17. In so far as the T.I. 42 is concerned, in the absence of product literature or technical write up or catalogue etc. there is nothing to show that it satisfies the criteria and factors indicated in the order of the Govt. of India in Revision No. 9/81 reported in 1981 ECR 434 D.18. On the contrary we observe that the Chandigarh Collectorate's Trade Notice No. 137C/81, dated 16-12-1981 mentioned in 1982 ECR Vol. II Part I page 6B shows that according to this trade notice foil seals were classifiable under item 68 and not 42.

19. In response to our query Ld. D.R. has himself drawn attention to the Tribunal's order in the case of Quality Containers reported in 1987 (27) E.L.T. 539 which shows that aluminium tear off and tear down foil seals are seals and not caps and they are classifiable under item 68 and not item 42.

20. In the absence of any detailed product description, technical write up or catalogue etc., it is not possible for us to give a definitive finding at this stage, but we feel that the Govt. of India order in Revision No. 9/81 reported in 1981 ECR 434 D and the Tribunal's order in the case of Quality Containers will have to be kept in view. Since the order of the Collector (Appeals) is evidently (wrong in so far as it relates) to the classification of the product and the extension of the benefit of the notification, we set it aside but in view of the position outlined above, we remand the matter to the Assistant Collector for reconsideration of the matter de novo with the direction that he should keep the above case law in view while deciding the matter.

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