

PETITIONER:
M/S WARDEN & CO.(INDIA) PVT.LTD.

Vs.

RESPONDENT:
THE COLLECTOR OF CENTRAL EXCISE, THANE.

DATE OF JUDGMENT 01/02/1995

BENCH:
SINGH N.P. (J)
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SINGH N.P. (J)
AHMADI A.M. (CJ)

CITATION:
1995 SCC Supl. (1) 740 JT 1995 (2) 79
1995 SCALE (1)405

ACT:

HEADNOTE:

JUDGMENT:

1. This is an appeal under Section 35L of the Central Excise and Salt Act, 1944 (hereinafter referred to as 'the Act').

2. The appellant has been manufacturing fibre drum, which consists of a circular tube exclusively made out of paper or paper-board.. The lid and the bottom are made of ply wood which is reinforced with mild steel rings and clamps. According to the appellant, in the total weight of the fibre drum, the predominant weight is of the paper or paper board. The same is the position in respect of value of the said fibre drum, the predominant value being of the paper or paper board. Commercially, it is known as a paper product.

3. The dispute is as to whether the fibre drum should be classified under Item No. 17(4) as claimed by the appellant or under the residuary Item No.68, which is the stand of the Revenue. There is no dispute that prior to the Finance Act, 1982, it was classified under the residuary Item No.68. But thereafter the appellant sought classification of the said fibre drum under Item No. 17(4) and exemption under Notification No.66 of 1982. By an order dated 24.3.1982, the Assistant Collector of the Central Excise, approved the classification as sought by the appellant. The Trade Notice No.49(MP) paper (2) 1982 dated 24.3.1982 (hereinafter referred to as the 'Trade Notice') in respect of Item No. 17(4) said:-

"sub-item(4) covers packing, transport, storage, or sale of merchandise whether or not having a decorative value, bags, canes, packets, sacks, boxes, cartons, drums fitted with reinforcing circular

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bands of other materials, tubular containers for posting documents, garment bags, the like are also covered under this subitem".

The Assistant Collector of Central Excise however, by an

order dated 14.4.1982 called upon the appellant to file a revised classification list classifying fibre drum under Item 68, on the ground that as the fibre drum was not made exclusively out of paper, it was not eligible for classification under Item No. 17(4). In view of the letter aforesaid, the appellant filed revised classification list No.3/82 classifying the fibre drum under Item No.68 under protest. The appellant addressed a letter dated 29.6.1982 representing its case that fibre drum was classifiable under Item No. 17(4) and was not classifiable under Item No.68. Ultimately-by an order dated 20.10.1982, the Assistant Collector of Central Excise, held that Item No. 17(4) and Notification No.66/82 were only applicable to such goods and articles which were made exclusively out of paper or paper board. Aggrieved by the said order, an appeal was filed before the Collector of Central Excise (Appeals). The said appeal was allowed on the finding that fibre drum was classifiable under Item No.17(4). The Collector of Central Excise (Appeals) referred to the composition of the fibre drum and the aforesaid Trade Notice in support of his finding.

4. The Revenue preferred an appeal before the Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as 'the Tribunal'). The Tribunal came to the conclusion that the fibre drum manufactured by the appellant was classifiable under Item No.68 of the Central Excise Tariff and not under Item No.17(4). On that finding the order of the Collector of Central Excise (Appeals) was set aside.

5. On behalf of the appellant, it was urged that there was no dispute that the fibre drum -manufactured by the appellant is used as packing containers. The only dispute is as to whether it is covered by Item No. 17(4), when apart from paper or paper board, the lid and the bottom of the said fibre drum are made of ply wood and to reinforce the same a steel ring has been placed. The relevant part of Item No. 17 is as follows:-

"17. Paper and paper board, all sorts (including paste-board, mill board, straw board, cardboard and corrugated board), and articles thereof specified below, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power:-

- (1)
- (2).....
- (3).....
- (4) Boxes, cartons, bags and other packing containers (including flattened or TWENTY TWO folded boxes and flattened or folded AND A HALF cartons, whether or not printed and PERCENT whether in assembled or unassembled AD VALOREM condition."

On a plain reading, boxes, cartons, bags and other packing containers manufactured from paper or paper board shall be covered under Item No. 17 because paper, paper board and all sorts including paste board, mill board, corrugated board and articles thereof have been specified in clauses 1 to 4 of Item No. 17. It need not be pointed out that boxes, cartons, bags and other packing containers, mentioned in Item No.17(4) must have been manu-

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factured out of paper or paper board. But if just to strengthen the packing container, a small piece of ply wood or a steel ring is introduced, whether such packing contain-

ers shall be out of the purview of Item No. 17(4)? The Tribunal has referred to the details of the fibre drum by saying that the cylindrical portion of the fibre drum is made of paper and its bottom and top are of ply wood, reinforced with mild steel ring and clamp. The Tribunal has also mentioned in the impugned order that according to the appellant, in terms of the percentage content, paper constitutes 51.18% of the finished product, the plywood content is about 23.57% and rings and clamps about 19.1/2%. Even before this Court, there was no dispute, that the percentage of the paper content is 51.18% only and the remaining 48.82% consists of plywood, rings and clamps etc. In this background, can it be said that the fibre drum which is a container is made of "paper and paper board, -ill sorts (including paste-board, mill board, straw board, cardboard and corrugated board), -and articles thereof.....for being covered by tariff Item No. 17. Tariff Item No. 17 read as a whole alongwith different sub-clauses makes it abundantly clear that to be included in the said tariff Item, the product must be of paper, paper board and all sorts. How a product can be covered by the said tariff Item No.17 including 17(4) if the paper or paper board constitutes only 51.18% and the rest 48.82% consists of plywood content, rings and clamps etc,?

6. On behalf of the appellant, it was pointed out that internationally, composite paper board drums and containers even when they are fitted with reinforcing circular bands of other materials, other than paper, e.g. textile backings, wooden supports, string handles, metal or plastic corners, they are classified under heading 48.16 under Customs Co-operation Nomenclature (CCCN - Brussels), which is equivalent to Tariff Item No. 17(4).

7. The Glossary of Terms relating to Paper and Flexible Packaging issued by Indian Standards Institution (IS : 7186 -1973) defines 'Fibre board Drum' as "a shipping package with cylindrical sidewall composed of paper or board having disc ends of similar or different materials, such as steel, wood etc." Thus, in spite of plywood discs at the top and the bottom, the fibre drum is to be treated as a fibre board drum, according to the Glossary of Terms relating to Paper and Flexible Packaging issued by the Indian Standards Institution. Whatever may be the classification by the customs Co-operation Nomenclature (CCCN - Brussels), but Tariff Item No. 17, including 17(4) clearly specify that products covered by said Item No. 17 must be the product of paper, paper board and all sorts.

8. On behalf of the Revenue, reliance was placed on the judgment of this Court in the case of Geep Flashlight Industries Ltd., v. Union of India, 1985(2) E.L.T. 3 (S.C.) where this Court had to consider Tariff Item No.15A(2) which read as under:

"Articles made of plastics, all sons, including tubes, rods, sheets, foils, sticks, other rectangular or profile shape whether laminated or not, and whether rigid or flexible including lay flat tubings and polyvinyl chlorides sheets.....

In that connection, it was said:

"The learned Counsel Contended that the

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plastic torch manufactured by the petitioner is nothing else but plastic tube made of plastic in which certain other devices are inserted so as to make it a torch but it nonetheless retains the character of a plastic

tube. A mere reference to Tariff Item No. 15A(2) would show that the articles therein described are plastic material in different shape and form and not articles made from such plastic material. There is a noticeable difference between plastic material in different shape and form such as tubes, rods, sheets etc. and articles made from such plastic material such as plastic torch. It would be doing violence to language if one were to include plastic torch in articles under Tariff Item No. 15A(2) on the ground that a plastic tube is used for manufacturing plastic torch. Articles such as tubes, rods, sheets, foils, sticks etc. of plastic material merely describe plastic material in different shape and form and each word used therein takes its colour from the word just preceding and just succeeding and the adjectival clause 'articles made of plastics'. Articles made of plastic meaning article made wholly of commodity commercially known as plastics, and not articles made from plastics along with other materials.

(emphasis supplied)

9. The Tribunal has placed reliance on the judgment in the case of M/s.Indian Textile Paper Tube Company Ltd. Madras v. Collector of Central Excise, Madurai 1984(18)E.L.T.35, where it was said that Vim Containers and Defence Containers cannot be said to be articles of paper or paper board; they are composite containers made of paper, paper board and other metal components. The material components like lids and bottoms were made of tin plates and black plates and printed aluminium foils were added. Paper or paper board was one of the raw materials. It was classified under Item No.68 and not under Item No. 17(4), because it was held that they cannot be held to be articles of paper or paper board, in view of the lids and bottoms of such Vim Containers and Defence Containers having been made of tin plates and black plates with printed aluminium foils having been added. We are informed that a Special Leave Petition filed against the said judgment has been rejected by this Court. According to us, there is not much difference in the components of Fibre Drum from Vim Container and Defence Container. The Tribunal has rightly come to the conclusion that such fibre drums shall not be covered by Item No. 17(4) and they shall be covered by residuary Item No.68.

10. Accordingly, the appeal is dismissed. The order of the Tribunal is upheld. There will be no order as to costs.