

GUJARAT HIGH COURT

Hon'ble Judges:J.P.Desai and N.H.Bhatt JJ.

Captocaps Private Limited Versus Union Of India

Special Civil Application No. 1877 of 1978 ; *J.Date :- FEBRUARY 27, 1985

- FINANCE ACT, 1969
- [CENTRAL EXCISE ACT, 1944](#)
- [CONSTITUTION OF INDIA](#) Article - [227](#)

**FINANCE ACT, 1969 - CENTRAL EXCISE ACT, 1944 - CONSTITUTION OF INDIA
- ART.227 - POWER OF SUPERINTENDENCE OVER ALL COURTS BY THE
HIGH COURT.**

Equivalent Citation(s):

1986 (24) ELT 19 : 1986 (10) ECC 167

JUDGMENT :-

N.H.Bhatt, J.

1 This is a petition under Article 227 of the Constitution of India by the petitioner-company styled as Captocaps (P) Limited, manufacturing Snapcaps commercially known as 'CAPTOCAPS' to be used as closures or works for bottles and other containers. The patent had been taken out for the same on August 1, 1965 from the Patent Office of the Government of India, and its registration number is 83044. The said patent was taken out by one Paul Staditz Van Baarn from whom the petitioner company had purchased the rights. Upto the year 1969 all types of caps were not excisable at all. The petition-company had started its manufacturing in the year 1965. However, by the Finance Act of 1969, item 42 was introduced in the First Schedule to the Central Excises and Salt Act, 1944 (hereinafter referred as 'the Act'). The said item 42 reads as follows :-

"Pilferproof caps for packages, all sorts, with or without washer or fittings or cork, rubber, polythelene or any other material."

In the beginning the rate of duty was 1 paise per cap. It was later on enhanced to 2 paise per cap. On the introduction of the above said item 42, the petitioner-company, by its letter Annexure-A dated 7-3-1969, explained the nature of its product, viz. CAPTOCAPS, to the Collector of Excise that these caps were not pilferproof. The Collector agreed and by the letter Annexure-B, dated April 28, 1969 informed the Company of his agreement, with this direction to the Company that its advertisements should specifically state that they were not pilferproof. The Company thereafter in its advertisements, the specimen of which is to be found at page 35, followed that direction year after year and time rolled by. In the year 1973, the then Collector of Excise at Baroda issued a show cause notice, Annexure-E dated May,

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16, 1973 informing the petitioner-company that their CAPTOCAPS were such as would fall under item 42, and called upon the petitioner-company to show cause why excise duty be not levied on their product right from the date the excise duty was introduced. The petitioner-company gave their reply, Annexure-F, dated June, 29, 1973 and then came after about a year, on July 15, 1974 to be exact, the Collector's decision, Annexure-F charging the petitioner-company with excise duty right from the day the entry had come to be introduced. The matter was carried in appeal in appeal before the Board which agreed with the Collector about the nature of the goods as falling under item 42 of the First Schedule, but allowed the company's appeal insofar as the duty was sought to be levied retrospectively from 1969. The revision before the Government failed and this gave rise to the present petition.

2 Mr. K. S. Navnvati, the learned Advocate appearing for the petitioner, inter alia contended before us that the Collector and the Board had committed errors of law apparent on the face of the record and, therefore, their decisions were vitiated. The Board in their judgement accepted the legal position that the term 'pilferproof' is not defined and therefore its commercial or mercantile meaning should be adopted. As a matter of fact, these types of caps or covers of bottles saw the market world somewhere in the year 1965 or thereabout and so the term had not acquired any demonstrative noun so that pilferproof cap was noun or nomenclature devised on its connotation. The Board accepts that pilferproof caps are those which are proof against any tempering with the contents of the bottle or any other container. Before the Collector, demonstration was not permitted. The Board permitted demonstration, but took away that benefit with the other hand. But we do not make much of this because we are in a position to show that after making certain observations the Board landed itself into clear error of approaching the problem. In paragraph 11 of their judgement the Board observes as follows :-

"Nevertheless the Board is prepared to accept that the Captocaps could be removed from the bottles on which they are used and replaced, with greater or less difficulty, by a person skillful or knowledgeable enough to do so."

Mr. K. S. Nanavati showed us some bottles and we also without much trouble or observation could repeat his performance, in the presence and hearing of the learned Standing Counsel for the Union of India. The Board in paragraph 12 of its judgement seems to accept in the proposition that pilferproof caps are those where under no circumstances the caps can be removed without leaving traces of the fact of the removal of the caps. The Board in terms states as follows :-

"The expression 'pilferproof caps' under item 42 of the Central Excise Tariff should no doubt be considered in the sense in which it would be understood by the manufacturer of pharmaceutical or other products who would buy such caps. But in the very sentence the Board lands itself into the error by observing that it should also mean that the lay consumer, who would buy the medicines, food stuff, etc., which are sold in the market, would also understand that the cap is pilferproof."

This part of the approach of the Board is wrong, and that has as further discussion in the paragraph 12 of the Board's judgement shows, clouded the consideration on the part of the Board. The petitioners are manufacturers of such caps to be purchased by manufacturers of pharmaceuticals or other products. As a matter of fact it is their approach to these caps that would decide the pilferproof character or otherwise of these caps. A consumer who purchases the container with such caps would start using

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the contents and he is not required to examine ordinarily whether the cap is such as could be replaced without any trace of evidence about its being replaced once. Only a very cautious and rare in number customer would be so meticulous as to go deep into this question. Essentially and fundamentally it is the concern of the purchaser of such caps for, in the course of their business, that would determine the true character of these caps. The Board did not consider how a manufacturer of pharmaceutical or other products would view these caps, but concentrated only on a consumer who would immediately proceed to remove a sort of a band, and existence of the band would be taken by him as sure proof of its contents having not been tampered with. This is the burden of the reasoning of the Board in other half of paragraph 12 of its order. The manufacturer of pharmaceutical or other products is then not at all considered or dealt with. Essentially it is the concern of such manufacturers of pharmaceutical or other products who would like to see that their products go into the market without being in any way tampered with or adulterated because if the contents are tampered with or adulterated, ultimately their business reputation would suffer. So to such manufacturers of pharmaceuticals and food stuffs etc. that these caps manufactured by this petitioner-company would be apparently and clearly known to be not pilferproof. Had the Board examined this question from the angle of the people in the business world, namely, the purchaser of such CAPTOCAPS, they would not have landed themselves into this one-sided reasoning concentrated only on a consumer.

3 We, therefore, see no escape from finding that the Board had viewed the problem from a wrong angle. We reiterate that if the caps are such as can be surely removed with a little skill or a little knowledge, then they can never be termed to be 'Pilferproof.' As a matter of fact the Collector should have taken samples of such caps from the petitioner-company of its customers-manufacturers and should have subjected them to the test of the nature we have just indicated. A visual appearance can hardly lend any assistance. We were therefore, very keen to see ourselves, not for arriving at any factual decision but for the purpose of ascertaining, whether the Board had gone wrong or not, and we had, therefore examined these 'CAPTICAPS' and found that they could be easily removed and again refitted without even the faintest trace of those caps having been once or earlier removed.

4 The result is that the petition is required to be allowed by quashing the orders at Annexures F/1 and G and declaring that the CAPTOCAPS of the petitioner as they were there, are not falling under Item 42 of the First Schedule of the Act and they were wrongly held to be excisable to excise duty under the said item.