

**Collector of Customs Vs. Graphite Vicarb India Ltd.**

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

**Decided On :** May-23-1997

**Reported in :** (1997)(93)ELT710TriDel

**Appellant :** Collector of Customs

**Respondent :** Graphite Vicarb India Ltd.

**Judgement :**

1. The respondents imported a consignment of Tubes in Graphilor. They claimed assessment as machinery parts under CTH 8419.90. The claim was rejected and the goods were assessed under Heading 6815.10. The Collector (Appeals) however, allowed the claim under 8419.90 holding that these are parts of Heat Exchanger.

2. The learned DR arguing for the Revenue submits that HSN notes refer both to natural and artificial graphite and therefore, the goods would be correctly covered under Heading 68.15 as articles of stone or of other mineral substance (including articles of peat), not elsewhere specified or included.

3. The learned Advocate pleads that these have been specifically designed and imported as parts of Heat Exchangers and he drew our attention to literature represented in the Court.

5. It was conceded by the learned DR that the facts are similar to the facts discussed in the case of Collector of Customs v. Albright, Morarji & Pandit Ltd. as

reported in 1988 (33) E.L.T. 488 (Tribunal).

He, however, submits that HSN notes include both artificial as well as natural graphite and therefore, the assessment under 68.15 cannot be ruled out.

7. In the case of Collector of Customs v. Albright, Morarji & Pandit Ltd. as reported in 1988 (33) E.L.T. 488 (Tribunal) the Tribunal held that graphilor blocks are parts of heat exchangers falling under Heading 84.17(1) since they are not articles of mineral substances under Heading 68.01/16 and are made of artificial and not natural graphite impregnated with phenolic resins. It was conceded by both sides that there was no contrary order of the Tribunal or any High Courts or any other Apex Court on this subject. In view of this, we follow the ratio of this order and reject the Revenue appeal and uphold the impugned order.

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