

**Zenith Ltd. Vs. Commissioner of Central Excise**

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**SooperKanoon Citation :** [sooperkanoon.com/11276](http://sooperkanoon.com/11276)

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

**Decided On :** May-29-1997

**Reported in :** (1997)(95)ELT80TriDel

**Appellant :** Zenith Ltd.

**Respondent :** Commissioner of Central Excise

**Judgement :**

1. The dispute in this case relates to the classification of Carbide Throwaway Inserts, plugs and rods. The asses-sees had proposed classification under Tariff Item No. 68. After issuing a show cause notice proposing classification under the Tariff Item No. 51 A, the Assistant Collector classified them under Tariff Item No. 62. The Collector upheld this classification. The CEGAT directed the Collector to reconsider the classification of these goods. The Collector in his impugned order held that the correct classification was under Tariff Item 62. The present appeal is against this order. The appellants desired disposal on merits which we proceed to do after hearing Shri Negi, SDR.2. In the appeal memorandum no contest has been made of the fact that whereas the show cause notice proposed classification under one tariff item, the classification finally adopted was different. The grievance made is that since 1975, these very goods were accepted to be classifiable under Tariff Item No. 68 by the department and that the department has no reason to reclassify the product now. We observe that where the assessee had been put on notice, the established classification could be changed provided the change is with prospective effect only.

3. The claim made in the appeal memorandum is that the plugs and rods are not Tool Tips but that they perform dual function namely to form wear resisting parts of machine components and as being used as gauges for measuring purposes. These bare claims however, have not been substantiated by the appellants. We observe that measuring gauges at the material time were classifiable under Tariff Item 51A and not under Tariff Item 68. Since the appellants have not shown as to how these goods formed components of machines, the claim under Tariff Item No. 68 has to be rejected for lack of substantiation.

4. The Collector has further observed that the impugned goods are made of Sintered Carbide of metals in upholding the classification under Tariff Item No. 62. The appellants have claimed that mere raw material cannot act as the guide to classification but that these goods were never known in the market as tool tips. The appellants have, however, failed to substantiate this claim by leading evidence such as certificates or affidavits from the traders indicating how these goods are sold in the market. On this count also the appellants have failed to establish their case.

5. In view of our analysis, we uphold the order of the Collector and dismiss this appeal.

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