

Phoenix Enterprises Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-19-1998

Reported in : (1999)(112)ELT496TriDel

Appellant : Phoenix Enterprises

Respondent : Commissioner of Customs

Judgement :

1. The appellant filed this appeal against the order-in-original dated 12-9-1989 passed by Additional Collector of Customs, Chandigarh.
2. In the impugned order the tungsten carbide tips recovered from the appellants' business premises are ordered to be confiscated and released on payment of redemption fine of Rs. 40,000/-. Demand of differential duty was also confirmed. A penalty of Rs. 50,000/- was also imposed on the appellant.
3. Brief facts of the case are that Revenue officers searched the business premises of the appellant and 46 bags containing tungsten carbide tips weighing 2298 Kgs. were recovered. Shri C.P. Aggarwal, Managing Partner of the appellant firm made a statement that the tungsten carbide tips were mixed with brass scrap and was imported and hence got cleared as scrap.
4. Ld. Counsel appearing for appellant submits that Shri C.P. Aggarwal retracted from the statement on 9-6-1988 and submitted to the Revenue authority that the goods were locally purchased. He submits that adjudication order was passed

solely on the basis of uncorroborated statement of Shri C.P. Aggarwal. Ld. Counsel also submits that the goods were waste and scrap of tungsten hence classifiable under Tariff Heading 81.13 of the Customs Tariff.

6. In this case tungsten carbide tips were recovered from the premises of the appellant. Shri C.P. Aggarwal, Managing Partner made a statement on 13-5-1988 that these tips were imported and were got cleared as brass scrap as these were mixed with brass scrap. On 9-6-1988 he was again summoned by the officers of the Revenue and Shri C.P. Aggarwal again admitted that tungsten carbide tips were imported in the guise of brass scrap. On 20-6-1988 he again appeared and produced some record to show that goods were purchased locally. The contention of the appellant is that Shri C.P. Aggarwal retracted from his statement on 9-6-1988.

Before this date he appeared before the authority more than once but did not retract from his statement. Hence the retraction at this stage is of no avail.

7. The appellant produced some purchase bills in respect of tungsten carbide tips. But on verification these were found to be false.

Therefore, we do not find any merit in the arguments of the appellant that goods were purchased from local market.

8. In respect of classification of the goods the plea of the appellant is that goods are waste and scrap of tungsten. The report of the Chemical Examiner shows that the goods are tips for tools of tungsten carbide. In view of the test report and admission made by Shri C.P. Aggarwal, we find that the goods were tungsten carbide tips and classifiable under Heading 8209 of the Customs Tariff as held by the Additional Collector in the impugned order.

9. In view of the above discussion, we do not find any merit in the appeal, the same is dismissed.