

Simpex Overseas Ltd. Vs. Commissioner of Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-16-2002

Reported in : (2002)LC909Tri(Delhi)

Judge : K Usha, N T C.N.B.

Appellant : Simpex Overseas Ltd.

Respondent : Commissioner of Cus.

Judgement :

1. The appeal is at instance of the assessee challenging the Order-in-Original No. SSK/CC/ICD/ TKD/40/2001, dated 8-3-2001 passed by the Commissioner of Customs, ICD, New Delhi. The assessee has filed Bill of Entry dated 8-1-2001 for clearance of 104.24 MT of "Brass Scrap Drink". The assessing authority took the view that the Brass Scrap was having the grade of 'Honey' and not the declared grade of 'Drink'. On the above basis, value of the goods was enhanced and fixed @ US\$ 959.12 PMT as against the declared value of US \$.825 PMT. The duty demand came to Rs. 24,67,854/-. The adjudicating authority further directed payment of redemption fine of Rs. 4,50,000 - and imposed a penalty of Rs. 1,50,000/-.

2. On going through the impugned order, we find that admittedly the imported goods contained 5% impurity of iron. As per Scrap Specifications Circular 1997 read with Guidelines for Non-ferrous Scrap : NF-97 "Drinks - Refinery Brass - shall contain a minimum of 61.3% copper and maximum 5% iron. "Honey - Yellow

Brass Scrap - shall consist of brass castings, rolled brass and brass, tubing and miscellaneous yellow brasses including plated brass. Must be free of manganese bronze, aluminium bronze, un-sweated radiators of radiator parts, iron, excessively dirty and corroded materials".

3. In the light of the above, it is clear that the imported goods which contained 5% iron was Brass Scrap Drink and not Honey. The reason given in the impugned order to treat the goods as having the grade Honey is curious. The adjudicating authority observes that going by the statement of the assessee if the 5% impurities found in the consignment are separated then the remaining goods would become "Honey" grade Brass Scrap. It is not relevant whether the quality or grade of the imported goods can be changed after the import by the appellant.

The goods are to be assessed as they were imported. Since it is admitted by the Revenue that the goods contained 5% iron as impurity, it has to be treated as having the grade of 'Drink' at the time of import. In the light of the above, we find no reason to sustain the impugned order. The order under challenge is set aside and appeal stands allowed.

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