

Devidayal Electronics and Wires Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-25-1987

Reported in : (1989)(42)ELT271TriDel

Appellant : Devidayal Electronics and Wires

Respondent : Collector of Customs

Judgement :

1. Devidayal Electronics & Wires Ltd. have filed an appeal being aggrieved from the Order-in-Appeal No. S/49-1194/82-R, dated 31-12-1982 passed by the Collector of Customs (Appeals), Bombay.

2. Briefly the facts of the case are that the appellants had imported Brightray Alloy 'F' or Strips under Bill of Entry Cash No. 3765/80, dated 16-6-1980. The same were assessed to customs duty under Heading 73.15(2) of the Customs Tariff Act, 1975. The appellants had claimed re-assessment under Heading No.75.02(1) and claimed the same as Nickel Alloy. The Ld. Asstt. Collector did not accept the contention of the appellants and rejected the refund claim. Being aggrieved by the order of Asstt. Ld. Collector of Customs the Appellant had filed an appeal to the Collector of Customs (Appeals). The appellants' appeal was also rejected by the Collector of Customs (Appeals). Being aggrieved from the Collector of Customs order, the appellant has come in appeal to the Tribunal. Notices of hearing were sent to the appellants. The appellants vide their letter dated 7th Sept., 1987 have intimated that the matter may be decided on merits in their absence, and as such we proceed with the matter in absentia.

3. Shri J. Gopinath, Ld. SDR has appeared on behalf of the respondent, he has reiterated the facts. Shri Gopinath has argued that the lower authority has correctly assessed the imported item under Heading 73.15(2) as stainless steel strips and not under Heading 75.02(1) as claimed by the appellants. Shri Gopinath, Ld. SDR in support of his argument referred to Para 3(a) of Section Note XV of CTA 1975. Shri Gopinath has also referred to a test report of the manufacturers. He further states that items are imported and in one item the percentage of nickel is 35.41% and in the other it is 36.0% and after totalling of the composition of the metals the residue portion comes to 41.62% and 42.31%. The percentage of ferrous is more than the percentage of nickel. Since the percentage of Ferrous metal is more the imported item falls under Heading 73.15(2). Shri Gopinath states that in view of his argument the imported item should fall under Heading 73.15(2).

4. We have heard Shri Gopinath, Ld. SDR and have gone through a records. We have also perused the test report and invoice and the Bill of Entry. The percentage of ferrous (iron) is 41.62% and 42.31% and as such the pre-dominate metal is iron and as such assessment falls under Heading 73.15(2) of CTA 1975. The goods do not fall under Heading Chapter 75. Accordingly we confirm the findings of the lower authorities. The appeal is dismissed.

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