

Baniyan and Berry P. Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-21-2005

Judge : S Kang, Vice, S T T.V.

Appellant : Baniyan and Berry P. Ltd.

Respondent : C.C.E.

Judgement :

1. Heard both sides. The appellant filed these appeals against the Order-in-Appeal passed by the Commissioner (Appeals), 2. Brief facts of the case are that the appellant made import of goods and declared the same as Stainless Steel Magnetic Scrap '400 grade'.

The goods were examined by the Customs authorities and as per examination report, the goods are different type/sizes and Magnetic serviceable stainless steel sheets approximately 70% and 30% stainless steel scrap (400 grade). On visual examination, the goods appeared to be of second grade. In view of this examination report, the Customs authorities of the view that the goods were not as per declaration and the goods were serviceable stainless steel sheets. The adjudicating authority confiscated the goods and ordered to release of the same on payment of redemption fine and also enhanced the assessable value.

3. The contention of the appellant is that they are actual user and the goods AND imported scrap which is to be used as inputs for manufacture of the final product after melting. The contention is that as per examination report the goods are of

second grade and also of variable length and thickness. The contention is that their goods were of 400 grade and of second quality and value was enhanced by the authorities on the basis of imports made by the other importers which are of 430 and 409 grades. The contention is that the grade of imported material is 400 and also of second grade, therefore, they are not comparable goods with the goods of grade 430 and 409. The appellant also submitted that the goods were used in the manufacture of their final product and they have availed credit in respect of C.V. Duty paid on these goods.

The contention is that in such situation, the impugned order is not sustainable.

4. The contention of the Revenue is that these sheets are of the length of 3' to 7' and width 3' to 4' approximately therefore these goods cannot be considered as scrap. These can be used as such for various purposes, therefore, impugned order whereby the declaration declaring the same as scrap is rightly rejected.

5. In this case, the appellant made import of goods declaring as scrap.

We find that even on examination it was found that by Customs authorities, the goods are of second grade. The sheets are of various length and various thickness 1mm to 4 mm. The examination report also reveals that 30% of the goods are Stainless Steel scrap. Only 70% can be considered as serviceable sheets in respect of valuation. We find that the imported goods are of 400 grade whereas the revenue enhanced the value after comparing the same with the grade of 430 and 409. As these goods are not comparable with the goods on the basis of which value is enhanced, therefore, the impugned order enhancing the value is not sustainable. The appellant used these goods, after melting, into the manufacture of their final product. The appellant also produced a copy of their Modvat account whereby they had availed the credit in respect of C.V. Duty paid on the goods imported by the appellant. In these circumstances, I find merit in the contention of the appellant that the imported goods is only scrap. The impugned order is set aside and appeals are allowed.