

Commissioner of C. Ex. Vs. Leak-proof Engineering (i) Pvt.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-03-2006

Judge : J Balasundaram, Vice-, V T M.

Appellant : Commissioner of C. Ex.

Respondent : Leak-proof Engineering (i) Pvt.

Judgement :

1. In these appeals arising out of two separate orders of the Commissioner of Central Excise (Appeals), the Revenue seeks classification of product "Grafoil" consisting of graphite tapes, packing rings and gaskets under CET sub-heading 6807.00 as articles of graphite, as against the Commissioner (Appeals)'s classification of the product as parts of pumps under CET sub-heading 8413.90. *Grasim Industries Ltd. v. CC, Bombay*, holding that Karbate tubes made of artificial graphite impregnated with phenolic resin and which are parts of heat exchangers are classifiable under CTA Heading 6815.10 as non-electrical articles of artificial graphite or other carbons, in view of Chapter Note I(a) to Chapter 84 of the Customs Tariff which excludes articles falling under Chapter 68 from coverage under Chapter 84, we hold that the product in dispute is required to be classified under the heading claimed by the Revenue, viz. under CET sub-heading 6807.00. The submission of the learned Counsel for the respondents that the product in question is not an article of graphite and, therefore, is not ruled out from classification under Chapter 84, for the reason that it is made of cotton threads dipped in graphite solution, is not acceptable for the reason that there is no

material on record to show that the product in dispute, viz. Grafoil, is anything other than an article of graphite and indeed throughout the proceedings before the adjudicating authority as well as the lower appellate authority, the contention of the manufacturers (the respondents herein) has been that Grafoil is an article of graphite. However, the benefit of cum-duty price is to be extended to the respondents.

4. In the result, we set aside the impugned orders and allow the appeals in the above terms.

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