

SUPREME COURT OF INDIA

Commnr.of Central Excise, Mumbai

Vs.

Tikitar Industries

C.A.Nos.2566-2569 of 2003

(D.K.Jain and T.S.Thakur JJ.)

22.04.2010

ORDER

1. In these appeals under Section 35-L(b) of the Central Excise Act, 1944, (for short, "the Act"), the following two questions have been framed by the revenue for adjudication :

“(i) Whether the conversion of `Straight Grade Bitumen' not `Blown Grade Bitumen' amounts to manufacture or not;

and (ii) Whether `Roof Felt' is classifiable under Chapter sub-heading 5903.90 or 5907.90 ? Since admittedly answer to both the afore-noted, questions stands concluded by the decisions of this Court, we deem it unnecessary to state the facts giving rise to these appeals.”

2. Insofar as the first question is concerned, a similar issue came up for consideration before this Court in the case of the present assessee in *Commissioner of Central Excise and Customs vs. Tikatar Industries*¹. Relying on the circular issued by the Board on 1st July, 1988, it was held that the process of converting straight grade bitumen into blown grade bitumen through Oxidation, known as blowing process, does not amount to manufacture and therefore, exempted from payment of Excise duty. Thus, while observing that the Revenue cannot be permitted to take a stand contrary to its own stand in the said circular, the view taken by the Customs, Excise and Gold (Control) Appellate Tribunal (for short, "the Tribunal" was affirmed.

3. Similarly, the second issue was considered by this Court in *C.C.E., Navi Mumbai vs. Amar Bitumen & Allied Products Pvt. Ltd.*² and it was held that `Bitumenised Hessian based felt' was classifiable under Chapter Heading 59.09 and the assessee would be entitled to exemption from payment of excise duty under Notification Nos. 53/65-C.E. and 92/94- C.E. dated 20th March 1965, and 25th April, 1994 respectively.

4. In the light of the opinion expressed by this Court in the said pronouncements, with which we are in respectful agreement, we affirm the findings recorded by the Tribunal and answer both the questions in favour of the assessee and against the Revenue. The appeals, being devoid of any merit, are dismissed accordingly. The parties shall, however, bear their own costs.

¹2006 (202) E.L.T. 215 (S.C.)

²2006 (202) E.L.T. 213 (S.C.)