
(2012) 02 SC CK 0122

In the Supreme Court Of India

Case No : Civil Appeal No's. 5562-5563 of 2003 with C.A. No. 3863 of 1007

Commissioner of C. Ex., Mumbai-III

APPELLANT

Vs

Tikitar Industries

RESPONDENT

Date of Decision : 09-02-2012

Acts Referred:

Central Excise Rules, 1944 — Rule 173G

Citation : (2012) 192 ECR 1 : (2012) 277 ELT 149 : (2012) 11 SCC 639

Hon'ble Judges : H.L. Dattu, J;Anil R. Dave, J

Bench : Division Bench

Advocate : R.P. Bhatt, Rajiv Nanda, K. Swami, Shipra Ghosh, A.K. Sharma and B. Krishna Prasad, for the Appellant; Gaurav Goel, Mahesh Agarwal, Rishi Agrawala, Amit Kumar Sharma and E.C. Agrawala, for the Respondent

Final Decision : Allowed

Judgement

CA. Nos. 5562-5563/2003:

1. These appeals are directed against judgment and final order passed by the Central Excise & Gold (Control) Appellate Tribunal, West Regional Bench at Mumbai (for short, the Tribunal') in Appeal Nos. E/1784/97-Bom. and E/1785/97-Bom., dated 2-1-2003 2003 (154) ELT 239 By the impugned judgment and order, the Tribunal has confirmed the orders passed by the first appellate authority in setting aside the order which affirmed the show cause notices, issued by the adjudicating authority dated 1-2-1995,10/17-4-1995, 3-11-1995,19-6-1996 and 1-8-1996. The Assessee is a manufacturer of the 'Bitulux Insulation Board' known as Tikki Exjo Filler', which falls under the Chapter Sub-heading 4407.10 of the Central Excise Tariff Act, 1985 (for short "the Act"). The 'Tikki Exjo Filler' is obtained by the process of bituminization of the Insulation board which also falls under the same Chapter Sub-heading 4407.10 of the Act. In this view, the Assessee had filed a declaration under Rule 173G of the Central Excise Rules, 1944 ('the Rules' for short) inter alia requesting the adjudicating authority to classify the product in issue as an item falling under Chapter Sub-heading

4407.10 of the Act at nil rate of duty on the ground that there is no manufacture involved in the process of obtaining 'Tikki Exjo Filler' from bituminizing the Insulation board. The adjudicating authority vide its Order No. 6/96-97 dated 19-3-1996, after a detailed discussion of the claim made by the Assessee, had come to the conclusion that the product in question requires to be classified under Chapter Sub-heading 4407.10 of the Act and rate of duty would be levied at 10 per cent as the activity carried out by the Assessee amounts to manufacture. Aggrieved by the aforesaid classification of the product in issue at 10 per cent rate of duty under Chapter Sub-heading 4407.10, the Assessee had carried the matter in an appeal before the first appellate authority, who, by its order No. GS/132/B.111/97 dated 16-5-1997 had accepted the Assessee's stand that the rate of duty livable on the product in issue is nil rate of duty. For the reasons best known, that order of the appellate authority has attained the finality.

2. We need to notice yet another feature in these appeals that in the meantime, the revenue had issued several show cause-cum-Demand Notices to the Assessee inter alia directing the Assessee to pay the differential duty at 10 per cent, since the product in issue would fall under Chapter heading 4407.10. The Assessee had filed its reply inter alia taking a stand that the product in issue requires to be classified at nil rate of duty, since the Insulation Board and Bitulux Insulation Board are one and the same products. The adjudicating authority had confirmed the show cause notices issued by his Order No. 39/96-97 dated 19-6-1996 and No. 69/96 dated 12-9-1996.

3. The Assessee carried the matter in appeal before the first appellate authority, who, vide its order No. GS/133-134/B.III/97 dated 16-5-1997 had allowed the appeal and had set aside the show cause notices issued, inter alia, demanding the differential rate of duty from the Assessee in view of its earlier Order No. GS/132/B-III/97 dated 16-5-1997.

4. The Revenue had carried the matter in an appeal before the Tribunal. The Tribunal by its impugned judgment and order dated 2-1-2003 has rejected the revenue's appeal and, thereby, has confirmed the orders passed by the first appellate authority. This order of the Tribunal is called in question by the revenue in this appeal.

5. Shri R.P. Bhatt, learned senior counsel appearing for the revenue, very fairly submits that the revenue has not questioned the correctness or otherwise of the order passed by the first appellate authority in GS/132/B.III/97 dated 16-5-1997. In the said order, the first appellate authority has given a finding that the product Bitulux Insulation Board is identical to the Insulation Board which finds a place under Chapter Heading 4407.10. The appellate authority has also observed in its order that the Assistant Commissioner (Adjudicating Authority) was not justified in treating the process of conversion of Insulation Board into Bitulux Insulation Board as a manufacturing activity.

6. Since the revenue has not questioned the correctness or otherwise of the

findings on the conclusion reached by the first appellate authority vide its order dated 16-5-1997 in GS/132/B.III/97, it may not be open for the revenue to contend that the adjudicating authority was justified in issuing the impugned show cause notices and also the further confirmation of said notices vide orders passed by the adjudicating authority, the appellate authority and the Tribunal.

7. In our opinion, without questioning the orders passed by the appellate authority in GS/132/B.III/97 dated 16-5-1997, the revenue would not be entitled for any relief, whatsoever. The appeals are, accordingly, dismissed, since the order passed by the Assistant Commissioner, holding the process as amounting to manufacture, had been set aside vide order dated 16-5-1997 in GS/132/B.III/97.

CA. No. 3863/2007

In view of the decision in C.A. Nos. 5562-5563 of 2003, this appeal is also dismissed.