(2002) 12 SC CK 0104

In the Supreme Court Of India

Case No : Civil 731 of 1995

United Felts and Carpets — APPELLANT

Vs

Collector of Central Excise — RESPONDENT

Date of Decision : 17-12-2002

Acts Referred:

Central Excise Rules, 1944 — Rule 56B
Central Excises and Salt Act, 1944 — Section 35L

Citation : (2003) 151 ELT 245 : (2003) 10 SCALE 479 : (2003) 9 SCC 293

Hon'ble Judges : M. B. Shah, J;D. M. Dharmadhikari, J

Bench : Division Bench

Advocate : V. Lakshmikumaran, T. Vishwanath, A.R. Madhav Rao, Vishwanath Shukla, Alok Yadav, M.P. Devanath and V. Balachandran, for the Appellant; Ranjit Kumar Ashok K. Srivastava and B. Krishna Prasad, for the Respondent

Final Decision : Allowed

Judgement

1. Heard the learned Counsel for the parties.

2. This appeal is filed against the judgment and order dated 12/15th October, 1993 passed by the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi in Appeal No. E/1502/92-D reported in 1996 (81) ELT 609 .

3. It is a case of the appellant that appellant had applied for and obtained permission for clearance of semi-finished goods i.e. floor coverings or felt falling under sub-heading 5702.20 and 5702.90, under Rule 56B of the Central Excise Rules, from their factory for the purpose of latexing at the factory premises of some other person at Faridabad. It was the contention of the Department that the aforesaid semi-finished goods, were 'felt' on which excise duty was payable under Heading 56.02. That contention was adjudicated upon and finally it was accepted by the Tribunal. Hence, this appeal.

4. At the time of hearing of this appeal, learned Counsel for the appellant relied upon subsequent judgment of the CEGAT in 1999 (85) ECR 797 wherein

according to him similar semi-finished floor coverings is held as non-excisable because it is non-marketable. Learned Counsel appearing on behalf of respondent pointed out that the aforesaid judgment depends upon facts as well as on the evidence brought on record. He drew our attention to the contention which was raised in that matter by the learned Counsel for the appellant-assessee before the Tribunal as narrated in paragraph 6. As against this, learned Counsel appearing for the appellant submitted that same item was all throughout manufactured by the appellant, there is no change of manufacturing process and that the item on which excise duty is sought to be levied was all throughout semi-finished product for manufacturing carpet and not the felt as known in the market.

5. Considering the dispute involved in the matter and the subsequent judgment rendered by the Tribunal, in our view this would be a fit case for remanding it to the Tribunal for reconsideration it and decision on the basis of evidence brought on record.

6. In the result, appeal is partly allowed to the aforesaid extent and the matter is remitted to the Tribunal for deciding it afresh in accordance with law.