

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NOS. 635-639 OF 2001

Commissioner of Central Excise & Customs

Appellant(s)

Versus

M/s. Tikatar Industries & Ors.

Respondent(s)

With

CIVIL APPEAL NO. 640 OF 2001 (With appl(s) for stay and office report)
CIVIL APPEAL NOS. 1459-1461 OF 2001 (With appl(s) for stay and office report)
CIVIL APPEAL NOS. 2230-2234 OF 2001 (With appl(s) for stay and office report)
CIVIL APPEAL NO. 6076 OF 2000 (With appl(s) for stay and office report)
CIVIL APPEAL NOS. 6332-6333 OF 2003 (With appl(s) for ad interim ex parte stay
and office report)
CIVIL APPEAL NOS. 4514-4518 OF 2005 (With appl(s) for ex parte stay)
CIVIL APPEAL NO. 6398 OF 2005
CIVIL APPEAL NOS. 4895-4898 OF 2005

Date: 02/08/2006 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s)

Mr. K. Radhakrishnan, Sr. Adv.
Mr. R. Sudhinder, Adv.
Mr. T.A. Khan, Adv.
Mr. B. Krishna Prasad, Adv.

In C.A 4895-98/05

Mr. Harish Chander, Sr. Adv.
Ms. Shilpa Singh, Adv.
Mr. B.K. Prasad, Adv.

For Respondent(s)

Mr. D.A. Dave, Sr. Adv.
Ms. Meenakshi Arora, Adv.

Mr. K.V. Mohan, Adv.

UPON hearing counsel the Court made the following

O R D E R

Civil Appeals except Civil Appeal nos. 4895-4898 of 2005 are
dismissed leaving the parties to bear their own costs.

Civil Appeal nos. 4895-4898 of 2005 be listed tomorrow.

(J.S. Rawat)

(Suman Wadhwa)

AR-cum-PS

Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

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O R D E R

The point involved in this batch of eight sets of appeals is, whether

the straight grade bitumen which is converted into blown grade bitumen

through oxidation known as blowing process, amounts to manufacture and

as to whether it is eligible for exemption from payment of excise duty under

the notification in question. All these appeals are disposed of
by this

common order.

The Customs, Excise and Gold (Control) Appellate Tribunal, New

Delhi [for short "the Tribunal"] in its common order dated 10th March,

2000, relying upon various circulars issued by the Board before and after

coming into force of new tariff, has held that both straight grade bitumen of petroleum and blown grade bitumen of petroleum are classifiable under sub heading 2713.21 or 2713.22 of the Central Excise Tariff Act, 1985 [for short "the Act"], depending on whether those are packed in drums or in bulk and no duty would be chargeable on blown-grade bitumen of petroleum if made out of duty paid straight-grade bitumen of petroleum.

The Tribunal in paragraph 20 of the impugned judgment, has recorded the following finding:

"We also observe that after consulting Chief Chemist, the Central Board of Excise & Customs clarified as early as on 2.6.1979 that blown grade bitumen is a variety of 'Bitumen' but when it is produced from duty paid straight grade bitumen, it will not be liable to duty under Item 11 C.E.T. Again the Board, vide Tariff Advice No. 41/82 dt. 16.7.82 Board clarified that blown grade bitumen would fall under Item No. 11 of Old Tariff. We also observe that the Chief Chemist advised that B.G. Bitumen is an oxidised Variety of 'Straight-grade Bitumen' and as such it cannot be said that a new commercial commodity with a new name, character or use comes into existence by the process of air blowing. After the introduction of present Central Excise Tariff, it was again clarified by Board vide Circular dated 16.6.87 that "both straight grade bitumen of petroleum and blown grade bitumen of petroleum would be classifiable either under sub-heading No. 2713.21 or 2713.22 of the schedule to the Central Excise Tariff Act, 1985, depending on whether those are packed in drums or in bulk and no duty would be chargeable on blown-grade bitumen of petroleum if made out of duty paid straight grade bitumen of petroleum." It is again evidence from this clarification that the classification was based on the mode of packing. This is clear from the Board's Circular dated 1.7.88 in which it was mentioned that "The new CET has made a departure from the HSN in respect of petroleum bitumens by making their modes of packing a criterion for their classification under different sub-heading." The Board, keeping this criterion, it seems, further clarified that duty would be chargeable on B.G. Bitumen where it falls under a sub-heading different from the sub-heading under which duty paid straight-grade bitumen falls because of variations in their modes of packing. In light of this clarification we do not find any substance in learned SDR's argument that the circular does not mean to say that process of converting into B.G. Bitumen does not amount to manufacture. This is apparent from the next

sentence in Board's letter dated 1.7.88 which reads as under:

"However, where the duty paid straight grade bitumen of petroleum out of which the blown grade bitumen of petroleum has been produced and the blown-grade bitumen of petroleum so produced fall under the same sub heading, because of the same mode of packing no duty would be chargeable on such blown grade bitumen of petroleum."

In view of the Board's circulars and the findings recorded thereon by the Tribunal, Shri Radhakrishnan, learned senior counsel appearing for the revenue, fairly conceded that the revenue cannot take a stand contrary to its own circulars issued by the Board from time to time. He conceded that the finding recorded in paragraph 20 of the impugned order is unassailable.

In the case of Bitumen Products (India) vs. CCE, [1989(44) ELT 504(T)] while considering Item 11, which was under the old tariff, the Tribunal took a contrary view holding that the assessee was ineligible for the exemption under the notification, as the Board's circulars were not brought to the notice of the Tribunal for its consideration. Therefore, Bitumen's case (supra) on which reliance was placed by the learned SDR before the Tribunal, has rightly not been followed by the Tribunal in the present case.

For the foregoing reasons, we do not find any merit in this batch of appeals and dismiss the same leaving the parties to bear their own costs.

.....J.

.....
(ASHOK BHAN)

New Delhi;

.....J.

August 02, 2006.

(MARKANDEY KATJU)