

Commissioner of Central Excise Vs. Sarika Chemicals and Adhesive

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-12-2006

Judge : J Balasundaram, Vice, S T C.

Appellant : Commissioner of Central Excise

Respondent : Sarika Chemicals and Adhesive

Judgement :

1. The respondents herein are manufacturers of paints falling under subheading 3210.90. They claimed classification of the product Bituminous Black under chapter heading 27.15 of the schedule to the .

As the department was of the view that the product fell for classification under Chapter heading 32.10 as per HSN Explanatory note thereto, demand show cause notices were issued which were confirmed by the Asstt.Commissioner. The Commissioner(Appeals) allowed the appeal of the manufacturer by accepting their claim for classification under Chapter heading 27.15; hence this appeal by the Revenue.

2. We have heard the Id.SDR and perused the records as none appears for the respondents in spite of notice.

3. As per the HSN Explanatory notes, bituminous mixture are generally used for road surface and further bituminous paints and varnishes falling under Chapter heading 32.10 have been excluded if they differ from certain mixtures of Chapter

heading 27.15, for example, greater fineness of filler, one or more film producing agents (other than asphalt, bitumen), the ability to dry on exposure to air in the manner of paints or varnishes and the thinness and hardness of the film formed. In the present case, Bituminous black is composed of bitumin and a solvent and this is used to paint the bottom of the chassis of the motor vehicle. Admittedly, the mixture dries on exposure to air in the manner of paints or varnishes and the application would protect the bottom of the chassis and therefore, it is clear that the item in question is of the nature of bituminous paints and varnishes falling under Chapter heading 32.10 as per HSN explanatory note to heading 27.15(exclusion Clause (e)). Therefore, the claim of the Revenue that the product is more appropriately covered by the description of goods falling under Chapter Heading 32.10 viz. "other paints and varnishes" requires to be accepted. We, therefore, set aside the impugned order and allow the appeal.

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