

Decora Ceramic Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-29-1999

Reported in : (1999)(113)ELT162TriDel

Appellant : Decora Ceramic

Respondent : Collector of Central Excise

Judgement :

1. This appeal arises out of and is directed against the order-in-original dated 22-3-1990 passed by the Collector of Central Excise, Rajkot 2. Appellant M/s. Decora Ceramic are engaged in the manufacture of ceramic products like glazed tiles falling under sub-heading 6906.10.

They are also manufacturing and consuming captively ceramic glaze frit for the coating of ceramic tiles.

3. Shri Madhav Rao, learned Counsel, appearing for the appellants, submitted that apart from the merits of classification of goods in question, the important point to be considered in this case is whether the appellants are not entitled to exemption in terms of Notification No. 217/86 with reference to the goods which were captively consumed.

He submits that the goods which were captively consumed are falling under Chapter 32 and finished product i.e., glazed tiles are falling under Chapter 69 and both the Chapters are covered under exemption Notification No. 217/86. He

submits that though exemption notification number as such was not mentioned; nevertheless it was claimed before the Authority below that the goods which were captively consumed were exempted in terms of the respective exemption notifications but the Commissioner in the impugned order observed that during the material time no exemption was available prima facie for the said goods captively consumed.

4. Shri K. Panchatcharam, learned JDR while justifying the action of the department in denying the benefit of notification A, submitted that the party has not claimed the benefit of notification with reference to the relevant notification as urged before the Tribunal.

5. Shri Madhav Rao also submits that show cause notice was issued proposing to classify the item i.e., ceramic product under 3207.10 but ultimately it was classified under 3207.90. He submits that this position is not correct and is contrary to the observations made by the Supreme Court in the case of Hindustan Polymers Co. Ltd., reported in 1999 (106) E.L.T. 12 (S.C.).

6. We have considered the matter. We find that there is some justification in the prayer of the assessee with reference to the claim under exemption Notification No. 217/86. Since this issue has not been considered by the Authority below with reference to the Notification No. 217/86, we are of the view that this matter will have to go back for reconsideration. Accordingly, we are remanding this matter to the jurisdictional Commissioner for de novo consideration. During readjudication the party is at liberty to take all other connected pleas. The concerned Commissioner may pass an appropriate order accordingly, after providing an opportunity to the appellants.

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