Cce Vs. Indcon Structurals (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Oct-12-2000

Reported in : (2001)(73)ECC398

Judge : S Peeran, S T S.S., L Ram

Appellant : Cce

Respondent : indcon Structurals (P) Ltd.

Judgement :

2. We have heard Shri S. Kannan, learned DR for the Revenue, and Shri RC. Anand, Chartered Accountant for the respondents who are manufacturers of Cement tiles which were classified under heading 6807.00 "all other articles of plaster, cement etc, not elsewhere specified or included". They were granted the benefit of SI. No. 4 of the table to Notification No. 59/90 CE dated 20.3.1990. This Serial No.reads as follows: 3. The entity in question, from the literature down loaded from the Internet as presented to us is one of the following, as home product: Tiles for Stairways The laying instructions for floor, for walls, and stacking guidelines as cited are as follows: 1. The ground is to be watered and rammed thoroughly to create a firm base.

3. On top of sand coushion for pedestrian traffic, 4" of 1:5:10 brick jelly concreting has to be done. For heavy traffic 4" of 1:4:8 PCC concrete has to be done.

1. Prepare base mortar with cement and sand in the ratio 1:4 (Cement consumption per item No. 4 is also to be taken into account for arriving at this ratio) 2. The total mortar thickness should be not more than 1". In case where tiling is to be done on RCC slabs, finished floor levels would have to be marked using tube levels. In this process if it is observed in some area mortar thickness is likely to be in excess of 1" in those areas PCC work will have to be done to raise levels so that mortar thickness is not more than 1" 3. Set the levels for the finished floor (i.e. dead level or slope as specified by the Architect/Contractor) 4. Prepare cement slurry i.e. mixture or cement and water to form a thick paste and spread it on the leveled base mortar.

5. Wet the reverse of the tile with water. Complete immersion of tile in water is not required.

6. If tiles are square or rectangular in shape, set the right angles for the rooms and place the first tile along with the right angle lines and place it on base mortar. Tap gently and uniformly only with a rubber or wood mallet covered with cloth to obtain perfect levels.

7. Clean the surface of the tile with clean water immediately after laying with wet sponge. Ensure that the base mortar cement which squeezes through joints does not settle on the tiles.

8. Also ensure that the water used for clearing is not salty, hard or brackish.

9. It is suggested to leave a fine gap of 1 mm all round for designs like Regalia and Aquarius for fast and proper laying. For Macedonia a groove of 6-8 mm may be left alt around the tile.

10. In site where multiple levels are encountered, whenever level changes occur, the tile on the ridge will have to be adequately protected with mortar cushion.

11. When large span tiles have to be laid on curved substrate, it is suggested that the tiles be cut to take the contour of the slope ensuring proper bedding.

13. Fill in the joints with pointing material which is mixture of white cement and desired colour of pigment. For higher quality of finishes, you could use, if required, a polymer based cementitious tiling join filter like Roffe Rainbow. To arrive at the desired colour/shade, mix the same with water to form a smooth paste which should be applied to the joints, preferably with the use of rubber squeeze or rubber sheet. Do not apply the pointing material all over the tile surface.

14. Allow pointing material to set for 15 minutes and then clean the surface of the tile with wet sponge, removing the excess pigment on the like surface.

15. Wash the surface with soap water or mild detergent to obtain a clean surface.

1. Plaster the surface to be tiled with mortar (cement & water ratio 1:3) (Cement consumption as per item No. 2 is also to be taken into account for arriving at this ratio) 2. Prepare cement slurry i.e. mixture of cement and water to form a thick paste and spread it on the reverse of the tile after wetting the tile with sponge.

3. Instructions given for floor against S. No. 2, 3, 4, 6, 7, 8, 9, 12 & 13 of floor tiles laying should be followed.

1. All fully covered closed boxes like Monolisa and other closed tile boxes to be stacked horizontally only upto a height of 6 boxes one on top of the other. In case of emergency, height can be increased to a maximum of 8 boxes for a temporary period only.

2. Larger tiles packed like Macedonia, Babylon with only side covered to be vertically stacked. Maximum 2 box height.

3. All open ended boxes are to be vertically stacked up to 6 boxes high, except Cologne/Tyne, Maple/Valencia, Regalia, Taurus and Minsk which are to be sacked 4. Step tiles to be kept horizontally--one tile behind/besides the other.

The following works are to be completed prior to commencing laying of Eurocon Tiles.

2. Two coats of wall painting in all rooms (final painting should be done only after laying of floor tiles.) 5. Fixing of grills and polishing of windows/window

frames/door frames and door.

6. Bathroom's floor and wall tiles should be laid after all the work in the bathroom is completed.

7. Fixing of wall tiles and platform slabs to be completed in the kitchen.

If Mosaic/Marble/any other natural stone which needs machining and polishing is being used in any other part of your floor, it is necessary that this work is completed before commencing laying of Eurocon Tiles.

4. The present appeal by the Revenue is against the following finding of the Collector (Appeals): In this view of the matter, the application is rejected, upholding the order of the lower authority.

He has confirmed order of the Assistant Collector and these findings of the original authority being relevant are reproduced below: 6. Throughout the period, the assessees have contended with their replies to SCNs that their product viz Cement Tiles could not be construed as the floor coverings by facts or by known prevalent commercial and technical practice in the Industry and essential prerequisite for the term floor covering is the presence of an existing floor on which a covering is to be fixed. It is common knowledge in the construction Industry that floor tiles are essential and integral part of the floor. As such it forms part and parcel of the flooring itself. Apart from the above, they have also listed out the major differences that exists between integral floor tile and floor covering in the following manner.EUROCON INTEGRAL FLOOR TILES FLOOR COVERINGSa. DESCRIPTION.It forms part and parcel of the floor itself, It is fixed on the existing floor.

Eurocon Tiles are manufactured floor coverings are usually in the Eurocon tiles as they are manufactured Floor coverings by the very of their from cement, are robust, weighty and raw materials are substantially lighter are durable.

and cannot generally withstand much Eurocon tiles can withstand temperature Floor coverings are generally and wear.

inflammable and cannot withstand Compressive and tensile, load which Floor coverings can never ever Eurocon tiles can withstand surpass IS: compare with high structural 1237.

characteristics of Eurocon tiles.

Thickness of the Eurocon floor tiles Floor coverings thickness varies from range from 20 to 25 cm.

0.6 m to 2 m.g. LAYING Integral floor tiles are usually embedded Floor coverings are generallyfixed on and cemented on a cement slurry base.

mechanically or stuck with synthetic Eurocon tiles are sold on the Basis of Floor coverings are usually soldon quantity (Nos.) metre lengths based on Standard widths.

Eurocon tiles are manufactured as Floor coverings are generally distinct tiles and can never be in a rolled manufactured in rolled forms, form.

Once laid Eurocon integral floor tiles can Floor coverings can be easily removed be removed only breaking the floor. As as they are mechanically fixed or such they are almost impossible to stuck on a floor. They can be remove without damage and hence relocated at another site.

impossible to relocate elsewhere.

Eurocon tiles can be used for both Floor coverings are essentially used for indoor and outdoor applications and not interior application and cannotwithstand affected by weather.

exposure to elements of weather.

Eurocon tiles are an in integral Part of Floor coverings are temporary in nature 7. As requested by the assessee, a personal hearing was granted to on them 23.12.92. Shri D.R Padamanaban, Director of the Company and Shri V. Krishnamurthy, Factory Manager were appeared for the personal hearing. During the personal hearing, they have reiterated the facts already submitted by them in the reply to the show cause notices. In addition. They submitted fresh submissions vide letter INS CE 1296 dt. 22.12.99 by supporting with the Certificates obtained from the Architect; Trade and end user to the effect that the subject goods are totally different from floor coverings. They have also produced some samples pertaining to floor coverings as well as their own products Cement tiles as material evidence and for comparative analysis.

8. From the information available on hand and on perusal of the case records. It is felt that the subject matter could be decided only after conducting a spot study since the issue before adjudication is about the product classification. It has now to be decided as to whether the cement tiles-manufactured by the Company is primarily to be used for Flooring purpose or for Floor covering purpose.

Accordingly the factory was visited by me and studied the process of manufacture of cement tiles. The ingredients such as Cement, Sand, Blue metal, Gravel are mixed in predetermined proportion along with pigments which results in a scientifically designed cement concrete mix. This mixture is poured into moulds, compacted and allowed to set automatically through Vibration Table. The tiles are demoulded, cured, surface treated. The said cement tiles are marketed in the brand name of Eurocon Tiles. They have wide range of tiles for use both for flooring and Wall tiling. These tiles are capable of using for wall application of both external/internal wall tiling which forms an integral part of the wall on which they are cemented. I have also studied the product with reference to its characteristics, temperature resistance, structural properties and durability.

9. I have carefully gone through the case records along with the submissions made by the assessee on the subject matter. I have further perused Section Notes/ Chapter notes of Chapters 39, 57 & 68 that are covered for the goods floor covering and flooring materials. The product cement tiles manufactured by the assessee is correctly classified under Chapter heading 6807.07. On this there is no dispute raised on both sides. However, while on a plain reading of SI. No. 4 of the Table appended to the Notification No. 59/90 dated 20.3.90 issued under Chapter heading 68, it stays that: SI. 4. 68.07.00 All goods excluding the following 15% ad valorem As per the above, the concessional rate of duty at 15% adv. is

available to all goods of Chapter heading 6807 except with two exclusion categories, among which, item 4(1) specifically covers with floor coverings in roll or in the form of tiles by this it implies that the benefit of exemption does not cover for the goods specified under the said item 4(1) of the table.

10. As seen from the definition given for the product floor covering/wall covering under the Chapter Hearings 39, 57, and 59 which are made out of plastics, coir/textiles, it is observed that floor covering has got a distinct identity from the floor material.

Further, on analysis this product with regard to its characteristics, temperature resistance, durability and structural properties it is found that floor covering materials are totally different product which are commonly used as an additional coverage to an existing floor/wall only for the purpose of beautification and decoration. And such floor coverings are quiet replaceable in nature since they are mechanically placed on the floor and could be re-usable also. Whereas the tiles such as Mosaic/Granite/Cement-tiles which are basically embedded to the floor is normally on life time basis. More over such tiles once laid on the floor are almost impossible to remove without breaking or causing damage to the floor. These tiles are used not only for flooring but also used for wall tiling.

11. Further, I have perused the narration by the assessee in their replies to SCNs on the major differences that exist between the flooring materials and floor covering materials along with specifications maintained by IS: 1237 of 1980 for Cement Tiles and IS : 11206 of 1984 and IS : 809 of 1992 for other floor covering material and it is observed that basically they are not akin in nature.

12. Under these circumstances, I find that there is some valid force in the argument put forth by the assessee particularly with reference to nature of goods viz. Cement Tiles manufactured by them, it could say that but for the ingredients presented in the product they are to be treated on par with products like Ceramic tiles/Mosaic Tiles/Granite Tiles/Marble Tiles. Therefore, I feel that there is no reason to have any doubt in recognising the product viz. Cement Tiles as flooring material. It is only a misconstruction held by the Department for all these period with sentence framed in the said Notification viz "Floor Covering in rolls or in the

forms of TILES" It should be noted here that the floor covering material of the description mentioned in the chapter Notes of 39 is also available in the form of Tiles. Therefore, it should not be held that all other tiles meant for flooring which (sic) not be covered under the floor covering category. Hence I am of the opinion that flooring tiles are in no way connected to floor covering material and on merits Cement tiles are rightly covered within the nomenclature of flooring tiles. Having clarified all the doubts that were hitherto prevailed over the issue, it is unlawful in denying the concessional exemption Notification No. 59/90 to the assessee.

Therefore, I pass the following order.

I hereby accord the approval on the classification lists filed by M/s. Indcon Structural Pvt. Ltd. on 22.3.90 and on subsequent dates in respect of their product Cement Tiles covered under Chapter heading 6807.00 by extending the concessional exemption Notification No. 59/90 dated 20.3.90 as the said products are falling outside the purview of the exclusion clause provided against serial No. 4(1) of the Table appended to the said Notification. Accordingly, I drop further proceedings initiated in the four show cause notices issued for the period from 1.4.90 to 31.10.92 as there is no case is involved on the subject issue.

5. The findings of the Commissioner (Appeals) in the impugned order are reproduced herein below:6807.00 All goods excluding the following namely: (i) Floor Coverings in rolls or in the form of tiles From the above, it is clear that the benefit of this notification is available to all goods other than the floor coverings in rolls or in the form of tiles. Therefore, the short point that, falls for my consideration in the present is as would be as to whether the impugned item viz, "Cement Tiles" are "Floor coverings" or not. I observe that, in the application, reliance has been placed mainly on the dictionary meaning given to the word "floor" to hold the view that the impugned item is a floor covering not eligible for the 'benefit of Notification No. 59/90 CE dated 20.3.90 in terms of entry made against SI. No. 4 of the table annexed to it. It may be mentioned that the term "floor covering" has not been defined statutorily in the Central Excise Tariff Act, 1985.Besides, the Hon'ble Supreme Court of India, in the cases of M/s. Krishna Carbon Paper Co. a Collector of Central Excise have held that, Where no definition is provided in the statute

itself for ascertaining the correct meaning of a fiscal entry, reference to a dictionary is not always safe. The correct guide, it appears in such a case is the context and the trade meaning. The trade meaning is one which is prevalent in that particular trade where that goods is known or traded. If special type of goods is subject matter of a fiscal entry than that entry must be understood in that context of that particular trade. Where however, there is no evidence either way then the definition given and the meaning following from particular statute at particular time would be the decisive test.

Similarly, where a word has a scientific or technical meaning and also an ordinary meaning, the ordinary meaning should be preferred unless containing intention is clearly expressed by the Legislative.

Where no trade evidence is available but ISI specifications are available, they should be relied upon for interpreting a Tariff Entry.

Therefore, I am not inclined to accept the reliance derived in the application on the dictionary meaning given to the word "floor" for the holding the view that the impugned item is a floor covering and accordingly the ground that, as the cement tiles for covering the surface of the roof, the same are to be treated as floor coverings as per the dictionary meaning". Urged in the application, in my considered view, is not sustainable in law. On the other hand, the impugned item is known of "flooring Tiles" in trade parlance, and is certified by architects as a cement flooring tiles conforming to the ISI specification is, IS: 1237-1980, which can be accepted by respectfully following the ratio of the decision of the Apex Court in the reported case stated above. Another ground taken in the application is that, "the tiles are laid on a roughly prepared surface (floor) of a room, and are therefore meant for covering the floor of the ground. This contention is not acceptable in view of the findings recorded by the lower authority vide para 10 of the impugned order to the effect that, further, on analysing this product with regards to its characteristics, temperature resistances, durability and structural properties it is found that floor covering materials are totally different product which are commonly used as an additional coverage to an existing floor/wall only for the purpose of beautification and decoration. And such floor coverings are quite replaceable in nature since they are mechanically placed on the floor and could be rousable also, whereas the tiles such as Mosaic/Granite/Cement Tiles which are basically embedded to the floor is normally in life time basis. Moreover such tiles once laid on the floor are almost impossible to remove without breaking or causing damage to the floor.

with which not only I am in full agreement, but also the same are not disputed in the application. There is considerable force in the argument advanced by the respondent that "the contention of the department that tiles are spread only on roughly prepared surface confirms the fact that the cement tile is used in the preparation of the floor, and what emerges after the process is a complete usable floor, and is therefore erroneous to regard the impugned product as floor covering. In other words, the impugned item viz. "cement tiles" themselves form the floor after getting embedded and they do not cover the floor. (Emphasis supplied). Besides, the major differences that exist between integral floor tile and floor covering with regard to description, raw material, form of manufacture, application etc. as explained in their reply dated 13.4.92 to the show cause notice dated 26.3.92 by the respondents, and incorporated in page 3 of the impugned order, are also not disputed in the application, to cite a few, that, (i) floor tiles form part and parcel of the floor itself, whereas, floor coverings are fixed on an existing floor (ii) Floor tiles are manufactured from cement and aggregates, whereas, floor coverings are fixed as on existing floor usually made from natural and synthetic fibre and other patroleum products (iii) Integral floor tiles are usually embedded and cemented on a cement slurry base, but, floor coverings are generally fixed mechanically or stuck with synthetic glue on an existing floor (iv) floor tiles can be used for both indoor and outdoor applications, and not affected by weather, whereas, floor coverings are essentially used for interior applications and cannot withstand exposure to elements of weather, and so on. The certificates issued by various architects and trade, and submitted by the respondents would also confirm the view that the impugned item is a flooring material and not a floor covering. In view of the foregoing I am not inclined to accept the contention made in the application that the impugned item viz. "cement tiles" are intended for covering the floor, and falls under the excluded category of Notification No. 59/90 dated 20.3.90 and hold that the item "cement tiles" are not floor coverings, but only flooring tiles, eligible for the benefit of Notification No 59/90-CE dated 20.3.90.

6. Against the above findings, the Department has come up appeal on the following grounds: (a) The effective rate of duty in terms of Notification 59/90 is not applicable to "floor coverings in rolls or in the form of tiles" According to Oxford dictionary 'tiles' means thin slab of baked clay or other material for covering roof or floor. 'Floor' according to oxford dictionary means 'lower surface of rooms, bottom of sea, cave etc'. As the tiles are meant for covering the lower surface of the room i.e. floor the same are to be treated as floor coverings.

(b) The findings of the Assistant Collector upheld by the Collector (A) to the effect that the tiles are laid only on roughly prepared surface and not on a made up floor is not correct, as floor may be of any area or surface including rough surface. Further, it is seen from the pamphlets that levels of the floor is to be set up and cement slurry is to be spread on it before laying the tiles.

Therefore, it is evident that the tiles are laid on roughly prepared surface (floor) and are meant for covering the floor.

(c) When the end use of the tiles is covering the floor as stated above, all the study made by the Assistant Collector and considered by the Collector (A) regarding characteristics, temperature resistance durability etc. will not be of any relevance. Both the 'flooring materials' and 'floor covering materials' as understood by the Asst. Collector serve only one purpose i.e. covering the floor, Further the Notification, does not make any distinction between the two artificial concepts viz. Flooring materials and floor covering materials.

(d) The cement tiles laid on the floor are for decorative purposes also. No other covering can be made once these tiles are laid.

Further the tiles are used for decorating the walls also which would prove that they are nothing but coverings to floor or wall.

7. After considering the submissions made in extenso by the DR, Shri S.Kannan, and Shri RC. Anand, Chartered Accountant, and also after considering the material which was obtained from the internet and submitted by the DR and

presented as regards the characteristics of the entity under dispute and considering the ISI specifications and the reasoning of the lower authorities, we find that: (a) There is no doubt that the goods under dispute are cement tiles unglazed manufactured and utilized as flooring materiel and/or cladding material for external and internal walls, stairways. There is no materials which has been brought on record before us to consider the same as floor coverings in tile form. From the stacking, guidelines and desired site conditions for laying of Eurocon tiles as down loaded from the Internet by the learned DR and the laying instructions, it is apparent that the items are items of flooring material and becoming constituent part of the floor or wall or stairways and function, as the case may be, as outer-most surface. We find there is no material before us to disregard the major difference that exist between such integral flooring material in the form of tiles and floor coverings, which are extracted herein above in para 6 of the Asst. Collector's order. We are in complete agreement with the difference between the floor coverings and the flooring material as brought out and we cannot come to a conclusion that the impugned goods i.e. floor tiles are floor coverings in tile form when they are used in flooring of floors externally or internally. As long as they are used at places other than floorings i.e. internal or external stairways, they do not remain flooring tiles material and/or floor coverings but become wall cladding tiles and stairways tiles which are in any case not understood by the people dealing with the same as floor coverings in the form or roil form, which are excluded tram the item INO. 4 of the table to the Notification No. 59/90.

(b) We find that certificates have been produced to indicate that the subject goods are not understood as floor coverings in any form by persons who are commercially dealing with the same. We have also considered the ISI specifications and find that floor covering materials have different specifications than cement concrete floor tiles and this induces us to come to a conclusion that commercially floor tiles are different from floor coverings in tile form and are not excluded by SI. No. 4 of Notification 59/90 as floor covering in tile form.

(c) In view of these findings of ours, we hold that it is only covering in roll form and/or in tile form which are excluded from the benefit of SI. 4 of the subject

Notification as extracted herein above. A plain reading of this Notification does not induce us to come to a conclusion that cement tiles which are flooring material are excluded. When we find that the items are not excluded by the Notification, we find no reason in the grounds taken by the Revenue in the present order impugned before us to hold against the findings of the lower authorities.

8. In view of our findings, we do not find any reason to interfere with the orders of the lower authorities and we confirm the same and reject the appeal filed by the Revenue.

9. I have carefully considered the proposed order of my Ld. brother Member (T) proposing to dismiss the Revenue appeal. With due respect, I am unable to agree with the findings recorded by my Ld. brother. The matter had been heard on more than one occasion and the bench pointed out to both sides large number of judgments. The matter was heard in the light of the judgments cited and the material on record. The Ld. DR had categorically pointed out that the case was no longer res integra and it was covered by the ratio of the following judgments: (i) Niraj Cement Structurals v. CCE wherein under the same Notification the reinforced cement concrete (RCC) tiles were held to be not entitled to the benefit of Notification under SI. No. 4 under which the present assessee is also making the claim for exemption.

(ii) CCE, Vadodara v. Kedia Agglomerated Marbles Ltd. .Royal Cushion Vinyl Products Ltd. v. CCE, Baroda .

10. It is the contention of Ld. DR that admittedly the item is a tile and there is no dispute regarding the same. He submits that it acts as a floor covering also as before the tiles are fixed, a flooring has to be prepared and the product literature itself clearly indicates that first, floor has to be prepared with floor materials with cement, jelly and sand and thereafter, these tiles are covered over it. He points out that there is no dispute with regard to the classification of the item under Chapter heading 6807 which refers to all other articles of stone, plaster, cement, asbestos or similar materials not elsewhere specified or included. The serial number 4(1) of Notification No. 59/90-CE dated 20th March 90 states that all goods under Sub-Heading 6807.00 are exempted excluding the following namely: Floor covering of

Rolls or in the form of tiles." It is his submission that there is a specific exclusion of tiles which are manufactured under the Sub-Heading 6807 for floor covering in rolls or in the form of tiles under Sub-Heading 6807.00. It is his contention that admittedly the item being marketed as tiles and it is a product recognised in the trade and marketed by the appellants also as "Eurocon Tiles", hence there cannot be any dispute of the item being excluded from the exclusion category under SI. No. 4 which refers to Floor in the form of tiles. He contends that a different interpretation would be doing violence to the terms of the notification and an unintended benefit could flow to the assessee which is not permissible in law. In this connection, he referred to the Apex Court judgment rendered in the case of Nouopon India Ltd. v. CCE . He contended that the item being floor covering in the form of tile and it cannot be interpreted to mean that it is only a tile and not a floor covering tile which interpretation is not permissible as has been given by both the authorities below. He further pointed out that Assistant Commissioner's order citing ISI's 11206 of 1984 and ISI 809 has absolutely no relevance for the purpose of interpreting the terms of the Notification as the said ISI's specification refers only to floor covering material required for preparing a floor and not to items which are tiles manufactured and classified under Sub-Heading 6507. He points out that in the case of Baliapatnam Tiles Works (supra), the item in question was ceramics tile and that they were held to be classifiable under the present heading in dispute i.e.

6807 and only unglazed tiles were held to be classifiable under 69.05 and therefore the controversy that once the undisputed fact of the item being a ceramic tile is in question and its classification under 6806 has not been disputed then the terms of SI. No. 4 of the Notification to exclude tiles would clearly clinch the issue to refer to the present item itself in question. He also refers to the details of the other judgments cited to indicate that it has a clear bearing with regard to the present item itself. He states that in the judgment rendered in the case of Niraj Cement (supra) is not at all distinguishable as it referred to the floor covering which have been held to be not entitled to the benefit of the Notification.

11. On the other hand, Ld. Chartered Accountant has vehemently put his points to argue that the item has to be reads as a floor covering tile which are different than

ceramic tile per se as marketed by the assessee. He adverted back to the clarification given by the architects in the matter to show that the item is referred as floor material and once it is a floor material in the eyes of Architects and users, although it is classified as tiles, but for the purpose of Notification, it has to be understood as a floor material and not a tile as tiles are the ones which fixed over the flooring while the present item forms the flooring itself. He further referred to the impugned orders, more particularly, the order of the A.C. which refers to the floor covering materials and attempted to persuade the bench to accept the said rulings. He pointed out that the judgments relied by the Ld. DR are all distinguishable and cannot be accepted. He pointed out that ISI's 1278 of 80 is for floor tiles and the item cannot be considered as a floor covering at all. It is his contention that the Notification in question refers to floor covering in the form of tiles and it has to be read in that light only and therefore, the judgment of Niraj Cement (supra) is distinguishable as that judgment refers to floor coverings laid on top of the marble running below the ground and it is not para materia in the present case. He also referred to the word "cover" as appearing in Concise Oxford Dictionary, 6* Edition which gave the meaning of cover as "overspread or overlay; put cover on; lie over, be a covering too; occupy the surface of". Thus he stated that the cover has been explained very specifically to mean that something which is an overspread. It is his contention that ISI's specification 1237 of 80 refers to floor material in the form of tiles and not as floor covering. He referred to the Apex Court judgment rendered in the case of UOI a Wood Papers Ltd. as wherein it had been laid down that the interpretation of the Notification is based on the wordings as seen in the Notification and once the item falls within the notification, then a full play has to be given to it and it calls for a wider and liberal construction. Therefore, he argued that the Notification excluded floor covering and the floor covering tiles and the item is not the one falling in that category of exclusion as the Architects had accepted the item to be an integral part of floor and not floor covering and therefore their evidence cannot be brushed aside.

12. In counter, Ld. DR pointed out that the exclusion clause Floor covering in rolls or in the form of tiles has to be independently read as "or" has to be read disjunctively and it cannot be read as floor covering in the form of tiles. He contends that when "or" is disjunctively read, then the terms have to be read as

floor in the form of tiles in the light of the interpretation as laid down in the following judgments: (1) , in the case of Ravalgaon Sugar Farm Ltd. v. CC.13. On a careful consideration of the submission of both the sides and on perusal of the entire order, I am inclined to accept the arguments put forth by Ld. DR and the grounds taken up by the Revenue in the present matter. The orders of both the authorities are not as per law and it has been understood and applied totally against the terms of the Notification as appearing in SI. No. 4 of the Notification. SI. No. 4 of the Notification refers to grant of exemption of all goods coming under 6807. There is no dispute in the classification of the impugned item tiles under 6807. Therefore, what is required to be now interpreted is the exclusion clause under SI. No. 4 which excludes (a) floor covering in rolls or in the form of tiles. The term "or" has to be read disjunctively as has been held in the judgment cited by the Ld.

DR. In the case of Consolidated Petrotech Industries Ltd. v. CC , it has been clearly laid down that "or" has to be read disjunctively. If this interpretation is taken, the tiles have to be taken as independent of "covering in rolls." There is no dispute that the item is marketed as floor tiles and the entire literature clearly indicate that it is a floor tile. The understanding of the Architects that it is a floor material is independent of the term appearing in the Notification. The notification clearly refers to floor tiles while interpreting disjunctively the term "or". This view was accepted again in the case of Ravalgaon Sugar Farm Ltd. . The literature which has been extensively quoted in para 3 of the Member-T's order also clearly clinches the issue that the item is a floor tile and the party themselves are clearly marketing it as floor tiles. They have in their instructions indicated that they first prepare a substrate preparation by preparing a ground with water and rammed thoroughly. Thereafter, on top of the sand cushion for pedestrian traffic, 4" of 1:5:10 brick jelly concreting has to be done.

How the floor tiles are laid are also described. Therefore, the suggestion of Ld. Chartered Accountant that flooring is already in existence and this is kept only as a floor material is not acceptable.

This is acting as a floor covering tile and even as a floor covering tile, it is excluded. Tile covering is over the floor which is made in terms of instructions indicated by the appellant itself which has been extracted in para 3 of the Member (T)'s order. Therefore, the legislature is very clear that floor covering and floor tiles which are coming within the Sub-Heading 6807 are excluded from the terms of the Notification. The Notification cannot be read in a manner as to violate its term but a plain reading has to be done. On such a plain reading, the item undoubtedly has to be classified under 6807 and tile being floor tile only, it cannot be considered as a flooring material as it is not marketed as a flooring material. Even the ISI specification 1237 of 1980 refers to cement, concrete flooring tiles and this, in fact, cannot be said to support the party at all. It is also now well settled that ISI specifications are meant for the purpose of maintaining the standards. The said specification cannot be taken for the purpose of even interpreting the exclusion clause in a notification. The Hon'ble Supreme Court in the case of Novapan India Ltd. (supra) has clearly laid down that exemption being in the nature of exclusion has to be construed strictly at the stage of determination and in case of doubt or ambiguity, the benefit must go to the State. This judgment of the Apex Court would squarely apply to the present case. Goods excluded for grant of exemption are floor covering in rolls and floor tiles and the interpretation has to be done only in the manner, as even if there is an ambiguity, it has to be in favour of the State for the reason that the classification of the item as a floor tile under 6807 is not disputed. The Ld. CA's argument that the material has to be considered as a flooring material cannot be accepted as they themselves are clearly marketing the items as a floor tile as they are very expensive and they are utilised by high strata of society. There could not have been an intention of the legislature to grant exemption and the CA's argument that the item is not a tile in so far as the interpretation of the Notification is concerned is not acceptable as already held that they themselves market it as tiles and have got it classified as floor tiles.

14. Further, it is noticed that the Tribunal has taken a categorical decision in the case of CCE a Bhora Industries Ltd. (Marble Floor tiles) (supra), in which the plastic material amounts to 10% to 15% of the total quantity of a tile is classifiable only under 6807 as held in the case of Bhora Industries Ltd. the composition marblex covering of tiles have been given in the order which are akin to the present item.

The judgment clearly has laid down that the marblex tiles are classified under 6807, therefore it clinches the issue that the item is a floor tile in terms of the classification which is not disputed.

15. In the case of Balipatnam Tile Works v. CCE (supra), the classification of ceramic products filed after shaping - Facing tiles, Flooring tiles and the Split flooring tiles although manufactured from red clay were held to be unglazed ceramic products and used for paving and floorings and such products were held to be classifiable under 69.05 while in the present case, the product being glazed tiles are undisputedly covered under 6807.

16. In the case of Niraj Cement Structurals Ltd. v. CCE (supra), the classification of tiles was also taken into consideration and the very serial number 4 of the table annexed to Notification in question was considered. There was no dispute on the item being reinforced cement concrete tiles and its classifications under 6807. Therefore, the Tribunal held that the expression "floor" is wide enough to cover the product as well as the use as given by the appellants and for the reasons given thereto, the benefit of the notification was denied.

There was a clear-cut finding given by the Tribunal in para 5 of the order that under SI. No. 4 of the table annexed to that notification, floor covering in rolls are in the form of tiles were specifically excluded from the purview of concessional rate of duty. Therefore, it was further observed that a tile continues to remain a tile whether it is reinforced or not and it was also noticed that the item in question was used as floor covering inasmuch as it is placed on the floor and covers the cable running underneath. Ld. Chartered Accountant attempted to distinguish the judgment on the plea that there was cable underneath and the item was used as floor covering which was specified in the terms used in the notification. However, a close reading of the order, it is seen that the observation of the bench are quite explicit to define the expression "floor" to be wide enough to cover products as well as the use as given by the appellants thereunder. It has been clearly observed that tile continues to remain as tile whether it is reinforced or not. It also observed that tiles were used for floor coverings only. Therefore, the argument of the Ld. Chartered Accountant that the present item was not a floor covering in the form of tiles as it is a flooring material is not acceptable. So long as it is a tile which is admitted in terms of the classification and used on the floor prepared in terms of their own, then interpretation to be given to the terms in SI. No. 4, according to me is that it refers to floor tiles as the terms "or" has to be read disjunctively. Therefore, there are two items referred to in this serial numberone is floor covering and the other is floor tiles. The items being floor tiles as noted supra are excluded from the category of the exemption.

17. In the case of CCE v. Kedia Agglomerated Marbles Ltd. (supra), the question of classification of agglomerated marbles made out of fresh marble mixed with cement, resin and certain other additives was considered and held to be not a mineral product and its classification under 6807 was upheld and as a consequencee, the very benefit claimed under the present notification was denied. Therefore, in my humble opinion, the interpretation given by the Tribunal in these judgments to consider that the product is a tile having been upheld and also having given an opinion that such tiles are not covered under serial number 4 of the notification, therefore the plea raised very consistently by the Ld. Chartered Accountant to support the order is not sustainable.

18. In that view of the matter, I am inclined to accept the Revenue's contention raised in the grounds of appeal and I find that both the authorities have erred in granting the exemption, therefore the same is required to be set aside by allowing the appeal of the Revenue.

In view of difference of opinion in the matter, the following question is referred to 3rd Member for consideration: (a) Whether the Revenue appeal is required to be rejected by holding that the authorities below have rightly given the benefit of notification under Serial No. 4 as held by the Ld. Member (Technical) (b) Whether the Revenue appeal is required to be allowed by setting aside the impugned order by holding that the assessees' products are not covered by the terms of serial number 4 of the notification in question.

19. The difference of opinion referred to me in this appeal filed by the Revenue in which the respondents are M/s. Indcon Structurals (P) Ltd. Chennai (hereinafter referred to as "M/s. Indcon") is as under: (a) Whether the Revenue appeal is

required to be rejected by holding that the authorities below have rightly given the benefit of notification under Serial No. 4 as held by the Ld. Member (Technical) (b) Whether the Revenue appeal is required to be allowed by setting aside the impugned order by holding that the assessees' products are not covered by the terms of Serial No. 4 of the notification in question.

20. The matter was heard on 7.11.2000 when Shri S. Kannan, Ld. JDR referred to the brief facts of the case and pleaded that the Revenue had relied upon the Tribunal decision in the case of Niraj Cement Structurals v. CCE and that no cognizance of the same had been taken by the Learned Member (Technical) while confirming the view taken by the lower authorities. Ld. DR also submitted that a number of other decisions which had been relied upon, also did not find any mention in the order proposed by the Ld. Member (T). He pleaded that a correct view has been taken by the learned Member (J) and prayed for confirming the same.

In reply, Shri RC. Anand, Chartered Accountant referred to his submissions as recorded by the Ld. Member (T) and submitted that a correct view has been taken by the Ld. Member (T). It was submitted that the scope of the expression "floor coverings" was restricted and did not include "tiles" which was usable only after affixation on the floor. He pleaded that the view taken by the Ld. Member (T) be confirmed.

21. I have carefully considered the matter. The respondents were engaged in the manufacture of cement tiles which were used as floor coverings. It is not in dispute that the cement tiles manufactured by M/s. Indcon were covered by the description under heading 68.07 of the CETas "all other articles of stone, plaster, cement, asbestos, mica or of similar materials, not elsewhere specified or included". The dispute is with regard to the interpretation of the expression "floor coverings in rolls or in the form of tiles" as occurring against SI. No. 4 of the table annexed to the notification No. 59/90 (CE) dt. 20.3.1990. For case of reference Notification 59/90 (CE) dt. 20.3.1990 is extracted below:SI No. Sub-Heading No. Description of goods Rate of duty2.

6805.10 Gaskets other than those used in vehicles of 15% ad valorem3.

6806.10 Brake linings, pads and 15% ad valorem clutchfacings other than4.

6807.00 All goods excluding the 15% ad valorem following namely.6.

6807.00 Mosaic tiles, that is to say, Nil tiles known commercially as7.

6807.00 Goods manufactured at the Nil site of construction of8.

6807.00 Blocks, slabs, lintels, concrete 5% Ad valorem beams and stairs constituting 22. It will be seen that if the goods in question were covered by the expression 'floor covering in rolls or in the form of tiles' then they were not eligible for the concessional rate of Central Excise duty as provided under Notification No. 59/90-CE aforesaid.

23. The tiles manufactured by M/s Indcon were manufactured with cement, sand, blue metal, gravel etc. The ingredients such as cement, sand, blue metal, gravel etc., were mixed in pre-determined proportion along with pigments which resulted in a scientifically designed cement concrete mix. This mixture was poured into the moulds, compacted and allowed to set automatically through vibration table. The tiles were demoulded, cured, surface treated, etc. for marketing. They were marketed under the brand name of "Eurocon Tiles", by M/s. Eurocon Tiles Company. The registered trade mark 'Eurocon' was however owned by the respondents., M/s. Indcon Structural Pvt. Ltd. These tiles were marketed as highly fashionable, highly functional, made to international standards by Europeon process. It was stated as per literature of the product at page 26 of the paper book that EUROCON was probably the only one of its kind in India to offer a comprehensive range of wall and floor tiles for both indoor and outer applications in a wide range of sizes, textures and finishes catering to virtually any tiling requirement in a wide range of colours. General and Speciality floor, Ready to Lay, Structural Properties were described as under: General & Speciality Floor: EUROCON offers a wide range of tiles which can be used for general purpose flooring as also specialised flooring like ramps, drive-ways, pathways, basements, verandahs, garden path, swimming pool, etc.

Ready to Lay: EUROCON Tiles are ready to lay which do not require cumbersome conventional tile--polishing procedures which results in an enormous saving in time, effort and money for all concerned: Builders/Contractors and Owners.

Structural Properties: EUROCON Ties have excellent structural properties in terms of tranverse strength, compressive strength, wear strength and water absorption and more than complies with all the requirements of IS: 1237 of 1980. The impact resistance of EUROCON is far superior to any ceramic tile. This results in excellent durability and performance.

24. Admittedly, the goods manufactured by the respondents M/s. Indcon were used as floor tiles (Refer Para 6 of reply dated 24.12.90 to Show Cause Notice dated 5.11.90 at page 31 of the paper book). A distinction has been sought to be made on the ground that after they were affixed to the floor, tiles manufactured by them formed part and parcel of floor itself. The classification is not of the product after they were affixed to the floor but of the goods as were presented for assessment.

There is no dispute that the goods were marketed as tiles. They were commercially known as tiles. They were for use for flooring.

25. The mode of affixation to the floor, of the floor coverings whether in rolls or in the form of tiles will not rob the rolls or tiles of their character terms as 'floor coverings'. No restricted meaning could be given to the expression 'floor coverings' as to include only those items which could be just spread or placed on the floor, and to put the items that are affixed to the floor, to cover the same, out of its purview.

26. The Revenue has relied upon the Tribunal decision in the case of Niraj Cement Structural v. CCE . Para 5 of the above decision is extracted herein below: 5. The appellants have claimed that earlier they were extended the benefit of Notification No. 132/88-CE., dated 15.3.1988 while in the present proceedings, the benefit of Notification No. 59/90-CE., dated 20.3.1990 had been denied to them. We find that under Notification No. 132/88, dated 15.3.1988 all goods falling under Heading No 6807.00 of the Tariff were eligible for the concessional rate of

duty. There was no exclusion of the goods classifiable under sub-heading No. 6807.00 which were covered by that notification. We find that such is not the case under Notification No. 59/90-CE., dated 20.3.1990. Under Serial No. 4 of the table annexed to that notification, floor coverings in rolls or in the form of tiles were specifically excluded from the purview of the concessional rate of duty. Undisputedly, the goods in question are tiles. The expression 'floor' is wide enough to cover the product as well as the use as given by the appellants. The Collector of Central Excise (Appeals) had referred to the various submissions made by the appellants and after referring to the tariff entry and the exemption notification had held that even when the appellants' submissions are taken note of that the tiles were used for functional purposes as they were laid on the top of the cable running below the ground, it had to be taken that these tiles were used for floor coverings only. He had further observed that a tile continues to remain a tile whether it is re-inforced or not. He held that the appellants' products under dispute was used as floor coverings inasmuch as it is placed on the floor and covers the cable running underneath.

27. In my view the matter is entirely covered by this decision. Ld.

Member (Judicial) has also referred to a number of other decisions to hold that items manufactured by respondents were covered by the exclusion clause against SI. No. 4 of the table annexed to the Notification No. 59/90-CE dated 20.3.90.

28. After taking all these facts and circumstances of the case, I agree with the view taken by Ld. Member (Judicial).

29. The files may now be placed before the referring Bench for appropriate orders.

In view of the majority order, the impugned order is set aside and the Revenue appeal allowed.