Commissioner of Central Excise, Vs. Diamond Tiles Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-31-2002

Reported in : (2002)(81)ECC622

Judge : K Usha, A T V.K., N T C.N.B., P Chacko, K Kumar

Appellant : Commissioner of Central Excise,

Respondent : Diamond Tiles Ltd.

Judgement :

1. These appeals at the instance of the Revenue are directed against common order passed by the Commissioner (Appeals) vide Order-in-Appeal Nos. 373 to 377/95 (129-133-Raj.) 1 CE./Collr. (Appeals), Ahmedabad.

2. The issue that has come up for consideration in these appeals is whether the respondents herein who are manufacturers of ceramic glazed tiles falling under subheading 6906.10 of the Schedule to the CETA, 1985 are entitled to avail Modvat credit on input, namely, ceramic glazed frit which were consumed in broken tiles. Following the two earlier decisions of this Tribunal CCE v. Somany Pilkington (P) Ltd. [1992 (59) E.L.T. 451 (T)] and Orient Ceramic & Industries ltd. v. CCE [1993 (65) E.L.T. 426 (T) the Commissioner (Appeals) took the view that the broken ceramic glazed tiles are different from ceramic glazed tiles, it cannot be considered as marketable goods and therefore, not excisable to duty. It was also held that the manufacturers are entitled to the benefit of Modvat credit on input used in such broken tiles by virtue of the provisions contained under Rule 57D of

the Central Excise Rules. This finding is under challenge at the instance of the Revenue in these appeals.

3. The Revenue contended that broken tiles which come into existence during the course of sorting and packing of the tiles have the same characteristics of ceramic glazed tiles covered under sub-heading 6906.10 and that they are sold in the market as broken tiles and therefore, come within the definition of "goods" under Section 2(d) of the Central Excise & Salt Act, 1944. The Revenue further contended that since an exemption is granted for broken tiles under Notification No.139/90, dated 3-9-90 it has to be taken that the goods are excisable since the respondents (manufacturers) are filing classification/price lists for broken glazed tiles, they are to be treated as one of the final products in the manufacturing process. When the matter came up for argument before the Bench of 2 Members, the Revenue submitted that the earlier two decisions of the Tribunal referred above are liable to be reconsidered in the light of a later decision of the Supreme Court in CCE, Kanpur v. Gayatri Glass Works - 1999 (114) E.L.T. 786 (S.C). It was in this background these appeals were referred for consideration by a Larger Bench.

4. The ceramic glazed tiles which are manufactured by the respondents fall under sub-heading 6906.10 of the Schedule to CETA, 1985. At the time of sorting and packing of the tiles some of them got broken and they are cleared without payment of duty by availing exemption under Notification No. 139/90-C.E., dated 3-9-90. Admittedly, these broken tiles are sold in the market by weight. According to the respondents, the broken tiles would constitute less than 0.1% of their total manufacture and are sold at fractional value of the regular tiles, they are to be treated as waste material. In support of their contention they relied on the above mentioned two decisions of this Tribunal wherein it has been held that broken tiles belong to a category distinctly apart from the category of glazed tiles, they cannot be considered marketable and that they are not excisable to duty. It is submitted before us that the appeals filed by the Revenue from these two decisions were dismissed by the Supreme Court by orders dated 8-4-96 [1996 (84) E.L.T. A51 (S.C.)] and 29-4-93 [1999 (112) E.L.T.A168 (S.C.)] respectively.

5. As mentioned earlier, it is contended on behalf of the Revenue that the dictum laid down in the above two decisions of the Tribunal is no longer good law in the light of M/s. Gayatri Glass Works. The issue that came up for consideration before the Apex Court was whether molten and broken glass (Bhagar) arising at the stage of final manufacture of glass is liable to excise duty as "other glass" under Item 23A(4) of the erstwhile Central Excise Tariff. The Supreme Court held that molten and broken glass arising at the stage of final manufacture of glass is saleable for a considerable value. It has utility, inter alia, in the manufacture of glass itself. Therefore, they are would be liable to excise duty as "other glass" under Item 23A(4). In the facts available in the present case, we find it difficult to apply the above decision in support of the contention raised by the Revenue. There is no material available on record that the broken tiles are sold for considerable value. Admittedly, it cannot be recycled for manufacturing glazed tiles. For yet another reason also we are of the view that the broken tiles which are the subject matter in the present case cannot be treated as goods liable to excise duty.

6. Exemption to broken tiles falling within Chapter 39 has been granted under Notification No. 139/90-C.E., dated 3-9-90. It reads as follows :- "In exercise of the powers conferred by Sub-section (1) of Section 5A of the Central Excises and Salt Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts broken tiles, falling within Chapter 69 of Schedule to the Central Excise Tariff Act, 1985(5 of 1986), from the whole of the duty of excise leviable thereon which is specified in the said Schedule : Provided that an officer not below the rank of an Assistant Collector of Central Excise is satisfied that such broken tiles are in the nature of scrap and not capable of being used as tiles." The above would show that exemption is granted only in respect of such broken tiles which are in the nature of "scrap" and not capable of being used as tiles. The Assistant Collector of Central Excise has to be satisfied as to such nature of the broken tiles in order to grant exemption under the above Notification. Admittedly, in the case of the respondents herein such exemption has been granted. If that be so, it has to be taken that the Assistant Collector of Central Excise was satisfied that the broken tiles in respect of which exemption was granted are in the nature of "scrap" and not capable of being used as tiles.

For this reason also the Revenue cannot be allowed to contend that the broken tiles have the same characteristics, property and utility as that of glazed tiles and they are marketable goods.

7. The Commissioner (Appeals) has held that once it is found that these broken tiles are in the nature of "scrap" then the claim for benefit of Modvat credit on inputs has to be considered under Rule 57D of the Central Excise Rules. The learned Department Representative contended that the word "scrap" is not used in Rule 57D. Sub-rule (1) reads as follows : "57D(1). - Credit of specified duty shall not be denied or varied on the ground that part of the inputs is contained in any waste, refuse, or by-product arising during the manufacture of the final product, or that the inputs have become waste during the course of manufacture of the final product, whether or not such waste or refuse or by produce is exempt from the whole of the duly of excise leviable thereon or chargeable to nil rate of duty or is not specified as a final product under Rule 57A." The contention is that since the word "scrap" is not used in Sub-rule (1) the respondents herein cannot claim the benefit of the Modvat credit. According to the learned Departmental Representative it is Rule 57C that has to be applied in the present case.

8. We do not find much merit in this contention also. The word "scrap" is used, as understood in commercial parlance to mean "waste". It was so observed by the Apex Court in Tata Iron & Steel Co. Ltd. v. CCE 1995 (75) E.L.T. 3 (S.C.). If we refer to decisions of the Tribunal in relation to the claims under Rule 57D it can be seen that the words "waste" and "scrap" are used in synonimous with each other [CCE, Bombay-II v. Tarapur Cables (1) Ltd. 1996 (85) E.L.T. 125 (T) and CCE, Pane v. Merry Weather food Products Ltd. -1996 (85) E.L.T. 348 (T)].

Therefore, when goods are found to be "scrap" it would come under Rule 57D. In the facts of the present case it has come out that the Assistant Collector of Central Excise was satisfied that the broken tiles are in the nature of scrap. That being the factual position, no argument can be heard against the respondents' claim for Modvat credit on the duty paid input ceramic glazed frit as allowed under Rule 57D of the Central Excise Rules.

9. In the result, the appeals filed by the Revenue fail and they stand dismissed.