

**Commissioner of Central Excise Vs. Inarco Ltd.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Jun-13-2003

**Reported in :** (2003)(156)ELT92Tri(Mum.)bai

**Judge :** S T Gowri, G Srinivasan

**Appellant :** Commissioner of Central Excise

**Respondent :** inarco Ltd.

**Judgement :**

1. The question for consideration in this appeal is the classification of floor tiles manufactured by Inarco Ltd., the respondent to this appeal.

2. In the classification list that it has filed effective from 10<sup>th</sup> March 1999, the assessee classified the tiles in heading 6807.00 of the Central Excise Tariff. This heading is for articles of stone, plaster, cement, asbestos, mica and similar material not elsewhere specified or included. The notice issued to it proposes to classify the goods in heading 3918.10, which covers floor covering of plastics whether or not self adhesive, on the ground that the report of the test of these goods indicated them to contain polyvinyl chloride, resin, plaster etc. etc.

and on further ground that the goods were generally known as plastic tiles in the market. The Assistant Commissioner confirmed the classification of the goods in this heading. On appeal by the assessee, the Commissioner (Appeals), accepting the contention that the composition of the tiles was similar to that of flooring tiles

manufactured by Bhor Industries Ltd., which is the subject matter of the Gujrat High Court's judgment in Bhor Industries Ltd. v. CCE, 1980 ELT 762, applied the ratio of that judgment and held the goods classifiable in heading 68.07. This is challenged in this appeal by the Department.

3. The two grounds in the Department's appeal are that the tiles derive their distinctive character from the polyvinyl chloride used in their manufacture and that they are known in the market as plastic tiles. It is also contended that the judgment of the Gujarat High Court, relied upon by the Commissioner (Appeals) has been appealed to the Supreme Court. The Supreme Court has in fact dismissed the Department's appeal against high court's judgment. In that judgment, the high court had held that the tiles made by bhor Industries Ltd., which contained limestone and asbestos to the extent of 71% and plasteriser to the extent of 10% to 15%, could not be considered articles of plastic so as to bring it under item 15A(2) of the Tariff. It accepted the assessee's contention that the plastic was only used to bind the other material and was not the principal ingredient of the product. The predominant material as limestone which former 45%. That ought to determined the classification.

4. No doubt the judgment of the High Court has been followed in other decisions. However, it was rendered in the context of the earlier tariff. The test that the High Court has applied of predominance physically of material would not become, in our opinion, applicable now. What is to be seen is whether by applying the provisions of Note 2(a) of the general interpretation rules to the fact, it is the plastic that gives the tiles their essential character or the limestone.

5. No technical material has been advanced by either side to show in support of its respective contention that it is the plastic or limestone that gives a tile its essential character. It would appear on the fact of it that it is the characteristics of limestone that confers upon the material its use; the reference by the respondent to the Explanatory Note to the Harmonized System of Nomenclature support its case the notes heading 68.10 indicate that articles such as slabs, tiles etc. obtained from agglomerating pieces of natural stone with cement or other pipes, e.g. plastics, would be classifiable in that heading. Plastics referred to in the note as binder. It

would of course be open to anyone to contend that a particular tile in fact is something more than a mere agglomeration of broken tiles and that it is the presence of plastic gives them their characteristic rendering them suitable for the use to which they are put. Such a contention however has to be supported by acceptable evidence. No such evidence is referred to or cited.

6. The second contention in the appeal, that the goods are known in the market as plastic tiles, is unacceptable. The from anything else, there is no evidence in support of this contention. It appears to us as misleading as the claim made by the respondent appears in its advertisements that the tiles are made of marble. It is relevant to note in this context that although marble and limestone may chemically be the same, marble is technically different from limestone on account of its crystallization. However, it is settled law that misleading claims as to nature of the product made by a manufacturer cannot form the basis of classification.

7. There is, ultimately, totally insufficient material in the appeal to justify the Commissioner (Appeals)' contention.

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