

**Mridul Enterprises Vs. Collector of Central Excise**

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

**Decided On :** Jul-12-1988

**Reported in :** (1988)(17)ECC217

**Appellant :** Mridul Enterprises

**Respondent :** Collector of Central Excise

**Judgement :**

1. In this case the dispute relates to classification of glass tiles manufactured by the appellants. The claim of the appellant is that the goods are correctly classifiable under Item "23-D Mosaic Tiles" of the Central Excise Tariff whereas the Assistant Collector of Central Excise, Ghaziabad has classified the goods under Tariff Item 23-A as "glass and glassware". The Assistant Collector has held that glass tiles manufactured by the appellants are made of glass and not made from glass and as such It is a glassware. He has also held that unicolour tiles are not mosaic tiles as the mosaic tiles come into existence at site after coloured tiles are set in according to design.

By the Impugned order the Collector of Central Excise (Appeals), New Delhi has upheld the classification decided by the Assistant Collector.

The Collector (Appeals) has held that after Tariff Item 23-D has been made inapplicable to the glass tiles manufactured by the appellants, the same should automatically be taken into Tariff Item 23-A as glass and glassware.

2. We have heard Shri Daya Sagar, learned Consultant for the appellants and Smt. V. Zutshi, learned S.D.R. for the Respondent-Collector. Shri Daya Sagar has first drawn our attention to the process of manufacture of glass tiles as given in paragraph 8 of the statement of facts attached to the Appeal Memorandum (C.A.-3). He has stated that raw material for "Glass Mosaic tiles" manufactured by the appellants is glass powder. The desired shape of a tile is produced by bonding the glass powder and making a compact. The compacted mass is sintered at a temperature below the melting point of glass, resulting in the formation of the glass mosaic tiles. He has stated that during the relevant period, Tariff Item 23-D covered "Mosaic tiles in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power". In the Explanation below the Tariff Item 23-D, it was stated that "for the purpose of this item 'Mosaic tiles' means tiles known commercially as mosaic tiles". Shri Daya Sagar has argued that glass mosaic tiles manufactured by them are commercially known as mosaic tiles and hence, these were correctly classifiable under the aforesaid Tariff Item. In support of this argument Shri Daya Sagar has, inter alia, relied on letter dated 14-2-1984 from British Ceramic Research Association Limited (copy placed as Annexure-III to the Appeal Memorandum, page 29 of the paper book) in which it has been stated that individual pieces are mosaic tiles or tesserae. He has also drawn our attention to pages 14, 20, 21, 54 and 59 of the book titled "83-'84 Ceramic Tile from Japan", photo copies of which are placed at pages 31, 32, 39, 43 and 44 of the paper book filed by the appellants, to show that single colour tiles and individual units of tiles are also called "mosaic tiles". Specifically drawing our attention to pages 54 and 59 of the aforesaid book, (Photo copies placed at pages 43 and 44 of the paper book), Shri Daya Sagar has stated that these pages of the authentic book clearly show that both unicolour and designed tiles are "mosaic tiles". To become mosaic tile design is not necessary. He has further argued that in the Central Excise Tariff Guide compiled by the Directorate of Publications, Customs and Excise, an extract of which has been placed as Annexure V(a) to the Appeal Memorandum (page 33 of the paper book), Ter-rage tiles are known as Venetian Mosaic has been classified as mosaic tiles under Tariff Item 23-D of the Central Excise Tariff. Shri Daya Sagar has emphasised that glass tiles manufactured by the appellants are known as "mosaic tiles" in the common parlance and are available for purchase

and sale in the shops of building materials and not in the shops of glass and glasswares. Apart from the explanation given below Item 23-D itself, there is a judgment of the Supreme Court in the case of Atul Glass Industries Private Limited etc.

v. Collector of Central Excise, reported in 1986 (25) ELT 473 (S.C.), in which it was held that common parlance test should be applied for the purpose of classification in the absence of a definition. Applying the common parlance test, the Hon'ble Supreme Court held that glass mirror would not be classified as glass and glassware under Item 23-A of the Central Excise Tariff. In the present case also, there is no definition of mosaic tiles except the Explanation below Tariff Item 23-D which says that mosaic tiles are those which are commercially known as mosaic tiles.

3. Shri Daya Sagar has argued that appellants' case is squarely covered by the earlier decision of this Tribunal in the case of Empire Industries Limited, Bombay v. Collector of Central Excise, Bombay reported in 1985 (19) ELT 572. In the said case, the appellants M/s.

Empire Industries Limited manufactured glass tiles. The question arose whether those were classifiable as glass and glassware under Item 23-A of the Central Excise Tariff. Following the trade parlance that those glass tiles were known in the Trade as building materials and were not available with the dealers in glassware, the Tribunal held that glass tiles were not classifiable as glass or glassware under Item 23-A of the Tariff. Shri Daya Sagar has also relied on Bombay High Court decision reported in 1981 ELT 147 (Bom.) in the case of Techni-Glass Limited v. Union of India and Ors. in which it was held: "Since the product cell-O-Therm is made from broken glass which is a special type of glass, it is a product made from glass and not an article made of glass. Consequently, it cannot be considered as 'glass and glassware' falling under Item 23A of the Central Excise Tariff." 4. The disputed product is manufactured by the appellants from glass powder. The Assistant Collector as well as the Collector (Appeals) have held the view that uni-colour tiles manufactured by the appellants cannot be classified as mosaic tiles. According to them those uni-colour tiles become mosaic tiles when those are set

in a definite pattern according to design. From pages 54 and 59 of the book "83-'84 Ceramic Tile from Japan", we observe that both uni-colourtiles as well as design tiles have been described as "mosaic tiles". It is not the case of the Department that this book is not authentic on the subject.

We are, therefore, not convinced by the reasoning followed by the lower authorities that uni-colour single unit tiles are not mosaic tiles.

5. The learned Consultant for the appellants has argued that these "glass mosaic tiles" are used as building materials and not as glassware. These are available with the dealers of building materials and not with those dealing in glass and glassware. The explanation below Tariff Item 23-D stated that "For the purpose of this Tariff Item - Mosaic tiles means tiles known commercially as mosaic tiles". The appellants have produced evidence to establish the trade parlance that these glass tiles manufactured by them are considered as mosaic tiles in the common parlance. The learned S.D.R. for the Revenue has not produced any material to rebut the contention of the appellants. The learned S.D.R. has very fairly conceded that the appellants' case is fully covered by the decision of this Tribunal reported in 1984 ECR 2437 and also by Bombay High Court decision reported in 1981 ELT147 (Bom.), which have been relied on by the learned Consultant for the appellants.

6. In the light of the above discussions, we do not find any justifiable reason for taking a view different from that already taken by the Tribunal In the case of Empire Industries Limited (Supra). We, accordingly, hold that the glass tiles manufactured by the appellants were not classifiable under Central Excise Tariff Item 23-A as glass and glassware, but the same were correctly classifiable under Tariff Item 23-D as mosaic tiles. In the result, we set aside the impugned order and allow this appeal.

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