

**Sheth Developers Pvt. Ltd. Vs. Commissioner of Customs (import)**

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

**Decided On :** Oct-24-2007

**Reported in :** (2008)(124)ECC24

**Judge :** M Ravindran, S T A.K.

**Appellant :** Sheth Developers Pvt. Ltd.

**Respondent :** Commissioner of Customs (import)

**Judgement :**

1. This appeal is directed against order-in-appeal No.470/2006/MCH/DC/Gr.III 06 dt. 5.10.06.

2. The issue pertains to collection of Anti-dumping duty on vitrified/porcelain tiles during the period 2.11.2002 to 30.04.2003.

Provisional of Anti-dumping duty was levied on vitrified/porcelain tiles by Notification No. 50/2002-Cus. and subsequently definitive Anti-dumping duty was imposed by Notification No. 73/2003-Cus dt.

1.5.2003. During the period 2.11.2002 to 30.4.2003, the appellants imported consignments of vitrified/porcelain tiles and no Anti-dumping duty was levied on them in provisional assessment of Bills of Entry.

Subsequently, the said provisional assessments were confirmed and Anti-dumping duty was sought to be recovered from the appellant. The appellant disputed the

imposition of Anti-dumping duty during the interregnum period. The lower authorities confirmed demand of the Anti-dumping duty during the relevant period.

3. The Ld Advocate appearing on behalf of the appellant submits that the issue is now squarely covered in their favour by the judgment and order of the Co-ordinate Bench in appeal No. C/2/07 vide order No.A/412-419/WZB/2007/CSTB/C-I dt. 18.5.2007. He submits that the Division Bench of the Tribunal had gone into in detail of the levy of Anti-dumping duty and held that provisional assessment for imposition of Anti-dumping duty cannot be borrowed and imposed. It is his submission that the Anti-dumping duty during the interregnum period is not imposable in view of the said judgment.

4. Ld. SDR on the other hand submits that the issue is now squarely covered against the appellant by the decision of the Tribunal in the case of Nitco Tiles Ltd. v. Designated Authority as reported at 2006 (72) 732 (CESTAT-Del.) and Bansilal Leisure Perks Ltd. v. CC, Kolkata 2007 (80) RLT 297 (CESTAT-Del.).

5. Considered the submissions made at length by both sides and perused the records. The issue is regarding the imposition of Anti-dumping duty during the interregnum period (sic) after expiry of provisional Anti-dumping duty and before imposition of definitive Anti-dumping duty, was gone into detail by the Three Member Bench of the Tribunal in the case of Nitco Tiles Ltd. v. Designated Authority and held that during the interregnum period the Anti-dumping duty is liable to be paid by the importers. It is seen from the order of the Division Bench in the case of Harsh International and Ors. Vide order No.A/412-419/WZB/2007 dt. 18.5.2007, the Hon'ble Bench has held as under: No Anti-dumping duty can be levied on merits, made during the interregnum period between the expiry of provisional levy and the levy of final Anti-dumping duty under Rule 21 of the Anti-dumping Rules.

While the Division Bench in the case of Bansilal Leisure Parks Ltd. (Supra) held as under; Perusal of the aforesaid judgments shows that the view taken on the subject by the three Member Anti-dumping Bench of this Tribunal is in favour of the Revenue. That view is binding on the other benches on this Tribunal.

It is noticed that on the issue of imposition of Anti-dumping duty during the interregnum period, there are conflicting decisions subsequent to the decision of the Tribunal in the case of Nitco Tiles Ltd. (Supra).

6. As such the Registry is directed to place this file before the Hon'ble President to constitute the Larger Bench to consider "whether the view taken by the Division Bench in the case of Harsh International is correct or the view taken by the Bench in the case of Bansilal Leisure Parks Ltd as to levy, imposition and collection of anti-dumping duty during the interregnum period".

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