

Cce Vs. Encore Grc Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Ahmedabad

Decided On : Jan-08-2008

Reported in : (2008)(126)ECC65

Judge : A Wadhwa, V T M.

Appellant : Cce

Respondent : Encore Grc Pvt. Ltd.

Judgement :

1. The dispute in the present appeals of the Revenue is as regards the classification of the respondent's product viz. Panel, Cornice, Arch, Column, Ceiling, Bracket, etc. Both sides agreed that the goods fall under Chapter 68 being articles of Stone materials, Cement, asbestos, mica or similar materials, etc. The dispute is between two sub-headings. Whereas the Commissioner (Appeals) has upheld the assessee's claim of classification of the goods under heading 6807.20, Revenue's contention is that the same are properly classifiable under heading 6807.90 as 'others'. Heading 6807.20 covers - "Blocks, Slabs, Concrete Beams and Stairs of a kind used in pre-fabricated building of heading 94.06". The Revenue's contention is that the appellant's goods are not essential parts of any building's structure but are ornamental parts and as such would not be covered by the description 'blocks, slabs, beams, etc.'.

2. The Commissioner (Appeals) while accepting the assessee's stand has observed as under: 5. It is important to understand the character and design of the

disputed items and the reasons of the adjudicating authority not agreeing to the proposed classification. The appellants have contended that panel' is a concrete member, usually precast, rectangular in shape and relatively thin with respect to other dimensions IS 2.126, "Cornice" is a horizontal molded projection that crowns or completes a building or a wall, upper most part of any entablature. "Arch" is a structure, especially one of masonry, forming the curved, pointed or flat upper edge of an open space and supporting the weight above it, as in a bridge or doorway, a structure such as a free standing monument, shape like an "U".

"Column" is a compression member, the effective length of which exceeds 12 times its least radius of gyration (IS 2.20). "Ceiling" is the surface of the room. "Bracket" is an overhanging member projecting from a wall or other body to support weight outside the wall, or similar piece to strengthen an angle (IS 2.17). "Bracket beam" is an architectural member, plain or ornamental, projecting from a wall or pier, to support weight falling out side of the same.

3. As such, it is seen that the disputed items are part and parcel of the building and are different names of blocks, slabs etc. which can be used in a pre-fabricated building. In fact, it is seen that the Adjudicating Authority has himself agreed with the contention of the assessee but has not accepted their claim under heading 6807.20 on the ground that there is no evidence to show that Cornice, panel, arch, etc. are known in the trade as block or slab etc. The Commissioner (Appeals) has taken into consideration the certificates issued by M/s.

Bhagwati Associates Pvt. Ltd., Consulting Engineers & Architects, certifying that cornices, column and capitals, panels, ceilings, arches, chajjas, etc. are architectural identification of a building and the same are different names given to the various products depending upon their location and purpose. It has been further clarified by him that in structural terminology, parts of building are categorized in four parts, beam, slab, block and stairs, hence, elements like cornices, lintels, arches are covered under beam and structural elements like foundations, columns are covered by blocks, the panels, chajjas, pediments are considered under slab. Another renowned Architect Hafeez Contractor has vide his certificate dt. 15/1/2002 confirmed that items like panels, chajjas, columns,

cornices are architectural names of slabs, blocks and beams, the architectural names are being used to identify the location of that particular element. As such, he has held that the goods are properly classifiable under heading 6807.20. We fully agree with the above finding of Commissioner (Appeals), Revenue has not produced any evidence to rebut the above finding and the certificates given by renowned architects.

4. We further note that the description in the tariff entry is broad and would cover in its ambit goods of similar kind. Merely because the goods in question are being given different names depending upon their locations and purpose, it cannot be said that they are not goods to be used in pre-fabricated buildings and are ornamental in character. In fact, as a common man, we all know that cornices, column, ceilings and arches are part and parcel of pre-fabricated buildings and form the very basis of the building and cannot be said to be of ornamental character. Merely because the shape of the product is different than the ordinary blocks and slabs in the sense that they may not be square or rectangular, the same cannot be held to be a criteria to move out of heading 6807.20. Support can be drawn from Notification No. 64/88 and 8/96, which provide concessional rate of duty to the goods falling under 68.07 described as- 'blocks, slabs, lintels, concrete beam and stairs constituting intermediates and components of pre-fabricated buildings falling under heading 94.06. As such it can be safely concluded that the various products used in the building would be covered by the description of the items against heading 6807.20.

5. We further find favour with the following observations made by Commissioner (Appeals): 10. From 1.3.1997, the notification was withdrawn and it was made part of the Central Excise Tariff. The tariff description for chapter sub heading 6807.20 read as "blocks, slabs, concrete beams and stairs of a kind used in prefabricated buildings of heading No. 94.06". Therefore, while the meaning of the description in notification giving benefit of concessional rate of duty and the present tariff has not changed, the scope of coverage has been widened under the present chapter heading by using the words 'of a kind used in' instead of 'constituting intermediates and components of. The items to be covered under this entry should not necessarily have to be in the form of blocks, slabs, concrete beams and stairs, but

the items which are akin to these description are also covered under this entry, if these are used in pre-fabricated buildings of heading No. 94.06. For the use in pre-fabricated buildings of heading No. 94.06, there is no dispute in the impugned order. In such a situation where the material words are capable of bearing two or more constructions, the most firmly established rule for construction of such words is the rule laid down in Hayden's case.

The Hon'ble Supreme Court in the case of CCE, Bangalore v. Tetragon Chemie P. Ltd. of words 'of a kind used in'. The Hon'ble Supreme Court negated the view taken by the Commissioner in that matter that the animal feed supplement would only be classified under entry 2302 if these are directly used as such for animals feeding and the Hon'ble Supreme Court upheld the view of CEGAT that animal feed supplements were rightly included in tariff item 2302 being preparation of a kind used in animal feeding including dogs and cats food. The ratio of this case is applicable to the present case, in as much as, the items in dispute are of a kind of blocks, slabs, concrete beams, etc. and if one looks at the policy of legislature, one would find that earlier these items carried concessional rate of duty and from 1.3.1997 onwards the items have been covered in the tariff itself by providing duty at a lower percentage than normal rate of duty. I do not find any basis to sustain the impugned order.

6. In view of the above, we find no merit in the Revenue's appeal and reject the same.

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