Collector of Central Excise Vs. Ceramic (India) Limited

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-19-1989

Reported in : (1989)(21)LC289Tri(Delhi)

Judge : M T D.C., J T P.C., S Maruthi

Appellant : Collector of Central Excise

Respondent : Ceramic (India) Limited

Judgement :

1. We have heard Shri Kohli and Smt. Zutshi. Shri Kohli has argued that M/s. Ceramic (India) Limited (hereinafter referred as the assessee) manufacture Glazed tiles on which duty is being paid. There is no dispute about this product. In the course of manufacture of Glazed tiles they get Clay tiles as an intermediate product, the dutiability of which is in dispute. The Assistant Collector of Central Excise, Jaipur has classified the Clay tiles under Tariff Heading 6905.00 for the purpose of Central Excise duty, whereas the Collector (Appeals) has classified the goods under Tariff Heading 6901.00. Shri Kohli has argued that the Clay tiles are neither unglazed tiles nor glazed tiles; they are not marketable and not excisable at all. They took up the matter with the Central Board of Excise and Customs, New Delhi, who, vide their circular No. 22/88 (F. No. 133/1/88-CX. 4) dated 17.10.1988, a copy of which is placed at page 98 of the paper-book filed by the assessee, have clarified that unvitrified porous unglazed biscuit tiles obtained during the manufacture of glazed tiles are not excisable goods and they are not required to be subjected to duty. He has also stated that the Calcutta Collectorate of Central

Excise has also issued a trade notice No. 272/(CH-69)-2/CE/Cal-II/88 dated 16.11.1988, which is published in 1989 (Volume 20) ECR Page 5C to the same effect. Shri Kohli has, therefore, argued that in view of the circular of the Central Board of Excise and Customs, New Delhi (supra), their contention before the lower authorities is correct and the appeals filed by the, assessee should be allowed and the appeals of the Collector of Central Excise, Jaipur may be rejected 2. Smt. Zutshi appearing for the Collector of Central Excise, Jaipur has slated that the Board's circular No. 22/88 dated 17.10.1988 is applicable to present case but she reiterates the reasons recorded in the Assistant Collector's and Collector (Appeals)' orders.

3. We have considered the records placed before us and the arguments of both sides. The orders of the lower authorities have not discussed whether clay tiles of the assessee herein are unvitrified porous unglazed tiles or not. The authorities below did not have the occasion to consider the Board's circular dt. 17.10.1988. The assessees' product is required to be considered with reference to the clarification given in the aforesaid circular order. As the full details about the nature and properties of the goods are not available before us, the matters are remanded back to the Assistant Collector of Customs and Central Excise Division, Jaipur for de-novo examination of the matter with reference to the Board's circular dated 17.10.1988, if on re-examination, the Assistant Collector of Central Excise finds that the assessee's clay tiles were not chargeable to duty in view of the Board's circular, he should grant consequential refund of duty to the assessee within a period of two months from the date of receipt of this order, 4. The Misc. Application was filed by the assessee for expediting their refund. In view of our present order as above, the Misc. Application becomes infructous. Accordingly, the same is dismissed.