

CASE NO.:
Appeal (civil) 5799 of 2002

PETITIONER:
Orient Ceramics & Inds. Ltd

RESPONDENT:
Commissioner of Customs, New Delhi

DATE OF JUDGMENT: 29/04/2008

BENCH:
ASHOK BHAN & J.M. PANCHAL

JUDGMENT:
J U D G M E N T
Reportable

CIVIL APPEAL NO. 5799 OF 2002

BHAN, J.

1. This Appeal has been filed u/s. 35L(b) of the Central Excise Act, 1944 (hereinafter referred to as the 'Act') against the Final Order No. 126/2002-D dated 08.05.2002 in Appeal No. C/411/2001-D passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as 'Tribunal') rejecting the appeal filed by the appellants.

2. Appellants imported two consignments of unglazed porcelain tiles, as per appellants, vide Bills of Entry No. 113197 dated 24.10.2000 and No. 113056 dated 23.10.2000. In these two Bills of Entry, the appellants claimed classification of the tiles under sub-heading 6907.90 of the Customs Tariff Schedule. Since goods falling under sub-heading 6907.90 were freely importable without any license, appellants sought clearance of the same on payment of appropriate customs duty in terms of para 5.1 of the Exim Policy 1997-2002. The Bill of Entry was assessed as per declaration made by the appellants. After the payment of duty so assessed, the Bill of Entry was presented in the import shed for physical examination where the goods were examined in the presence of the appellant's representative. On examination, it appeared that the goods were glazed tiles. Such tiles were classifiable under heading 6908.90 of the Customs Tariff Schedule and being restricted for importation as per classification, could not be imported without proper license. The appellants requested for the provisional release of the goods against the P.D. test bond pending finalization as per test report from Central Revenue Control Laboratory (hereinafter referred to as the "CRCL"). The request of the appellants was accepted and the goods were released to them provisionally.

3. The representative samples of the goods were drawn and sealed in their presence and sent to CRCL for test. The test report revealed that the goods had characteristics of glazed tiles. Show cause notice was accordingly issued to the appellants for the confiscation of the goods and for imposition of penalty on them. The appellants, however, contested the correctness of that

notice and also submitted manufacturing process of the unglazed tiles. It was also requested by the appellants that the goods may be sent to the Central Glass and Ceramics Research Institute, Calcutta for test. The request made by the appellants for sending the goods to Central Glass and Ceramics Research Institute, Calcutta was rejected. After considering the material on record, the Commissioner of Customs, held the goods to be porcelain glazed tiles and ordered confiscation of the same having been imported without license and also imposed penalty of Rs. 10,00,000/- on the appellants.

4. Aggrieved against the order passed by the Commissioner of Customs, the appellants filed appeals before the Tribunal which have been dismissed by the impugned order.

5. The point involved in the present appeal relates to the classification of goods in question under Indian Trade Classification (Harmonized System) [ITC (HS)] Policy. There is no dispute regarding rate of duty payable thereon. But depending on the classification, the goods will either fall under restricted list or free list of import. As per the appellants, the imported goods were unglazed porcelain tiles classifiable under heading 6907.90 and as such, could be imported without license.

6. To substantiate this plea raised by the appellants, reliance was placed on the manufacturing process supplied to the appellants by the manufacturer and the distinction between unglazed and glazed tiles. Admittedly, the representative samples of the goods were drawn and sealed in the presence of the appellants. The samples were sent to CRCL for 2nd time for test. The CRCL again pointed out that the samples had the characteristics of glazed tiles. The second report was given by the Director of the CRCL, which was conveyed to the appellants vide letter dated 27.02.2001. The relevant portion of the CRCL report reads as under:-

"The imperviousness test and chemical resistance test on the samples, have been concluded in this laboratory as prescribed in the ASTM Methods and found to satisfy the conditions as laid down in respect of glazed tiles. The test for water absorption as laid down in the I.S. has also been conducted and found to absorb appreciable quantity of water. In view of above facts it is clear that the samples under reference are other than unglazed ceramic tiles as claimed and hence the test as per ISO as indicated in your letter may not be necessary for further confirmation in this regard."

7. The appellants in their reply to the show cause notice have brought out the distinction between unglazed and glazed tiles as under: -

"...While porcelain unglazed tiles are almost completely vitrified and would absorb no water (impermeable) glazed tiles have a porous body permeable to

water..."

8. The manufacturing process supplied by the manufacturer which was in turn given to the Customs Authorities by the appellants vide letter dated 23.12.2000 also brings out the distinction between the glazed and unglazed tiles. Even in the subsequent communication dated 30.01.2001, the same very distinction was reiterated. The relevant portion of the letter reads as under: -

"...There are clear distinctions between porcelain unglazed tiles and glazed tiles from the point of view of their nature and compositions. While porcelain unglazed tiles are almost completely vitrified and would absorb no water (impermeable), glazed tiles have a porous body permeable to water..."

9. From the reading of the report of CRCL and the distinction between the unglazed and glazed tiles pointed out by the appellants in their correspondence with the Department, it is evident that the imported goods were not unglazed but glazed which was classifiable under tariff heading 6908.90. License of import for such goods was required, as per policy, before importing which the appellants admittedly did not have. In view of the report submitted by the CRCL, which is an expert body, we are of the opinion that the tiles imported by the appellants were glazed tiles and were liable to be classified under tariff heading 6908.90. Reasons recorded by the Tribunal in affirming the order passed by the Commissioner of Customs are perfectly valid and we do not find any reason to disagree with the same.

10. Counsel for the appellants, in order to wriggle out of the restricted list of the imports, then contended that if the goods were not classifiable under tariff heading 6907.90, then the goods were classifiable under tariff item 6914.10 as per classification issued by the Director General of Foreign Trade (DGFT). In ground 'C' of the grounds of appeal, the appellant has itself admitted that the difference between the ceramics and porcelain is brought out from the technical literature from the World Book Encyclopedia, copies of which have been attached as annexure to the appeal. While ceramics are made from minerals such as clay, feldspar, silica and talc, the porcelain is made out from a mixture of ingredients like kaolin, petuntse. Kaolin is a pure white clay and petuntse is a type of felt spar found only in China. It has not been proved by the appellants that the tiles imported by it were made from the mixture of ingredients like kaoline and petuntse. His case was that tiles imported by it were unglazed ceramic tiles. Since, the material which goes into production in the ceramic tiles and porcelain tiles is different, in the absence of any material to show that the tiles manufactured by the appellants were porcelain tiles made out of kaolin and petuntse, it cannot be held that the tiles imported by the appellants were other ceramic articles falling under tariff entry 6914.10. We do not find any substance in

the plea that the goods imported by the appellants would fall under Entry 6914. Entry 6914 pertains to 'other ceramic articles' and tariff sub-heading 6914.10 deals with other ceramic articles made of 'porcelain or china'. We have come to the conclusion that the goods imported by the appellants were classifiable under tariff heading 6908.90. As the items imported by the appellants are specifically covered by tariff heading 6908.90, the same cannot be brought under the residuary clause 6914. Appellants, in their Bills of Entry, did not claim classification under heading 6914.10. They claimed the classification under tariff heading 6907.90 as unglazed tiles. It had never been their case that the goods were not tiles or that they were "other ceramic articles" referred to in the DGFT classification under sub-heading 6914.10.

11. For the reasons stated above, we do not find any merit in this appeal and dismiss the same leaving the parties to bear their own costs.