

CASE NO.:
Appeal (civil) 1489 of 2001

PETITIONER:
M/s Indcon Structural (P) Ltd

RESPONDENT:
Commissioner of Central Excise, Chennai

DATE OF JUDGMENT: 17/04/2006

BENCH:
Ashok Bhan & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T

Lokeshwar Singh Panta, J.

This Statutory Appeal is filed by M/s Indcon Structural (P) Limited under Section 35L(b) of the Central Excise Act, 1944 (hereinafter referred to as "the Act") against the Final Order No. 1557/2000 dated 14th November, 2000 of the Customs, Excise and Gold (Control) Appellate Tribunal (for short "the CEGAT"), Chennai, in appeal No. E/1554/94-D-MD, setting aside the Order dated 16th May, 1994 recorded by the Collector of Central Excise (Appeals), Madras.

The appellant-Company is engaged in manufacture of flooring cement tiles using cement, sand, blue metal and gravel along with pigment. These are in the form of tiles used for constructing the floor itself or the wall, as the case may be.

The appellant-Company filed classification list claiming the benefit of Notification No. 59/90-CE on the ground that the cement tiles in question are not floor coverings in rolls or in the form of tiles as per the description against serial No. 4 of sub-heading 6807.00 of the Table annexed with the Notification. The Superintendent of Central Excise, Range-IXA, Madras, IX Division, issued a show-cause notice dated 6th November, 1992 to the appellant-Company (hereinafter referred to as the "assessee-Company") directing it to pay the excise duty on the cement tiles as the said goods are not eligible to avail the benefit of the Exemption Notification No.59/90-CE. The assessee-Company in its reply submitted that cement tiles manufactured by them are used to construct the floor itself and it is not floor coverings in terms of the description of the goods under sub-heading 6807.00. The Assistant Collector of Central Excise, Madras, IX Division \026 the adjudicating authority, on careful examination of the records and the submissions made before it by both the parties and after taking into consideration the Section Notes/Chapter Notes of Chapters 39, 57, 59 and 68, felt it necessary to conduct an on-the-spot study since the issue for adjudication was in regard to the product classification. The adjudicating authority accordingly visited the factory premises of the assessee-Company and studied the manufacturing process of cement tiles. Finally, the adjudicating authority came to the conclusion that cement tiles manufactured by the assessee-Company are covered under sub-heading 6807.00 as such the benefit of exemption Notification No. 59/90 dated 20th March, 1994 is available to the Company.

The Revenue preferred an appeal against the said order of the adjudicating authority before the Collector (Appeals).

The First Appellate Authority confirmed the order of the adjudicating authority holding that the cement tiles manufactured by the assessee-Company are not floor coverings and the benefit of the Notification has been rightly extended to the Company.

Being aggrieved against the order of the appellate authority, the Revenue filed an appeal before the CEGAT. The Member (Technical) of the CEGAT has found no infirmity or perversity in the said order and dismissed the appeal of the Revenue, but the second Member (Judicial) has recorded separate order differing with the order of Member (Technical) and set aside the order of the appellate authority.

The matter came to be referred to the third Member for solving the difference of opinion between the Members of the Bench. The third Member (Technical) agreed with the views expressed by Member (Judicial) and accordingly the appeal filed by the Revenue was accepted and the benefit of concession of the excise duty was denied to the assessee-Company. Hence, the assessee-Company has filed this appeal before this Court challenging the correctness and validity of the order of the CEGAT.

We have heard the learned counsel for the parties on either side. Mr. V. Lakshmikumaran, the learned counsel for the assessee-Company, submitted that the assessee-Company is the manufacturer of the cement tiles, which are used as flooring in the form of floor itself and these are not floor coverings as projected by the Revenue.

Per contra, Mr. B. Dutta, the learned Additional Solicitor General appearing on behalf of the Revenue, submitted that it is not in dispute that the product of the assessee is in the form of tiles, but these tiles are used for floor coverings and as such the majority members of the CEGAT have rightly denied the benefit of exemption to the assessee-Company.

Thus, the core question involved in the present appeal is whether the cement tiles, manufactured by the assessee-Company, are used for floor coverings in the form of tiles for the purpose of assessment of the rate of excise duty under Notification No. 59/90 or the goods are exempted from payment of such duty as claimed by the assessee-Company. Notification No. 59/90-CE dated 20th March, 1990 has been issued by the Central Government in exercise of the powers conferred under sub-section (1) of Section 5A of the Central Excises and Salt Act, 1944 (1 of 1944), exempting certain goods specified in column (3) of the Table annexed thereto and under Sub-heading No. (3) of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) specified in column (2) of the said Table, from so much of that portion of the duty of excise leviable thereon which is specified in the said Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table. Table of the Notification, relevant for the purpose of deciding the present appeal, reads as under:-

Table
Sl.
No.
Sub
Heading
No.
Description of goods
Rate of
Duty
1.
XXX
XXXX
XXX

2.
XXX
XXXX
XXX
3.
XXX
XXXX
XXX
4.
6807.00
All goods excluding the
following, namely:-
(i) Floor coverings in rolls
or in the form of tiles
(ii) XXXX
15%
ad valorem

It is by now well-settled that the words and expressions in taxing Statutes, unless defined in the Statute itself, have to be construed in the sense in which the persons dealing with them understand, i.e., as per the trade understanding, commercial and technical practice and usage. We find that the expressions "floor coverings in rolls or in the form of tiles" are not defined in the Central Excises and Salt Act, 1944 or in the Central Excise Tariff Act or in the Exemption Notification No. 59/90, but it has acquired a definite trade and business understanding. The record shows that the adjudicating authority in its order has recorded categorical finding that in support of the claim, the assessee-Company has produced on record certificates of the well-known Architects or Engineers and Town Planners, Interior Design Engineers and Consultants and users to the effect that the cement tiles manufactured by the assessee-Company are totally different from floor coverings. Some samples pertaining to floor coverings and other products, including cement tiles, were produced by the assessee-Company as material evidence for comparative analysis before the adjudicating authority at the time of inspection of the factory premises. The adjudicating authority on such inspection had studied the process of manufacture of cement tiles and found that cement, sand, blue metal, gravel were mixed in pre-determined proportion along with pigments and then the mixture was poured into moulds, compacted and allowed to set automatically through vibration table. The adjudicating authority further noticed that the cement tiles were demoulded, cured, surface treated and are marketed in the brand name of Eurocon tiles. These tiles are capable of using for wall application of both external/internal wall tiling, which form an integral part of the wall on which they are cemented. The adjudicating authority also studied the product in question with reference to its characteristics, temperature resistance, structural properties and durability. The authority has also perused Section Notes/Chapter Notes of Chapters 39, 57, 59 and 68 dealing with the goods floor coverings and flooring materials. On going through the expressions given for the products, floor coverings/wall coverings under Chapter Headings 39, 57 and 59, which are made out of plastics, coir/textiles, the adjudicating authority has observed that floor coverings have got a distinct identity from the floor materials as the floor covering materials are totally different products which are commonly used as an additional coverage to an existing floor/wall, only for the purpose of beautification and decoration. The authority also observed that floor coverings are quite replaceable in nature since they are mechanically placed on the floor and could be

reusable also, whereas the tiles such as mosaic/granite/cement tiles which are basically embedded to the floor is normally on lifetime basis and further that such tiles once laid on the floor are almost impossible to remove without breaking or causing damage to the floor itself. The major differences that exist between the floor materials and floor covering materials along with specifications maintained by ISI No. 1237/1980 for cement tiles and ISI No. 11206/1984 and ISI No. 809/92 for other floor covering materials would go to show that basically the specifications so maintained by ISI for cement tiles and for other floor covering materials are not akin in nature. On close examination of the entire material on record, the adjudicating authority has come to the definite conclusion that the cement tiles manufactured by the assessee-company are in no way akin to floor covering materials and these are covered within the nomenclature of 'floor tiles' and, therefore, the assessee-Company is entitled to the benefit of Exemption Notification No. 59/90.

The appellate authority as noticed earlier has confirmed the order of the adjudicating authority and held that the cement tiles in question are not 'floor coverings' and the benefit of the notification has been rightly extended to the assessee-Company. The Member (Technical) of the CEGAT has also come to the conclusion that the cement tiles in question are flooring materials and become constituent part of the floor or wall or stairways. These tiles cannot be termed as 'floor coverings'. In support of his findings, the Member (Technical) has taken into consideration notes of the IS specifications and various certificates issued by the qualified Architects, Engineers, Valuers and Interior-Designers dealing in the said goods. The other two Members of the CEGAT, in our view, have failed to consider the nomenclature of the words and expressions "floor coverings in rolls or in the form of tiles" as used under sub-headings 6807.00 in the description of goods specified in Table annexed with the Exemption Notification. The majority Members in recording different view than the one taken by the adjudicating authority, the first appellate authority and the Member (Technical), CEGAT, have only observed that no restricted meaning could be given to the expression "floor coverings" as to include only those items which could be just separate or placed on the floor and to put the items that are affixed to the floor to cover the same out of its purview. The second Member (Technical) in his separate order, supporting the order of the Member (Judicial), has mainly relied upon an earlier decision in *Niraj Cement Structurals v. Collector of Central Excise, Mumbai* [1998 (101) E.L.T. 284 (Tribunal)]. We have gone through the said decision of the Tribunal but, in our considered view, the same is of no assistance or help to the Revenue in peculiar facts and circumstances of the present case. In that case, the assessee was manufacturer of tiles covered by the same Notification No.59/90-CE and description of the goods were also under the same sub-heading. In that case the product manufactured by the Company was used as 'floor coverings' inasmuch as the tiles were placed on the floor covering the cable running underneath the floor. Thus, the findings of the Tribunal in the *Niraj Cement* case (*supra*) cannot be uniformly applied to the products in question manufactured by the assessee-Company.

In the facts and circumstances narrated hereinabove, the noted contentions of the learned Additional Solicitor General do not merit acceptance. The objection of the Revenue that the cement tiles manufactured by the assessee-Company are covered under the expression "floor coverings in rolls or in the form of tiles" is misconceived.

We, therefore, hold that as per the trade understanding and usages, cement tiles, the subject-matter of the present case, is a form of floor itself and, therefore, entitled to the benefit of Exemption Notification No. 59/1990.

Accordingly, we allow this appeal and set aside the orders of the majority Members of the CEGAT. Consequently, the order of the Member (T) maintaining the order of appellate authority which, in turn, has confirmed the order of the adjudicating authority are all held as reasonable and sustainable. The parties are left to bear their own costs.

JUDIS