

(2015) 03 SC CK 0126

In the Supreme Court Of India

Case No : Civil Appeal No. 8330 of 2003 with C.A. No. 1393 of 2009.

Commissioner of Central Excise, Vadodara - Appellant @HASH Inarco Ltd.

Date of Decision : 16-03-2015

Acts Referred:

Citation : (2015) 318 ELT 604 : (2015) 14 SCC 548

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri A.K. Sanghi, Sr. Advocate, Ms. Nisha Bagchi, P.K. Mullick, Ms. S. Srivastava, Ms. Pooja Sharma, B. Krishna Prasad, Mrs. Anil Katiyar, Advocates, for the Appellant; S/Shri Devan Parekh, Sr. Advocate, Ravinder Narain, Ajay Aggarwal, Ms. Mallika Joshi, Ms. Shravani Shekhar, Ms. Ruchika, Rajan Narain, R.N. Karanjawala, Ms. Nandini Gore, Abhishek Roy, Ms. D. Sehgal and Mrs. Manik Karanjawala, Advocates, for the Respondent

Final Decision : Disposed Of

Judgement

1. The respondent herein is the manufacturer of blended marble vinyl flooring which comes under the Chapter 68 of the Schedule of Central Excise Tariff, 1985 Act under sub-heading No. 6807. It was provisionally approved by the Assistant Commissioner under Rule 19B of Central Excise Rules, 1944.

2. However, thereafter two show cause notices were issued by the Assistant Commissioner. One show cause notice was for the period March, 1995 to July, 1995 and other for the period August, 1995 to November, 1995. In these show cause notices it was alleged that upon chemical test conducted on the product, the product is to be classified under Heading 3918.10. On this basis differential amounts of Excise duty in the sum of Rs. 1,54,31,679.55 and Rs. 13,48,149.00 respectively were demanded. The respondent contested the aforesaid show cause notices and reiterated its position that the goods were rightly classified under Chapter 68 sub-heading 6807. The Order-in-Original passed by the Assistant Commissioner on 27-3-1996 did not accept the aforesaid contention of the respondent and confirmed the demand raised in the show cause notices by classifying the product under sub-heading 3918.10.

3. The respondent preferred appeal against that order before the Commissioner (Appeals) and succeeded in as much the appeal of the respondent was allowed by the order dated 6-2-1997 and the order of the Assistant Commissioner was set aside.

4. Now, it was the turn of the Department to feel aggrieved and file the appeal before the CEGAT. The CEGAT has, however, vide impugned judgment dated 17-6-2003 [2003 (156) E.L.T. 92 (Tri.-Mum.)] affirmed the order of the Commissioner (Appeals) and dismissed the appeal of the Department. This is how the present appeal is preferred by the Department questioning the validity of the orders passed by the CEGAT.

5. We may mention at the outset that the Heading 6807 of the Central Excise tariff pertains to articles of stone, plaster, cement, asbestos, mica or similar material not elsewhere specified or included. On the other hand, Heading 3918.10 pertains to floor covering of plastics whether or not self-adhesive. Case of the Department is that report on the basis of these goods indicated them to contain polymers of vinyl chloride, resin, plaster, etc. and on the grounds that the goods are generally known as plastic tiles in the market and therefore, they are classifiable under Heading 3918.10.

6. A perusal of the order of the Assistant Commissioner which was extensively referred to by Mr. Sanghi, learned Senior Counsel appearing for the Department, would show that the Assistant Commissioner though took note of the judgment in the case of *Bhor Industries Ltd. v. CCE* - 1980 (6) E.L.T. 752, he was of the opinion that the "predominance physically of materials" test laid down therein would not be applicable any more in view of the change in the tariff rules. To this extent Assistant Commissioner was right and even CEGAT has accepted this position. However, thereafter, as the reading of the order suggests, the Assistant Commissioner noted that the floor tiles manufactured by the respondent consist of a thoroughly branded composition of thermo plastic binder asbestos fiber and filter & pigments. The order of the Assistant Commissioner also shows that in the test conducted by the Department the percentage of plastic (PVC) which was found was as low as 13.3% while the content of limestone was as high as 84.9%. It has also come on record that the plastic was primarily used as a binder. Even after noticing these facts, the only consideration which weighed with the Assistant Commissioner was that the main characteristics of the material was plastic. In our view it is here where the Assistant Commissioner fell in error, which error is rightly corrected by the Commissioner (Appeals).

7. The Commissioner (Appeals) noted the relevant facts and corrected the error committed by the Assistant Commissioner which is apparent from following portion of the orders of the Commissioner (Appeals).

"Considering the composition of tiles in the present case before me and that of *Bhor Industries Ltd.* discussed by the Hon"ble High Court, one cannot ignore the similarities existing in both the cases. The admitted fact is that the plastic

material constitutes less than 15% whereas the major component is limestone and cement falling under Chapter 66 which predominates over plastic materials in the tiles. This has been confirmed by the test report also and not disputed by the Assistant Commissioner in his impugned order. It is also a fact that the plastic materials are used as binding material. Therefore, the conclusion arrived at by the Hon''ble Gujarat High Court in case of M/s. Bhor Industries Ltd. would stand good in case of the appellants also. The conclusion that the essential character of the tiles is derived from the limestone and cement content cannot be brushed aside unless the facts in the appellants case is shown and proved to differ from the cited case. This is where the Assistant Commissioner has failed. He has in some instances reproduced the basis for holding the product under ch. 39 verbatim from the order of the Assistant Commissioner in case of Bhor Industries Ltd. which was set aside by the Commissioner C.Ex (Appeals), and also from the Affidavit filed by the department in the Hon''ble Supreme Court against the order of the Hon''ble Gujarat High Court in case of the same appellants. The only supports the view that the appellants case is similar to that of Bhor industries. Thus the essential character of the tiles is imparted by the materials falling under Chapter 68 and not by plastic materials falling under Chapter 39.

The view is further reinforced by the inspection of the samples produced by the appellants. It is seen that whereas the vinyl asbestos tile was prone to breakage with slight bending, some more effort is to be made on the PVC tiles to break, because of its flexibility imparted by plastic materials. The lack of flexibility in the tiles manufactured by the appellants is pronounced whereas the same is clearly visible in the PVC tiles."

8. From the order of the CEGAT it becomes clear that the CEGAT also accepted that the test in Bhor Industries was not be applicable any longer. Therefore, the CEGAT resorted to note 3(b) of General Interpretation Rules which is applied to the facts of the present case. Even Mr. A.K. Sanghi, learned Senior Counsel for the Department, does not dispute this position and emphasizes that it is General Interpretation Rules which are applicable. We find that as per Note 3(b) of the General Interpretation Rules, the test is essential character of the product and in the facts of the present case it is to be examined as to whether the said essential character is that of plastic or the limestone.

9. Though no technical material was placed by either side before the Courts below, the CEGA.T noted that use of limestone to the extent of 84.10% and use of plastic only as a binder clearly indicated that characteristic of lime stone that confers upon the material its use, in the present case. We may also remark that the Department could not produce any evidence in support of its contention that the goods are known as plastic tiles in the market and therefore this ground was rightly rejected. It may be reiterated that the onus lies on the Department to show that the goods were to be classified under sub-heading 3918.10, which onus the Department has failed to discharge.

10. We, thus, do not find any merit in the appeals which are accordingly dismissed.