CASE NO.:
Appeal (civil) 2728 of 2001

PETITIONER:
COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS, MUMBAI

RESPONDENT:
BELL GRANITO CERAMICA LTD.

DATE OF JUDGMENT: 09/05/2006

BENCH:
ASHOK BHAN & MARKANDEY KATJU

JUDGMENT:
JUDGMENT

MARKANDEY KATJU, J. :

This is an appeal filed by the Commissioner of Central Excise & Customs, Vadodra under Section 35-L(b) of the Central Excise Act, 1944 against the final judgment and order dated 12th September, 2000 passed by the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT), West Zone, Mumbai.

Heard learned counsel for the parties and perused the record.

Two questions are involved in this appeal - (i) the classification of the tiles manufactured by the appellant and consequential liability of the appellant to pay differential duties on the same; and (ii) whether the notice issued demanding excise duty is barred by limitation under Section 11-A of the Central Excise Act (hereinafter referred to as 'the Act').

The respondent manufactures ceramic tiles. Some of the tiles are described as polished while others as unpolished. The classification for both the polished and unpolished tiles was claimed under heading 6901.90 of the tariff and the classification was approved by the Department. However, subsequently, the Department enquired about the classification of the tiles manufactured by the assessee and was of the opinion that since the polished tiles are glossy with a shiny surface unlike the unpolished tiles which have a dull surface, such polished and glossy tiles are classifiable under the heading 6906.10 and others classifiable under heading 6906.90 and bore a higher rate of excise duty 30% as against 25%. The Department, therefore, issued notice dated 20.10.1998 proposing to recover the differential duty on the goods cleared between 30.10.1995 and 31.8.1998. Penalty under Section 11-A was also proposed, as well as confiscation of land, building, plant etc. used in the manufacture of these goods.

In the proceeding before the Commissioner, the assessee admitted that the classification initially claimed and approved under heading 6901.90 was incorrect, and that the correct classification should be under the heading 69.05. He also, inter alia, raised the plea of the bar of limitation. However, the Commissioner, by order dated 24.5.1999 held that the tiles manufactured by the assessee are glazed tiles within the meaning covered by Chapter sub-heading 6901.10 of the Schedule to the Central Excise Tariff Act, 1985. The Commissioner held that the assessee is liable to pay duty amounting to Rs. 7,39,91,215.85 under the proviso to Section 11-A of the Act, read with Rule 9(2) of the Central Excise Rules, 1944 (hereinafter referred to as 'the Rules'). He also directed recovery of interest under Section 11AB of the Act and also imposed a penalty of Rs. 7,39,91,216 on the assessee under Section 11AC of the Act read with Rule 173Q(1) of the Rules. The Commissioner also ordered confiscation of land, building, plant and machinery used in connection with the manufacture, production, storage and removal of the goods.

Aggrieved, the assessee filed an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) which was allowed by the impugned judgment and order dated 12.9.2005. The Tribunal held both the points in dispute in favour of the assessee. It held that there was no suppression of facts and hence the extended period of limitation under the proviso to Section 11A of the Act will not apply. The Tribunal also held that tiles in question were not glazed tiles.

There is no dispute that the goods in question are classifiable under chapter heading 69 of the Central Excise Tariff Act, 1986 (for short "The Tariff Act"). However, sub-heading 69.05 is for unglazed tiles while sub-heading 69.06 is for glazed tiles. Hence, if the assessee's tiles are unglazed, they would be classifiable under heading 69.05 but if glazed, would be under heading 69.06.

Learned counsel for the Revenue contended that the tiles which have a glossy and polished look are glazed tiles. With respect, we cannot agree. In our opinion, simply because the tiles are polished or having a shiny look, they cannot become glazed tiles. The expression "glazed tiles" is used in common parlance in connection with tiles on which there is a coating of melted glass. In our opinion, there is a clear distinction between glazing and polishing. The mere fact of polishing does not lead to the conclusion that the tiles are glazed.

As observed by the Tribunal in Paragraph 22 of its order, in the manufacture of the appellant's tiles there is no coating of glaze materials applied on the surface of the body of the tiles. The appellant's tile are subjected to the process of mechanical polishing only, with the help of rollers and abrasives. On the other hand, glazing is an application of a coating of melted glass upon the ceramic body.

In our opinion, simply because the tiles in question are polished or having a shiny look, they do not become glazed tiles. Glazed tiles, as already mentioned above, are produced when a coating of melted glass is applied on the surface of the body of the tiles. In fact, glazed tiles normally are not polished at all.

The Indian Standard Glossary of Terms relating to ceramic ware, gives the following definition : "Glaze : A ceramic coating matured to glassy state on a formed ceramic article, or the materials or mixture from which the coating is made".

In The McGraw Hill Encyclopedia of Science & Technology 'Glazing' is defined as "the application of finely ground glass, or glass forming materials, or a mixture of both, to a ceramic body and heating (firing) to a temperature where the material or materials melt, forming a coating of glass on the surface of the ware".

In the book 'Industrial Ceramic' by Felix Singer and Sonja S Singer published by Oxford & IBH Publishing Co. Pvt. Ltd., it is stated: "Glazes are thin layers of glass fused on to the surface of the body; they are applied to bodies to make them impervious, mechanically stronger and resistant to scratching chemically more inert and more pleasing to the touch and eye".

It is clear that vitrification and glazing are two distinct and separate processes - the former being a process to which the ceramic body is subjected before it is made, while the latter is a process to which the said body is subjected after being made. Thus, polishing and glazing are distinct and separate processes and hence the submission of the learned counsel for the Revenue cannot be accepted. The assessee is not coating or applying substances on the tiles which it makes, and hence it's tiles cannot be termed as 'glazed tiles'. Moreover, the Tribunal has held that there was no suppression. This being a finding of fact, we cannot interfere with the same in this appeal.

In Collector of Central Excise v. Chemphar Drugs & Liniments, (1989) 40 ELT 276, the Supreme Court observed that the extended period under the proviso to sub-section 11A will apply only if something positive other than mere inaction 'or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information is required before it can be saddled with any liability under proviso. This Court further observed that whether in a particular set of facts and circumstances there was any fraud or collusion or willful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case. Where the Department had full knowledge of the facts about manufacture of the goods of the assessee, it cannot be said that there was any supperssion. We respectfully agree with this view.

Thus, we are of the opinion that on both the points involved in this case, i.e. on merits as well as limitation, the view taken by the Tribunal is correct. We hold that the proviso to Section 11A will not apply in this case, and we also hold that the assessee did not manufacture any glazed tiles.

Resultantly, there is no force in this appeal and the same is accordingly dismissed. No costs.