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KEDIA AGGLOMERATED MARBLES LTD.

v.

COLLECTOR OF CENTRAL EXCISE

JANUARY 14, 2003

B

[M.B. SHAH AND D.M. DHARMADHIKARI, JJ.]

C

*Central Excise Tariff Act, 1985—Tariff Heading 68.07—Claimant manufacturing floor tiles—Marketing in trade name of 'Marbella Agglomerated Marble' and 'Marbellam Tiles'—Claim for benefit of exemption notification—Authorities allowing the claim, however Tribunal rejecting it since product marketed in the trade name and not in the name of 'Mosaic Tile' commercially known as such—Held: Tribunal erred in rejecting the claim since words 'Mosaic Tiles' in the exemption notification are to be understood in their popular meaning—Also the claimant produced before the authorities sufficient material to show that both technically and commercially its tiles are known as 'Mosaic Tiles' which was not rebutted by the departments—Interpretation of Statutes.*

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Appellant manufactured floor tiles which are marketed under the trade name 'Marbella Agglomerated Marble' and 'Marbellam Tiles'. The product is classified under Tariff heading 68.07. Central government issued an exemption notification whereby tiles commercially known as 'Mosaic Tiles' included in Tariff heading 68.07 were exempted from payment of duty. Appellant claimed exemption from payment of duty on the ground that the tiles manufactured by them are commercially known as 'Mosaic Tiles'. Authorities accepted the claim. However, Tribunal rejected the claim for exemption. Hence the present appeal.

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Respondent contended that the product though technically could be described as 'Mosaic Tile' is not proved to be commercially known as such.

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Appellant contended that they had produced before the authorities technical information on the manufacturing process of the product and affidavits of persons in trade to demonstrate that the product is commercially known as 'Marble Mosaic Tile' which was not rebutted by respondent; and that the Tribunal was not justified in ignoring the evidence and material produced by appellant and deciding the case only on the basis of the trade name given by appellant to its products.

H

**Allowing the appeal, the Court**

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**HELD: 1.1.** Tribunal upset the well reasoned orders of lower authorities and wrongly denied the benefit of exemption notification to appellant on the sole ground that it is marketing its product in the trade name of 'Marbella Agglomerated Marbles' and 'Marbellam Tiles' and not in the name of 'Mosaic Tile'. Appellant had produced before the authorities evidence and material to show that both technically and commercially its tiles are known as 'Mosaic Tiles' or 'Marble Mosaic Tiles' which was not rebutted by the department. Appellant had explained that trade name was given to the product so marketed to distinguish it from ordinary 'Mosaic Tiles' in which there is no use of marble chips and marble stones. There was no justifiable reason for the Tribunal to reject this explanation since appellant could give typical trade name to the product to distinguish it in the market from ordinary 'Mosaic Tiles' made from stones other than stones or chips of marbles.

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[326-G; 327-G, H; 328-A, B]

**1.2.** The primary object of classifying products in fiscal statute like Central Excise Act being for raising revenue, the settled rule of interpretation is that the various headings or sub-headings in the Tariff should be understood not in strict scientific and technical sense but in their popular sense i.e. the meaning assigned to them by those trading in and using the product. The words 'Mosaic Tiles' in the exemption notification are to be understood, thus, in their popular meaning. After the words 'Mosaic Tiles', the addition of words 'tiles known commercially as 'Mosaic tiles', in the text of the exemption notification appears to be an over emphasis, with intention to assign meaning to the product in the sense in which it is understood by those dealing in and using the product.

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[328-B-D]

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*Shree Baidyanath Ayurved Bhavan Ltd. v. Collector of Central Excise, Nagpur, [1996] 9 SCC 402, relied on.*

*Shon Ceramics Pvt. Ltd. v. Collector of Central Excise, [1991] 52 ELT 608, referred to.*

G

**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 6302 of 1995.

From the Judgment and Order dated 24.2.95 of the Central Excise Customs and Gold (Control) Appellate Tribunal, New Delhi in A.No. E/2102/93-D and E/CO/519/93-D in F.C.No. 113 of 1995-D.

H

**A** A.R. Madhav Rao, Alok Yadav, Vishwanath Shukla and V. Balachandran for the Appellant.

T.L.V. Iyer, Ms. Rekha Pandey and B. Krishna Prasad for the Respondent.

**B** The Judgment of the Court was delivered by

**C** **DHARMADHIKARI J.** The appellant M/s Kedia Agglomerated Marbles Limited is engaged in manufacture of floor tells which are marketed by them in the trade name "Marbella Agglomerated Marbles" and "Marbellam Tiles." The product of the appellant is classified under tariff heading 68.07 for the purpose of excise duty under the Central Excise Tariff Act (for short 'the Act'). The above classification of the appellant's product under Tariff heading 68.07 has been confirmed by order dated 21.6.1993 passed by the Collector of Customs and Central Excise (Appeals), Ahmedabad.

**D** On the basis of the aforesaid classification of its product under Tariff heading 68.07, appellant claimed exemption from payment of duty under Notification No. 59/91-CE date 20.301990 issued by the Central Government in exercise of powers conferred by sub-section (1) of Section 5A of the Central Excise Act. Under the aforesaid exemption notification, 'mosaic tiles that is to say tiles known commercially as mosaic tiles' included in Tariff heading 68.07 are exempt from payment of duty.

**E** The appellant's case that the tiles manufactured by it are commercially known as mosaic tiles and are entitled to exemption was accepted by the Collector of Central Excise (Appeals) by order dated 21.6.93.

**F** In the appeal preferred by the Department, Central Excise and Gold (Control) Appellate Tribunal [for short 'CEGAT'], however, upset the decision of the lower authorities by holding against the appellant that since it is marketing its manufactured tiles in its different trade names and not as 'mosaic tiles', it is not entitled to the benefit of exemption notification.

**G** The only question raised in this appeal is whether the manufactured products of the appellant sold in the trade name of "Marbella Agglomerated Marble" and "Marbellam Tiles", are commercially known as "mosaic tiles" and are entitled to the benefit of exemption notification.

**H** Before considering the material produced before the Central Excise

Authorities by the appellant for claiming benefit of the exemption notification, it is necessary to examine the relevant Tariff heading and subheadings. Chapter 25 of the Tariff under Section V with heading "Mineral Products" and subheading of the said Chapter is *Salt, Sulphur, Clay and stone: plastering materials; lime and cement*, Subheading "Marble" has entries 2504.10 to 2504.90 which are all products of marble like *marbling blocks, marble in slabs and marble and tells*. The relevant entry 25.04 under sub-heading 'Marble' reads as under:

|         |  |                         |  |
|---------|--|-------------------------|--|
| "25.04  | Marble   |                         |  |
| 2504.10 | - In block   | Nil                     |  |
|         | - in slabs:  |                         |  |
| 2504.21 | In or in relation to the manufacture of which any process is ordinarily carried on with the aid of power and where the electromotive force used exceeds ten horse power  | Rs. 15 per square metre |  |
| 2504.29 | - Other  | Nil                     |  |
|         | - In tiles:  |                         |  |
| 2504.31 | In or in relation to the manufacture of which any process is ordinarily carried on with the aid of power and where the electromotive force used exceeds ten horse power. | Rs. 15 per square metre |  |
| 2504.39 | - Other  | Nil                     |  |
| 2504.90 | - Other  | 10%                     |  |

It is not disputed that the product manufactured by the appellant is neither *block of marble nor marble in tile*.

The appellant has explained the manufacturing process of its product thus:

#### MANUFACTURING PROCESS

The Marble/Dolomite lumps are procured from the mines situated at different places. They are crushed with the help of jaw-crusher and

A Hammer Mill in the factory whereby they are obtained in the form of chips. These chips are mixed either with the Cement or Resin ordinarily in the ratio of 90% Marble or Dolomits and 10% of Cement or 93% to 94% Marble or Dolomits and 6 % to 7% of Resin. The colouring material is added wherever necessary. This mixture is put in the mould and converted in the form of blocks by pressure. The block is kept for curing for 8 to 10 days. Then after the block is cut into slabs and tiles of required sizes. The cut slabs tiles are polished as per the requirement. The finished tiles/slabs are used for flooring etc. purpose as tiles.”

C It is also not in dispute that the manufactured products i.e. tiles made from marble chipping or stones have been classified by the department for the purpose of Excise duty under Chapter 68 with *Heading Articles of stone, plaster cement, asbestos, mica or similar material*. The relevant subheading under which the appellant's product is classified is 68.07 which reads as under:

D 68.07. All other articles of stone, 30% plaster, cement, Asbestos, mica or of similar materials not elsewhere specified or included-

E It is not disputed by the department that “*mosaic tile*” fall under Tariff heading 68.07 it being ‘other article of stone and cement not elsewhere specified in other headings of Chapter 68’. The dispute, therefore, is limited to the question whether the appellant's product even though falling under Tariff heading 68.07 and may be technically ‘Mosaic Tiles’ or ‘Mosaic marble tiles are *commercially known as such* to be eligible for exemption under the Notification dated 20.3.90. The relevant part of the notification with reference to Tariff heading 68.07 reads as under:

| S.No. | Sub-heading No. | Description of goods  | Rate of duty |
|-------|-----------------|---|--------------|
| 6.    | 6807.00         | Tiles, that is to Mosaic say, tiles known commercially as “mosaic tiles,” | Nil          |

H In support of its claim that the product of the appellant is commercially known as marble mosaic tile, reliance was placed on the report of the Assistant Chemical Examiner, Central Excise, Baroda, which states:

"The sample is in the form of tube of size pcm x 30c. It is composed mainly of stone pieces of different shapes and colour, calcium carbonate, colouring matter and blinding matter. Tube in the technical literature available here as Hoenic tube."

Two affidavits of those engaged in the business of purchase and sale of various building materials and third affidavit of an architect were produced before the authorities in which it is stated that both in Indian and Foreign market, tiles prepared from marble chips or stones are sold as mosaic tiles or marble mosaic tiles.

With regard to the marketing of the manufactured product by the appellant in the trade name *Marbella Agglomerated Marble* and *Marbellam Tiles* the explanation of the appellant was that it was so marketed with a different trade name to distinguish its *marble mosaic tile* from other *mosaic tile in which marble stone or chips are not used*. On the basis of the material and evidence produced by the appellant the Collector of Central Excise (Appeals), Ahmedabad in its order dated 21.6.1993 held in favour of the appellant to allow him to claim exemption from payment of duty under the aforesaid exemption notification. The relevant part of the order dated 21.6.1993 held in favour of the appellant to allow him to claim exemption from payment of duty under the aforesaid exemption notification. The relevant part of the order dated 21.6.1993 reads thus:-

"The respondents have produced three certificate from different traders who have deposed that the resin, cement tiles manufactured by the respondents are known and sold as marble mosaic tiles. One affidavit from Shri Manoj Chimanbhai Patel who is an architect and another from JM Sharma, partner of M/s Art Ganito, engaged in trading of building material and another from Shri Purushottamdas Bansal, have been produced by the appellants. All of them have deposed that the agglomerated marble tiles are known in the trade as mosaic tiles. The department has, however not produced any material to deny these assertions of the traders and professionals. It is also brought on record by the respondents as well as by the department that the chemical examiner has also opined that the tiles manufactured by the respondents are known as 'mosaic tiles.'"

The ordinary dictionary meaning of mosaic is "pattern or design with inlaid glass or stone." It is also not seriously disputed that tiles manufactured by appellants from marble chips satisfy the dictionary meaning of the word

A “mosaic.” The only dispute raised by the department is that the appellant’s product even though technically can be described as ‘*Mosaic Tile*’ is not proved to be *commercially known as such* to be eligible for claiming benefit of exemption notification which in very clear terms grants exemption from duty to mosaic tile “*which are commercially known as mosaic tiles*”.

B We have heard learned counsel appearing for the appellant and the Standing Counsel for the Excise Department. On behalf of the appellant it is contended that the appellant had produced before the authorities technical information on the manufacturing process of the product and affidavits of persons in trade to demonstrate that the product of the appellant is commercially known as Marble Mosaic Tile. The department did not produce any material or evidence in rebuttal. The tribunal, it is argued, was not justified in ignoring the evidence and material produced by the appellant and deciding the case only on the basis of the trade name given by the appellant to its products. It is pointed out that the Tribunal in *Shon Ceramics Pvt. Ltd. v. Collector of Central Excise* (1991) 52 ELT 608 held that ‘*Ceramic Venetian Mosaics*’ are classifiable under heading 23D as it then existed in the Tariff. The Tribunal accepted the case of the manufacturer in the absence of any rebuttal material or evidence of the department. The aforesaid decision of the tribunal was upheld by this Court by dismissing CA 6629/94 on 2.4.1996. The Tribunal in the aforesaid case of *Shon Ceramics* had relied on a decision in the case of *Mridul Enterprises v. Collector of Central Excise* (1988) 37 ELT 379 where the question was classification of *Glass Mosaic Tiles*. On similar ground of non-production of any rebuttal evidence by the department, ‘*Glass Mosaic Tiles*’ were held to be ‘*Mosaic Tiles*’ as understood in common parlance for classifying them under the then Tariff heading 23D and not under 23A as *glass and glassware*. The appeal of the department preferred against the judgment of the tribunal in *Mridul Enterprises* case (being CA 4224/88) was also dismissed by this court on 3.5.1995.

G The Tribunal by the impugned order by upsetting the decision of the two authorities below it, rejected the claim of the appellant for benefit of the exemption notification on the ground that the product was marketed by the appellant itself in the trade name *Marbolia Agglomerated Marbles* and *Marbellam Tiles* not as “mosaic tiles.” Therefore, they were held to be not commercially known as ‘*Mosaic Tiles*’. The relevant part of the reasoning of the Tribunal containing in paragraphs 10-11 reads as under:

H “In support of their claim that “agglomerated marble tiles” in question

have to be deemed as mosaic tiles” the respondents have relied upon the Tribunal’s decision in the case of *Mridul Enterprise* and *Shon Ceramics* (Supra). In the case of *Mridul Enterprises*, the question that arose for consideration was whether unicolour glass tiles manufactured by the appellants were classifiable as “mosaic tiles” under Item 23D of the central Excise Tariff or under item 23A of the Tariff as “glass and glassware.” In the case of *Shon Ceramics* as well the issue for consideration was whether the tiles manufactured by the appellants were ‘mosaic tiles’ falling under Item 23D of the Central Excise Tariff. It is seen that in these cases the appellants had produced evidence to establish that the product manufactured was known commercially as ‘mosaic tiles,’ whereas the department had failed to produce any material evidence to rebut it, the tribunal had held that the tiles in question were ‘mosaic tiles.’ In the instant case, as held by us the affidavits of certain persons filed by the respondents to the effect that the ‘agglomerated marble tiles’ are known in the trade as ‘mosaic tiles’ cannot be relied upon and the respondents own literature and commercial invoices also do not describe the product as ‘mosaic tiles.’ Under these circumstances, we hold that the decisions of the Tribunal relied upon by the respondents cannot be of any assistance to them.

As described by us earlier in the commercial literature brought out by the respondents and in the invoices issued by them the product in question was being described only as “*Marbella agglomerated marble*” and “*Marbellam Tiles*” and not as ‘*Mosaic Tiles*.’ Hence, it has to be held that commercially the tiles in question were not known as “mosaic tiles.” We, therefore, hold that the Collector (Appeals) finding that the disputed goods were ‘mosaic tiles’ eligible for exemption under Notification No. 59/90 dated 20.3.1990 is not sustainable.”

After hearing learned counsel appearing for the parties we find that the tribunal has clearly gone wrong in rejecting the claim of the appellant for the benefit of the exemption notification on the sole ground that it is marketing its product not in the name of mosaic the but in the trade name of *Marbella Agglomerated Marbles* and *Marbellam Tiles*. The appellant had produced before the authorities evidence and material to show that both technically and commercially its Tiles are known as “*Mosaic Tiles*” or Marble Mosaic Tiles. No negative material was produced in rebuttal by the department.

So far as the trade name given to the product is concerned-the appellant

- A had explained that it was so marketed to distinguish it from ordinary Mosaic Tiles in which there is no use of marble chips and marble stones. There was no justifiable reason for the tribunal to reject this explanation. A typical trade name to the product could be given by the appellant to distinguish it in the market from ordinary Mosaic Tiles made from stones other than stones or chips of marbles. The primary object of classifying products in fiscal statute like Central Excise act being for raising revenue, the settled rule of interpretation is that the various headings or sub-headings in the Tariff should be understood not in strict scientific and technical sense but in their popular sense i.e. the meaning assigned to them by those trading in and using the product (see *Shree Baidyanath Ayurved Bhavan Ltd. v. Collector of Central Excise, Nagpur*: [1996] 9 SCC 402 at para 3). The words “mosaic tiles” in the exemption notification are to be understood, thus, in their popular meaning. After the words “mosaic tiles” the addition of words “tiles known commercially as “mosaic tiles” in the text of the exemption notification appears to be an over emphasis, with intention to assign meaning to the product in the sense in which it is understood by those dealing in and using the product.

In our opinion, on a wholly irrelevant and unsubstantial ground the well reasoned orders of the lower authorities were upset by the Tribunal and benefit of exemption notification was wrongly denied to the appellant.

- E The appellant before the authority has produced sufficient material to demonstrate that the tiles manufactured by it with use of marble chips and crushed stones or marble are also known in the market as “mosaic tiles” like other “mosaic tiles” in which stones or articles other than marble are used.

- F Consequently, this appeal succeeds and is hereby allowed. The impugned order of the CEGAT dated 24.3.1995 is hereby set aside and the orders passed by the Assistant Collector of Central Excise dated 5.8.1991 and Collector of Central Excise (Appeals), Ahmedabad dated 21.6.1993 are restored.

- G In the circumstances there shall be no order as to costs.

N.J.

Appeal allowed.