

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
SOUTH ZONAL BENCH  
BANGALORE**

Appeal(s) Involved:

**C/633/2008-DB**

[Arising out of Order-in-Appeal No. 70/2008 dated  
29/05/2008 passed by the Commissioner of Customs,  
Bangalore]

**Commissioner of Customs  
Bangalore**

C.R. Building, Queens Road,  
P.B. No. 5400,  
Bangalore – 560 001  
Karnataka

**Appellant(s)**

**Versus**

**Tile Italia Mosaics Pvt. Ltd.**

Bramhananda Court, No.37, Lalbhag  
Road, Opposite Prerana Motors,  
Bangalore

**Respondent(s)**

**Appearance:**

Mr. Madhup Sharan, Assistant  
Commissioner (AR)

For the Appellant

None

For the Respondent

Date of Hearing: 04/12/2018

Date of Decision: 04/12/2018

**CORAM:**

**HON'BLE MR. S.S GARG, JUDICIAL MEMBER**

**HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER**

**Final Order No. 21827 / 2018**

**Per: P. ANJANI KUMAR**

This is an appeal filed by the Revenue against the Order-in-Appeal No.  
70/2008 passed by the Commissioner of Customs (Appeals) Bangalore.

2. Briefly stated the facts of the case are that the respondent has imported two consignments of "Polished Porcelain Vitrified Floor Tiles" vide Bills of Entry 114152 dated 19.01.2006 and 115854 dated 17.02.2006 claiming the origin to be from Sri Lanka. Upon investigation taken up by the Department, the Sri Lankan Authorities have clarified that M/s. Sprint Tiles Export Pvt. Ltd. (the supplier to the respondent) is importing semi-finished tiles from China; undertaking the process of sizing and polishing; the tiles are classifiable under 6907 9090; the supplier do not import raw-material; they import semi-finished tiles which have the essential character of finished tiles for the classification purpose. The Department contended that the imported goods cannot be treated as originating from Sri Lanka but rather to be treated to be originating in China. Therefore, the benefit of Notification 72/2005 is not available to the respondent and that they are however liable to pay anti-dumping duty in terms of Notification No. 73/2003 Cus. dated 01.05.2003. The Department contended that the importer has mis-declared the import of origin without proper documentary evidence as prescribed under Customs Tariff (Determination of Origin of Goods under the Bangkok Agreement) Rules, 1976. The lower authorities confirmed the show-cause notice and the case has once travelled up to CESTAT which remanded the case back to Commissioner (Appeals) vide Final Order No. 1352/2007 dated 28.11.2007. The importer contended before the original authority and Commissioner (Appeals) that what is originated in China was only rough silicone earth bricks (Vitrified) and the polished vitrified tiles which are subject to anti-dumping duty were produced in Sri Lanka by their suppliers.

The CESTAT remand order was for reconsideration of the respondent's claim for concessional rate of duty under 72/2005 dated 22.07.2005.

3. We find that the learned Commissioner (Appeals) has decided that the respondents are eligible for the benefit of Notification No. 72/2005 dated 22.07.2005 for goods falling under Heading 6907 that the goods are imported from Bangladesh, China, Korea or Sri Lanka under Bangkok Agreement from so much of that portion of the applied rate of duty of Customs as it specified under Column No. 4 of the table annexed to the Notification. The Commissioner (Appeals) has found the respondents have fulfilled the conditions stipulated for concessional rate of duty. Therefore, the Commissioner (Appeals) has set aside the Order-in-Original and has granted relief.

4. The learned DR for the Department has submitted that there is also an issue of anti-dumping duty in the case as at the relevant time there was anti-dumping duty notification on the Porcelain Tiles imported from China. However, we do not find that issue has neither been discussed in the impugned order which is before us for consideration nor the same is mentioned in the grounds of appeal filed by the Department. The only issue raised in the grounds of appeal by the Department is that the issue clarified that Sri Lankan authorities vide letter dated 22.12.2004 that the supplier do not import raw-materials for manufacture of Porcelain Tiles, but they import semi-finished tiles, which has essential character of a finished tile for classification purpose. The Department opined that this is contrary to the

condition under Rule 7(b) of Customs Tariff (D.O.F.T.A) on S.L. & I) Rules 2000 which states that the finished products obtained are to be classified in a heading at the four digit level of the HSN different from those in which all the non originating materials used in its manufacturing are classified. In simple terms, this means that the finished product and the non originating material should be classified differently at four digit level.

5. However, we find that, in the remand proceedings the Commissioner (Appeals) has observed that the benefit of Notification is available to the respondents it appears that, though not explicitly stated the Commissioner (Appeals) held that the Notification 72/2005 is very much applicable even if the goods originated in China and that the products did not reach the stage in China whereupon anti-dumping duty could be imposed. As the issue of anti-dumping has not been specifically raised in the grounds of appeal, we are inclined to discuss the issue deeming it to be closed.

6. In view of the above, the impugned order is upheld and the Revenue's appeal is set aside.

(Order was pronounced and dictated  
in Open Court on **04/12/2018**)

**(P. ANJANI KUMAR)**  
**TECHNICAL MEMBER**

**(S.S GARG)**  
**JUDICIAL MEMBER**

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