

**C.C.E. Vs. Binny Limited**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Mar-08-2000

**Reported in :** (2000)(69)ECC698

**Judge :** S T G.R., S Kang

**Appellant :** C.C.E.

**Respondent :** Binny Limited

**Judgement :**

1. Shri R.D. Negi, Ld. SDR submits that the following points of law arise out of the Tribunal's order No. A/1116/97-NB dated 28.11.97: (a) Whether the Hon'ble Tribunal was correct in holding that "Boiler House Plant" fabricated and erected by M/s. Binny Limited in the premises of M/s. Bhagpat (Baghpat) Sugar Co-operative Mills, Bhagpat (Baghpat) were not goods, therefore, not chargeable to duty, and (b) Whether Tribunal was correct in holding that the three subcontractors are manufacturers instead of M/s. Binny Limited, Madras.

2. The Ld. SDR submits that everything which is embedded to the earth is not to be treated as immovable property. He cites and relies upon the decision of the Apex Court in the case of Sirpur Paper Mills Limited 1998 (97) ELT 3. He submits that sometimes supporting structures are provided in the plant and machinery to prevent wobbling.

He submits that if something is embedded to the earth alone will not disqualify the items to be treated as goods. He submits that in the instant case, various parts of boiling house plant could be dismantled and reassembled at the site. He, therefore submits that the points of law arise and prays that the matter may be referred to the Hon'ble Allahabad High Court.

3. Shri V.S. Venugopalan, Ld. Advocate submits that the items in the instant case are boiling house plants. He submits that it is a huge structure and is not capable of being dismantled and reassembled at any other place. He submits that the Apex Court in the case of Sirpur Paper Mills was dealing with some paper making machinery which was embedded to the earth to prevent wobbling. He submits that in their case it was huge plant; that for erection of this plant it became essential to make the plant plate by plate and step by step. Thus, there was no question of boiling house plant being dismantled and re-erected at other than its original site. He submits that the ratio of Sirpur Paper Mills's case was not applicable to the facts of the present case. He, therefore submits that no point of law arises with the decision of the Tribunal it was based on the facts and pure question of facts and not the question of law. He prays that the Revenue has not been able to made out a case that a point of law arises.

4. We have heard the rival submissions. We have also perused the final order of the Tribunal. The Tribunal has examined the decision of the Apex Court in the case of Mittal Engg. Works (P) Limited which was squarely applicable to the facts of the present case in which Apex Court held that the structures embedded to the earth are immovable property and not goods for the purpose of levy and collection of Central Excise duty. We note that the examination of the facts was done by the Tribunal and after examining the facts, the Tribunal held that the items were immovable property and not the goods for the excise duty. Thus, it was only a question of facts and no points of law "arises. Other point purported to be the point of law is whether subcontractors are manufacturers or M/s. Binny Limited was the manufacturer. We note that the Tribunal examined the contract and status of the subcontractors. Subcontractors were working on their own they were not hired labour, by M/s. Binny Limited and some were themselves SSI unit registered with the Central Excise department.

Thus, the subcontractors according the contracts placed before the Tribunal and available on records showed that they were independent manufacturers. Since this position was evident from the facts of the case, therefore no point of law arises in that connection. In the circumstances, the reference petition is rejected.

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