

Beam Engineering Pvt. Ltd. Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Aug-04-2000

Reported in : (2000)(72)ECC542

Appellant : Beam Engineering Pvt. Ltd.

Respondent : Commissioner of Customs

Judgement :

1. The present appeal is against the following issue to be decided in this case whether the assessee had manufactured SS tanks at the site of M/s. Asian Paints India Ltd. The Commissioner has found as follows :- "It has been alleged that the tanks consisted of parts such as cone, shells, base plate and channel rings. The cone was the top most of the tank and it was first fabricated by placing it on cement platform meant for fixing the tank. The top cone was lifted using chain and pulleys from the platform and thereafter the shell, the cylindrical part of tank was welded to the lifted top cone. Further the other shells were welded to the lifted shell one after the other. The base plate was welded to the bottom most shell and the channel rings were also fixed and welded to give extra firmness.

From the above, it is clear that the assessee had first manufactured the parts of the tank viz. Cone, shells, base plate and channel rings. All these were welded together and then fixed to the ground on the cement platform. There is no doubt that when the various parts of the tank were welded and fixed to the ground the tank becomes an immovable property and the same cannot be dismantled and shifted to the another place. These are huge tanks having the capacity of 50 cubic

metres or more. As all these parts of tanks were welded and fixed to the ground these have become an immovable property and hence not 'goods' for the purpose of levy of excise duty. However, the question still remains to be decided as to whether complete storage tanks have come into existence before these individual parts were welded and fixed to the ground.

Inter-pretative Rules 2(a) provides that any reference in a heading to goods shall be taken to include a reference to those goods incomplete or unfinished, provided that incomplete or unfinished goods have the essential character of the complete or finished goods. It shall also be taken to include a reference to those goods complete or finished (or falling to be classified as complete or finished by virtue of this rule), removed unassembled or disassembled. The assessee had manufactured all the above parts of storage tanks at the site. All these individual parts can be moved from one place to another and therefore, these are movable properties and hence 'goods' for the purpose of levy of excise duty.

Since these parts are movable and saleable in the market, these are excisable goods falling under heading 73.09 of the Tariff, which covers reservoirs, tanks, vats and similar containers for any material of iron or steel. Since all these parts have the essential character of storage tanks and complete tanks have been removed in an unassembled condition, these are rightly classifiable and chargeable to duty under Heading 73.09.

2. Learned Advocate has relied upon the decision in the case of J.K.Synthetics Ltd. v. CCE as reported in 1999 (33) RLT 129, wherein the Tribunal had held as under :- "Chimney shell - made by cutting and bending MS Sheets, the shells are bolted with foundation and with each other to make chimney which comes into existence as immovable property - no evidence about marketability of shells adduced by the department - not marketable and not excisable. Excis-ability - Fuel tank - made by embedding steel bars into civil foundation and by welding MS sheets cut to size - not excisable as it comes into existence as immovable property - appeal allowed." Learned Advocate also relied upon the judgment rendered in the case of Nikhil Equipments Pvt. Ltd. v. CCE as reported in 1997 (95) E.L.T. 527 to contend that when storage tank as a whole has assembled and tested before

clearance from the appellants site piece by piece and has come into existence as goods but as immovable property, then Rule 2(a) of Interpretation becomes inapplicable. He has also relied on para 3 of the Board's Circular No. 17/89 dated 21.04.1989, which is reproduced herein below :- "3. To illustrate, if plates, channels etc. for water tank are taken to site and first a tank is fabricated at site which is then lifted and placed in position and permanently attached to the earth/building, then a water tank comes into existence as goods capable of being brought and sold in the market and is liable to Central Excise duty. But where such tank comes into existence by fixing piece by piece while attached to the earth, it would be regarded as part of immovable property not liable to Central Excise duty." He submitted that in the facts of their case the tank is embedded into 1.5 metres of the cement concrete platform finally in the premises of M/s. Asian Paints India Ltd. and no tank came into existence at any place prior to the fabrication at site. The question of tank having come into existence and tested therefore, does not arise and in the facts of their case there can be no excisable stainless steel have come into existence. Therefore, he submits that their appeal should be allowed.

(a) The Commissioner in the impugned order, as extracted above, has admitted that the immovable property has come into existence at the site. When the Commissioner has come to this conclusion, we fail to understand how thereafter he has applied the Rule 2(a) to hold all the parts taken together to be steel tanks classifiable under heading 73.09, as Rule 2(a) would not be applicable in the facts of this case as held by the Tribunal in the case of Nikhil Equipments Pvt. Ltd. (b) We find that the present decision of the Commissioner is against the Board's instructions vide Circular No. 17/89 dated 21.04.1989.

The Commissioner cannot decide against the Board's instructions as held by the Hon'ble Supreme Court in the case of Ranadey Micronutrients v. CCE as reported in 1996 (87) E.L.T. 19 ending with the case of Paper Products Ltd. v. Commissioner as reported in 1999 (112) EL.T. 765 (S.C.).

(c) We also find that in the case of J.K. Synthetics Ltd. as reported in 1999 (33) RLT 129, the Tribunal held that fuel tanks embedded and erected at site were held

to be non-excisable and we allow the said decision.

5. In view of the above findings, we set aside the order impugned and allow the appeal in this case, with consequential relief, if any, as per law.

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