

V.M. Jog Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-13-2002

Reported in : (2003)(154)ELT172Tri(Mum.)bai

Judge : S T Gowri, P Bajaj

Appellant : V.M. Jog

Respondent : Commissioner of Central Excise

Judgement :

1. The question for consideration in these appeals is the availability of the exemption contained in entry 7 of the table to notification 59/90, dated 23-9-1990 of precast water drain boxes manufactured by V.M.Jog Engineering Limited, the assessee before us.

2. The facts are not in dispute. The drain boxes in question were to form part of storm water drain underneath the flyover to be constructed at Kalanagar on the western express highway. The drain boxes were actually cast in concrete at site allotted by the public works department of the Government of Maharashtra which was half a kilometre away from the highway. In the order impugned in the appeal, the Commissioner has not accepted the claim made by the assessee to the benefit of exemption to the goods and other contentions and held the goods liable to duty and imposed penalty on the manufacturer and on each of its directors.

3. The notification exempts from duty to "goods manufactured at the site of construction of buildings for use at site". In its decision in *Pratimba Industries and Anr. v. CCE* (Appeal 1134/92 & anr) a bench of this Tribunal in Delhi took the view that, in the absence of definition of the word "site" in the notification, that the site defined in the agreement could be applied to the entire area and it concluded that the goods, which were manufactured from distance away from the place where the goods to be brought to the site of construction, were entitled to the benefit of notification 59/90. The same view has been applied in the decision in *Delhi Tourism & Transportation Development Corporation v. Union of India* (sic) - 1999 (114) E.L.T. 421. In that decision, the Tribunal has held that the beams and girders which were manufactured by the Corporation and the casting yard provided by the Delhi Tourism and Transportation Development Corporation at Bhatti mines were to be used in one of the three flyovers some distance away were manufactured at the site of construction. The counsel for the appellant relies upon these decisions. He also cites a circular of the Board 456/22/99-CX, dated 18-5-1999 with reference to notification 5/98, dated 2-6-1998 (entry 182 of the table to notification) exempts from duty inter alia "the goods manufactured at the site of construction for use in construction work at such site". The Board had explained in its circular that 'the expression "site" may not be given a restrictive meaning and shall include any premises made available to the manufacturer by way of a specific mention in the contract/agreement for such construction work, provided that the goods manufactured in such premises are solely used in the said construction work.' 4. If the common ratio of these decisions and the Board's circular is applied, it will follow that the appellant would be entitled to the benefit of the notification.

5. These decisions and the circular of course raise a somewhat difficult question. If the expression "site" in the notification has to be construed according to what the parties to the contract terms it to be, it would follow that there would be many cases where the goods manufactured at a place away, in fact far away, from the site where they are to be used, would qualify for the exemption. But this would ignore the requirement in the notification that the goods must be manufactured at the site of construction of the building in which they are to be used. But we do not think that we need to consider this aspect in respect of the facts before us. In our view, by taking a pragmatic view, goods constructed at a site half a kilometer from

a busy highway on which they were to be used were within the site of the construction. It will be evident that most, if not all cases, of civil construction, goods to be used in the construction of a building cannot in fact be manufactured precisely at the site of such construction.

Thus, for example, beams or girders which ultimately form part of a bridge cannot be constructed at the site of the bridge. The bridge itself does not exist and it would be virtually impossible for parties to construct girders or beams on the bed of the river, or at the bed of the ravine, which is to be bridged. Similarly goods for use say, in a building cannot be made within the area which would form part of the building and must necessarily be made some distance away. In the case before us, the goods under consideration would ultimately be part of the flyover forming part of the highway, which carries heavy traffic throughout the day and most of the night. The construction of the flyover itself involved diversion of traffic, it would be virtually impossible to construct components of the highway flyover at a place where the flyover itself was being erected. The distance of half a kilometer away from the spot where the flyover virtually came into existence would therefore in fact be a site of construction of the flyover and thus the goods must be held to have been constructed at the site of their use. The benefit of the exemption therefore would be available to the goods.

6. The appeals are allowed and the impugned order set aside.

Consequential relief in accordance with law.

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