

**Cce Vs. Varnoj Associates**

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**SooperKanoon Citation :** [sooperkanoon.com/35007](http://sooperkanoon.com/35007)

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

**Decided On :** Apr-21-2004

**Reported in :** (2004)(96)ECC489

**Judge :** A T V.K., P Bajaj

**Appellant :** Cce

**Respondent :** Varnoj Associates

**Judgement :**

1. In this appeal filed by Revenue the issue involved is whether Central Excise duty is leviable on the goods manufactured by M/s.

Varnoj Associates.

2. Shri Virag Gupta, learned DR, submitted that the Respondent manufacture ducting, chutes, supporting structure, platform, stair case and other items for installation of clinker collers, electrostatic precipitator for M/s. Vikram Cement; that the Commissioner (Appeals) has held the product non-excisable holding that no evidence has been adduced by the department to suggest that the impugned items were goods capable of being marketed as such relying upon the Board's Order No.58/1/2002-CX dated 15.1.2002 issued under Section 37B of the Central Excise Act. The learned DR, further, submitted that Shri P.N. Jethwani, Proprietor of the Respondent firm, had admitted in his statement dated 19.10.95 that he had manufactured goods for M/s. Vikram Cement from material supplied by them; that

he had also admitted that the manufactured goods for CCI, Nayagaon, also without obtaining Central Excise registration under Rule 174 of the Central Excise Rules; that various items of electrostatic precipitator are moveable items and can be sold in the market and can be assembled at another site.

3. Countering the arguments Shri P.N. Kaul, learned Advocate, submitted that the goods fabricated by them are not excisable as these could not be brought to the market for being bought and sold; that it has been held by the Bombay High Court in the case of Sunflag Iron & Steel Co.

Ltd. v. Addl. Collector of Central Excise, 2003 (162) ELT 105 (Bombay) that "fabrication of structurals at the site of the principals by using raw material supplied by the principals did not amount to "manufacture" nor was it done at the "factory", nor were the goods saleable or capable of being brought to the market for being brought or sold." 4. We have considered the submissions of both the sides. The Commissioner (Appeals) had set aside the Adjudication Order, demanding the duty and penalty on the ground that there was no evidence in the Order-in-Original to suggest that the items were goods capable of being marked as such to render it liable to Central Excise duty. The Revenue neither in the appeal memorandum nor in arguments before us has adduced any evidence to show the marketability of the impugned products. Mere mention in the memorandum of appeal that the impugned goods are moveable items and can be sold in the market and can be assembled at another site is not sufficient by itself, in absence of any material, to show that they are marketable as such. The statement of the proprietor of the Respondent firm does not anywhere indicate that the goods are marketable as he had only accepted the fact that he had fabricated the impugned items on behalf of Vikram Cement and CCI, Nayagaon. The Revenue has not adduced any material to show that these goods were fabricated by the Respondents in his workshop and the goods were transported to the side. It is settled law that for being excisable goods it should be in a condition to be bought to the market for being brought and sold. In view of this we do not find any reason to interfere with the impugned order and reject the appeal filed by the revenue.