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**Servesham Construction Ltd. and Vs. Cce**

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**SooperKanoon Citation** : sooperkanoon.com/35270

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

**Decided On :** May-18-2004

**Reported in** : (2004)(95)ECC598

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

**Appellant** : Servesham Construction Ltd. and

**Respondent** : Cce

**Judgement** :

1. The above captioned two appeals have been directed against the common Order-in-Original vide which the Adjudicating Authority has confirmed duty demand of Rs. 90,281 with equal amount of penalty and interest, against the company -- appellant No. 1, and also imposed personal penalty of Rs. 2 lakhs on appellant No. 2 -- the Managing Director of the Company. The duty demand alongwith penalty has been confirmed against the company for having manufactured and cleared two mild steel/Carbon steel storage tank without payment of duty. On appellant No. 2 penalty has been imposed under Rule 209-A being the Managing Director of the Company who facilitated the company in the evasion of the duty on those storage tanks.

2. The learned Counsel has contended that show, cause notice was issued in respect of 12 tanks which were allegedly manufactured and cleared by the appellants without payment of duty, and 10 out of those had been admitted by the adjudicating authority to be not excisable goods. He has also contended that all

the tanks were constructed at the fertilizer plant site of Chambal Fertilizer and Chemical Ltd. (CFL) and permanently embedded to earth and as such, no tank irrespective its size, height or diameter could be removed from one place to another and as such, two tanks could not be singled out and treated as excisable goods. He has also contended that benefit of Notification No. 67/95 dated 16.3.95 exempting the capital goods from payment of duty when used in the factory of production has been wrongly denied to the appellants in respect of tanks in question. He has further contended that benefit of the Board Circular dated 15.1.2002 allowing exemption to the goods including the tanks had been wrongly denied to the appellants. He has referred to the Tribunal's Final Order dated 28.10.03 in the case of New Constructions and Ors. in which Chambal Fertilizers Ltd. was also a party and vide which the Tribunal allowed the benefit of the above cited Notification No. 67/95 dated 16.3.95 and set aside the order of the adjudicating authority raising the duty demand in respect of the goods involved therein i.e. pipes, fittings, etc. and also penalty confirmed against them. The impugned order therefore, deserves to be set aside.

3. On the other hand, the SDR has reiterated the correctness of the impugned order.

We have heard both the sides and gone through the records. The appellant No. 1 is a Company while appellant No. 2 is its Managing Director. The company was warded sub-contract by Tokyo Engineering Corporation, Japan who got the main contract for expansion of the fertilizer plant of Chambal Fertilizer and Chemicals Ltd; for fabrication, erection of 12 mild steel/carbon steel storage tanks. Out of these 12 tanks, 10 were of bigger size while two of smaller size as detailed in the impugned order itself (para 5 (iv)). All these tanks were fabricated, installed at the site and embedded to the earth permanently by the appellants. The process of fabrication of these tanks at site carried out by them was as under: "The base plates were fabricated as per drawings and specification supplied by the principal contractor Toyo Engineering Corporation, Japan in association with Toyo Engineering (I) Ltd. These plates were fabricated in circular shape by cutting and welding, The base plates were then fixed on bitumen carpet having 2"x3" thickness mounted on a concrete base. The concrete base and bitumen carpet

were prepared by the above-said principal Contractor. The appellants made brackets on the side of those base plates having holes for anchoring the storage tanks with the concrete foundation. For making cylindrical shape tanks, the appellants cut the plates as per drawings and bent them in a bending machine and those plates were erected oh the base plates of tanks and welded in a position to make a cylindrical shape. This process was carried out for making tanks of the desired height. This process of fabrication was detailed by the appellants in their reply to the show cause notice but was not contested by the Department." From the above referred fabrication process, it is thus quite evident that all the tanks had been fabricated at the site by the appellants and embedded to earth permanently and could not be removed without totally dismantling the same. They could not be brought as such to the market for sale. These had been designed as per the drawings supplied by the principal contractor and could be taken from the earth only after dismantling as sheets scrap. Even the adjudicating authority in respect of ten tanks has observed in para 22 of the impugned order as under: "I have also gone through the terms and conditions of the contract, entered into between the notices. I find that the fabrication/erection of these tanks was to be made at site and these tanks were to be used for the storage of sweet/raw naphtha, polished water, urea solution etc. This makes the intention of the notices clear that these tanks were got erected at the site with permanency and not for temporary purposes as has been enumerated in the Board s letter dated 15.1.2002".

The Adjudicating Authority has left out two tanks in question which were of the diameter 3.8 Mtr x height 4.4 Mtr with capacity of 49.9 Cub. Mtr each and demanded duty in respect of the same on the ground that these being in smaller in size than the other ten tanks, could be removed, transported and installed anywhere. But the authority has lost sight of the fact that these tanks alongwith other ten tanks were fabricated by same process and embedded to earth permanently. These could not be removed from the earth without dismantling. The benefit of Board Circular dated 15.1.2002 allowing exemption from duty liability to the tanks made and capable for storage of petroleum products in oil refineries or installation at the site and being not able to move without dismantling, could not be denied to these two tanks in question These tanks had been fabricated for storage of raw naphtha, urea, etc.

alongwith other ten tanks. The ratio of law laid down in Triveni Industries v. CCE, 2000 (71) ECC 225 (SC) : 2000 (120) ELT 273 (SC) and Bhagwanpura Sugar Mills, 2001 (47) RLT 409 which has been extended to denied these two tanks in question in the light of the facts detailed above. The fact that these two tanks were fabricated at one place and then shifted to their respective foundations, as observed by the adjudicating authority in the impugned order on the basis of statement of Shri C.S. Naik, Project Manager of the Principal contractor, did not make them as movable goods when these had been also embedded to earth permanently and could be removed only after dismantling the same. These tanks could be taken out only as sheets/scraps. Therefore, the duty demand raised in respect of these two tanks cannot be sustained.

4. Since the duty demand is liable to be set aside on the above discussed ground, the issue of availability of benefit of Notification No. 67/95 dated 16.3,95 allowing exemption from payment of duty in respect of capital goods when used within the factory of production, as claimed by the appellant, is not required to be gone into.

5. In the light of what has been discussed above, the impugned order is set aside. The appeals of the appellants are allowed with consequential relief, if any, permissible under the law.

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