

**Collector of C. Ex. Vs. General Engg. Servicing Workshop**

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

**Decided On : Sep-07-1987**

**Reported in : (1989)(42)ELT104TriDel**

**Appellant : Collector of C. Ex.**

**Respondent : General Engg. Servicing Workshop**

**Judgement :**

1. The department has filed this appeal against the order of the Collector of Central Excise (Appeals), Madras dt. 26-8-1983.
2. The respondents entered into a contract for construction of Boiler house, Power house, Pump house etc. with M/s. Thandava Co-operative Sugars Ltd. They raised invoice No. 23 dated 31-3-1981 for Rs. 3,07,856.00 for roofing of A.C. sheeting and invoice No. 24 dated 31-3-1981 for Rs. 50,277.48 for foundation bolts utilised in the process of structural and the A.C. Sheeting. A show cause notice was issued on 29-7-1982 raising a demand for duty of Rs. 29,415.68. The Assistant Collector, Kakinada held that the goods were liable to duty under T.I. 68. The Appellate authority allowed the appeal.
3. Shri J.N. Nigam, SDR submitted that the Appellate authority was not justified in holding that the A.C. Sheeting of foundation bolts were not liable to duty. He urged that the definition of goods under the sale of goods Act would not apply to the term "exciseable goods" under the Central Excise Act.

4. Sh. M.L. Routh, Consultant stated that the respondents were engaged in the fabrication of structures like spans, columns, bracing etc. and the erection of these structures and the roofing with A.C. Sheeting etc. He stated that the decision of the Tribunal in the case of Aruna Industries 1986 (25) ELT 580 (Tribunal) would directly apply to the facts of this case.

5. In the Cross Objections, the respondents have merely reiterated the contentions raised in the proceedings below.

6. The issue involved in this case is the classification of 'turnkey projects', which consists mainly of fabrication and erection activity at the site. In the decision cited by the consultant, an identical issue came up for decision. The Tribunal has held that the contract comprises of the construction and the completion of the works. There was nothing in the contract to hold that there was a sale of raw-materials by one party to the other. The contract was fabrication and erection of a structure and the building was held to be a works contract. The Tribunal also held that the term 'goods' has not been defined in the Central Excise Act and the term would not include "immovable property". Fabrication structures would not be considered as "movable properties" attracting Central Excise duty. From the facts of the present case, it is clear that the respondents were engaged in the fabrication activity namely, erection of a turnkey project. We also find that the A.C. Sheeting and the Foundation Bolts which were used in the fabrication activity were already duty paid. In the show cause notice, the duty was demanded for the A.C. Sheeting and the Foundation Bolts that went into the erection of the boiler house, milk house, power house etc. Since this is a fabrication activity and following the earlier rulings, we hold that there is no manufacture and the liability to duty would not arise.

7. In the grounds of appeal, it is stated that the Central Excise Act has nowhere indicated that the goods would not include immovable property. This contention is not tenable. Central Excise Act defines "excisable goods". The term "goods" has not been defined under the Central Excise Act. The words "movable property" and "immovable property" have been defined under the General Clauses Act. A study of the definitions would clearly indicate that "immovable property" cannot be

treated as "goods". Since the fabricated structures cannot be called as "goods", and are not articles which could or (Jinarily come to the market for being bought and sold, it would certainly exclude "immovable property". Hence we hold that there are no merits in the appeal and the same is dismissed. As no relief is prayed for in the cross objections, it is also closed.

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