Simplex Concrete Piles (i) Pvt. Vs. Commr. of C. Ex.

Simplex Concrete Piles (i) Pvt. Vs. Commr. of C. Ex.

SooperKanoon Citation : sooperkanoon.com/39183

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-26-2005

Reported in : (2005)(102)ECC19

Judge : S Kang, Vice-, N T C.N.B.

Appellant : Simplex Concrete Piles (i) Pvt.

Respondent : Commr. of C. Ex.

Judgement :

1 Heard both sides. As the issue involved in both the appeals is common, therefore, they were heard together and are being disposed of by this common order.

2. These appeals are taken up in pursuance of the remand order passed by the Supreme Court. The Hon'ble Supreme Court remanded the matter and held as under : Appeal above-mentioned alongwith connected matters called on for hearing before this Court on the 11th, ...th and 19th days of April, 2001, upon perusing the ...nd hearing Counsel for the parties herein, This ...th Pass the following order : "It was for the Tribunal to determine, as a fact, whether the structurals that the Department sought to make exigible to excise duty in the various appeals before it were new, identifiable goods which were produced as a result of manufacture or processes and which were marketable. Depending upon its conclusion on these aspects in each of the appeals before it, it was for the Tribunal to determine whether or not the goods in question in each of these

appeals were exigible to excise duty.

In the judgment and order of the Tribunal that is under challenge the Tribunal has failed to consider the facts of even a single of the appeals before it. It has proceeded simply upon the basis that structural are not exigible to excise duty. It has failed to appreciate that there is a tariff entry which makes structurals exigible to excise duty and that they are so exigible, provided that they are new identifiable goods that are the result of manufacture or processes and they are marketable.

It, thus, becomes necessary to set aside the judgment and order of the Tribunal under challenge and remand the appeals to the Tribunal for being heard and disposed of afresh, bearing in mind what we have stated above. All contentions may be raised before the Tribunal by either party. Liberty is given to produce additional evidence." 3. In these cases, the show cause notices were issued to the appellants demanding duty in respect of columns, beams, trusses, purlines etc. on the ground that the fabrication of these items amounts to manufacture and are classifiable under Heading 73.08 of the CET.4. The contention of the appellant is that they are simply cutting, drilling, binding the channels, angles and these are assembled at a work site and then erected in exact respective position. This fact is not disputed by the revenue. This issue is whether the fabrication of columns, beams, is now settled by the Hon'ble Supreme Court in the case of C.C.E., Nagpur v. Wainganga Sahkari S. Karkhana Ltd. - . On the contrary, the revenue relied upon the decisions of the Tribunal in the case of Bee Aari Engg. - 2001 (134) E.L.T. 528; Sangameshwar Pipe & Steel Trader -2002 (141) E.L.T. 252; Aarti Steels - 2002 (144) E.L.T. 360; A.C.C. v. C.C.E., Nagpur - 1996 (88) E.L.T 149. He submits that these disputed items are excisable and the process undertaken by the appellants amounts to manufacture.

5. We find that appellants are fabricating columns, purlines etc. by cutting, drilling, punching & welding on duty paid channels and angles and thereafter these are being assembled to post at work site and are fixed in the exact position. In the impugned order it is held that process undertaken by the appellant amounts to manufacture as a new and distinct product has come into existence, which has distinct name and goods in question are classifiable under Heading 7308 of the

Central Excise Tariff. The Revenue relied upon the decisions of the Tribunal and we find that in the case of Aarti Steels relied upon by the Revenue, the Tribunal held that without taking into consideration the Tribunal in the case of Aruna Industries and without going into the issue of manufacture set aside the demand as time bar. In the case of Bee Aar Engg. (Supra) the Tribunal without considering the earlier decision of the Tribunal in the case of Aruna Industries remanded the matter to the adjudicating authority regarding the issue of excisability of the goods. In the case of Sangameshwar Pipe & Steel Traders (supra) the decision of the Tribunal in the case of Aruna Industries was not considered and again matter was remanded in regard to excisability of the goods. Similarly, in the case of ACC Ltd., (supra) after taking into consideration the fact that the goods in question were fabricated in the factory and thereafter removed to the site, the Tribunal held that the goods in question are excisable. In this case also the decision of the Tribunal in the case of Aruna Industries was not considered.

6. We find that the issue of excisability of the goods which are under dispute in the present appeal is decided by the Tribunal in the case of Aruna Industries -1986 (25) E.L.T. 580. In this case the Tribunal held that goods in question are not excisable goods and the processes undertaken by the assessee does not amount to manufacture. The Tribunal held as under :- "26. The department's case is due to their perception of trusses, purlines, beams, columns, platforms, as goods which have been manufactured from channels, angles, joists, sheets and therefore must be subjected to duty, nothing could be more fallacious. There are no such goods as trusses, columns, purlines, made from channels, angles, joists. A truss is only a frame made from steel, timber, concrete etc. All the members remain unchanged; but their length etc. may have to be modified by cutting to the desired length; they may be joined by bolting, welding etc. to hold them together in a given position to fit a given application. But and this is very important, it is not a truss except when it trusses say, a roof to hold it up in a particular shape. Its function is to provide a firm support to a superincumbent weight like the roof of a building, or a bridge. The steel members of a truss may be items of merchandise, but a truss never. A truss does not form a recognisable article of commerce in the same way that an angle or a channel does because a truss is only a function to which a steel member article performs when placed in a position ordained by the engineer (builder). It is

very necessary to see this very clearly in one's mind's eye for it is almost impossible to define or explain by explicit words and sentences why a truss is not a goods to be excised. Any steel member may be put to work as a truss - it has no definite shape or size, a different roof or bridge will require a different method of trussing. To repeat, there is nothing like a truss - it is only a steel or concrete or wooden member that trusses up some incumbent weight.

27. A purlin is nothing but a roof beam, generally perpendicular to the trusses or rafters: it is also made from steel products which are manufactured in steel factories. It may be cut, drilled to take bolts, or treated in several ways, but always to fit it for that particular job it is to be put to. The steel product remains what it was - an angle, a channel etc.

28. A column is nothing but a larger member of sheets, drilled, sized, joined, welded, bolted together so that, in their newly acquired strength they form a pillar which will hold up part of a structure like a building. It may be a mass of concrete compacted to great strength so that it supports a bridge. But for all the cutting, drilling that the steel products received, they remain what they were, not changed, only adapted to a particular use. Let us remember, no steel factory makes a sheet, an angle, a beam, that fits all uses. All products of a steel factory must be sized, drilled, cut etc. to enable their use as such sheets, angles, beams.

This is because the steel factories make only standard sheets, beams, angles; but the actual user seldom has a use that accepts the product as it comes out of the steel factory. The sheet is no good to the buyer except when it is a sheet to meet his requirement. A steel factory can make specifications of thickness, strength, carbon content, as these are all standardized specifications; but size is more often than not, a matter of individual need. Or when the size is right, the holes must be only at given spots - no factory can ensure this. It is only the man at the location of the building project who can determine where the holes must be, and who can drill them so that they fit into other sections or shapes for bolting. At other times, the sheet may be too large and so must be cut and sized suitably, that it may go into the place chosen for it. That sheet, however, cut or drilled with holes it may be, does not cease to be a sheet -- one can still see it as a sheet, the shape it took at the steel factory. The 'I' beam retains this shape but in perhaps, a shorter length because it can also see the 'I' beam doing the work for which its shape best fits it for, a shape it was given by design at the steel factory, because in these applications an 'I' does it better than any other shape.

30. All the shapes of the steel products are given with this objective-that when the product is used, it will be used by reason of its shape to the best advantage. The 'T' shape, the 'I' shape and the 'L' shapes are no mere engineering flights of fancy. Their virtues were discovered by long and hard experience by men who led in their fields. Every product has a shape which pre-eminently fits it for the application to which it is put, and this has to be driven home very strongly; that shape must be kept when it is used in the structurals if it to give of its best. Thus every 'I' beam, every 'L' angle, every 'U' shape; even if it is shorter after cutting at site, it has the same shape and form it had when it left the steel factory. The angle is still an angle, the channel a channel, the sheet a sheet, the beam a beam. To be sure, they had to be sized, cut, drilled so that they could be put up together into one structure; but unless one just bound them, together, say with wire, or just piled them one on top of another, we cannot see how else the building or shed would be erected. The people at the construction site did not make trusses, purlins, platforms - they took angles, beams, sheets and by putting them together in a new form, made what are called trusses, purlins and so. A section or sections were sections and alone or with other sections and members were used to truss up the roof to form rafters or whatever they formed. They come into being only because of the roof they support, or the wall they hold up. They are not hawked the way goods like sheets, angles can be hawked and sold. These last are well known commodities in the market place, no one has heard of a truss or a purlin as an item of trade. They can of course, be sold, but only as the complete or finished structure -the shed, building, the cage, the bridge: they do not form a merchandise; they are just parts of a larger, differently designated unit. The man who buys the structure will not buy the truss, though there may be dozens of them - he will buy only the structure the whole construction".Wainganga Sahkari Sakhar Karkhana Ltd. v. CCE, Nagpur - 2002 (50) RLT 177 following the decision of the Tribunal in the case of Aruna Industries Revenue filed appeal against this decision of the Hon'ble Supreme Court dismissed the appeal filed by the Revenue reported

as CCE, Nagpur v. Wainganga Sahkari S. Karkhana Ltd., - 2002 (142) E.L.T. 12. The Hon'ble Supreme Court upheld the decision of the Tribunal in the case of Aruna Industries. Further, we find that the Hon'ble Bombay High Court in the case of Sunflag Iron & Steel Co. Ltd. v. Additional Collector of C. Ex, Nagpur reported in 2003 (162) E.L.T. 105 (Bom.) after relying upon the decision of the Tribunal in the case of Aruna Industries and other decisions held that fabricated material was not excisable goods. Revenue filed appeal against this appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court dismissed the appeal reported as 2005 (164) E.L.T. A178.

8. In view of the above decision of the Hon'ble Supreme Court in the case of Wainganga Sahakari Sakhar Karkhana Ltd. (supra) whereby the Supreme Court affirm the decision of the Hon'ble Tribunal in the case of Aruna Industries. We find no reason to upheld the finding in the impugned order whereby it is held that the goods are excisable. The impugned orders are set aside and the appeals are allowed.