

**A.E.E. Pilot Workshop Vs. Collector of Central Excise**

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

**Decided On :** Apr-19-1989

**Reported in :** (1989)(24)LC320Tri(Delhi)

**Judge :** H Chander, J T P.C.

**Appellant :** A.E.E. Pilot Workshop

**Respondent :** Collector of Central Excise

**Judgement :**

1. A.E.E. Pilot Workshop, a unit of Punjab State Electricity Board, has filed an appeal being aggrieved from the order passed by the Collector of Central Excise, Chandigarh. Briefly the facts of the case are that the Appellant M/s. A.E.E. Pilot Workshop, a Unit of Punjab State Electricity Board which is engaged in the generation of electricity and they also manufacture PCC Poles. PCC Poles fall under item No. 68 of the erstwhile Central Excise Tariff. The appellant did not take out any Central Excise licence and on 13th September, 1983 a contingent of Central Excise Preventive staff had made a surprise visit and found that the appellant was engaged in the manufacture of PCC Poles and poles numbering 7825 were found lying in the factory which were seized by the visiting officers and the value worked out to Rs. 16,82,375/- at Rs. 215 per pole. A show cause notice was issued for the period 1st April, 1983 to 19th September, 1983 on 4th October, 1983. The appellant was also asked to show cause as to why the seized poles numbering 7825 valued at Rs. 19,56,250/- at Rs. 250/- per pole should not be confiscated and why duty amounting to Rs. 1,20,181.82 should not be recovered.

The appellant had filed the reply to the show cause notice. The learned Collector had confirmed the demand for Rs. 1,20,181.82 and had also ordered appropriation of Rs. 1,000/- towards the value of seized goods out of the security amount of Rs. 1,00,000/-furnished by the appellant.

Being aggrieved from the said order the appellant has come in appeal before the Tribunal. Shri Yakesh Anand, the learned Advocate who has appeared on behalf of the appellant has reiterated the facts mentioned in the appeal memo. Shri Yakesh Anand, the learned Advocate has stated that Notfn. No. 77/83-CE dated 1st March, 1 983 is ultra vires. He has pleaded for the acceptance of the appeal.

2. Mrs. Vijay Zutshi, the learned SDR who has appeared on behalf of the Respondent stated that the matter fully stands covered by a Judgment of the Tribunal in the case of Andhra Pradesh State Electricity Board v. Collector of Central Excise, Hyderabad Cegat and further states that there are many subsequent judgments to this effect.

On the plea of the learned Advocate that the issue of Notification No.77/83-CE dated 1st March, 1983 is ultra vires, Mrs. Zutshi states that the Tribunal is a creation of the Statute and as such is bound by the provisions of the four corners of the Central Excises & Salt Act, 1944.

She has pleaded for the dismissal of the appeal.

3. We have heard both the sides and have gone through the facts and circumstances of the case. The learned Advocate's plea that Notification Number 77/83-CE dated 1st March, 1983 is ultra vires is not tenable. The Tribunal is a creation of Statute and we are bound by the provisions of the Statute. Hon'ble Supreme Court in the case of Collector of Central Excise, Chandigarh v. Doaba Co-op. Sugar Mills . had held that the provisions of the Act are mandatory and the Tribunal is bound by the same. Accordingly we do not accept the arguments of the Ld. Advocate in this regard. On the issue of the excisability of the PCC Poles and clubbing of the clearances of generation of electricity and other various units, the matter is fully covered by the judgment of the Tribunal in the case of Andhra Pradesh State Electricity Board v. Collector of Central Excise, Hyderabad Cegat.

Para Nos.

18. We find considerable substance in the arguments of Shri Tayal.

The poles are clearly recognisable articles which even according to Shri Rangaswamy himself are made according to specifications furnished by the Board. We had pointed out to Shri Rangaswamy that Item 68, being a non-specific item, can cover any goods, and not only those which form complete articles. So far as marketability is concerned, the judgment in the Union Carbide case clearly sets out the position. Since the supply of electricity is a function statutorily entrusted to the Board, it may be considered that no one else in Andhra Pradesh would wish to purchase them (though even this would not rule put their use for some other purpose as pillars, etc.), but this only makes them a kind of "monopoly product", and does not prevent them from being "goods". The analogy sought to be drawn to elevators, chemical plants, etc., is far fetched and inapplicable, since duty is here sought to be levied with reference to the condition of the goods when they are removed from the place of manufacture, and this duty liability is not affected by the fact that they are subsequently fixed to the ground. (In fact, many items of machinery have to be fixed to the ground before they can be efficiently or safely used). We are, therefore, unable to accept the argument of Shri Rangaswamy that the concrete poles are not "goods" within the meaning of the Central 'Excises & Salt Act and are, therefore, not excisable." 30. The facts of these cases as set out above make it very clear that the units were not independent but were all under the Board and were subject to common directions and control. As pointed out earlier, when they were called upon to take out a licence and pay duty, they referred to the advice given to the Board. The following extract from the reply given by the Assistant Divisional Engineer, Central Stores, Gudur, in his reply dated 5.4.1982 to the show cause notice dated 5.3.1982 in the case covered by Appeal No. 133/82 is very revealing as to what the units themselves (which should have been in the best position to know whether they were functioning independently or not) thought of the position: I, therefore on behalf of A.P.S.E.B. state further that the A.P.S.E.B. is constituted under Section 5 of the said Act. No suit prosecution, or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act. The

Officers of the Board are adhering to the duties enjoined upon them under the Act by the Board and hence no prosecution or penalty is leviable. The Board is also not liable for the proposed levy of excise duty from 18.6.1977 in view of the foregoing explanation and in view of the position already stated.

31. We also observe that, with reference to the question of penalty, Shri Rangaswamy himself has argued that the officers in charge of the individual units could not be held liable since they had to follow directions from above. It would, therefore, be plainly contrary to the facts to say that the units were functioning independently, particularly in the light of the common control, transferability of employees and pooled procurement of materials.

We, therefore, do not find any substance in the argument that the units should be treated as independent manufacturers.

4. In view of the earlier judgment of the Tribunal we confirm the findings of the Collector and dismiss the appeal.

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