Associated Cement Companies Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-09-1996

Reported in : (1996)(88)ELT149TriDel

Appellant : Associated Cement Companies

Respondent : C.C.E.

Judgement :

1. In this appeal filed by the Associated Cement Companies Ltd., the duty liability on the product 'Columns' fabricated by welding various steel items is involved. The appellants were engaged .in the manufacture of cement at their Cement works, Chanda. For producing cement they required fly ash. Maharashtra State Electricity Board had put up a power plant at Durgapur (Chandrapur). The appellants were permitted to put up a fly ash collecting plant within the premises of the Maharashtra State Electricity Board site at Durgapur. They fabricated the Columns at their cement works for subsequent fixing at the site of the Fly ash collecting plant. They paid Central Excise duty under Item No. 68 on such excisable goods under protest and subsequently they filed a refund claim. Their refund claim was rejected by the Assistant Collector and their appeal to the Collector of Central Excise (Appeals), Bombay was rejected.

2. The matter was posted for hearing on 9-8-1996. The appellants had prayed for decision on merits. On behalf of the respondents, Shri P.Das, ld. SDR briefly explained the facts and submitted that the goods known as 'columns' were a marketable commodity and they were moveable goods. They were manufactured

by fabricating various steel items and were transported to the site at Durgapur (Chandrapur). He submitted that the view taken by the Collector of Central Excise (Appeals), Bombay was correct and that there is no merit in the appeal.

3. We have carefully considered the matter. It is seen that the 'Columns' were fabricated by welding two channels/beams and plates. The Columns are a separate commodity from the channels/beams and plates from which they were fabricated. They were manufactured in the Cement works and were to be transported to a different site for erecting Fly Ash handling plant.

4. The goods involved in these proceedings were not immovable property.

At the stage of clearance they were not fixed to the ground. The Collector of Central Excise (Appeals) had held that they were a separate commodity and separate from the raw materials out of which they were manufactured. He had held "The 'Columns' fabricated by the appellants by welding of M.S. Channels/beams with M.S. Plates of specific sizes for the specific purpose of erecting Thermal Power Station at Durgapur (Chandrapur) site are manufactured items." , 5. In the grounds of appeal, the appellants have only referred to the decisions in the case of Hindustan Steel Works Construction Ltd. of the CBEC [reported in 1982 (10) E.L.T. 439 (CBEC)] and of the Govt. of India in the case of OTIS Elevators Company India Ltd. [reported in 1981 (8) E.LT. 720 (GOI). They have not explained as to how the facts in those cases are applicable to their goods. They have submitted that the 'Columns' were not ordinarily bought and sold in the market. For the purposes of excisability it is not necessary that the goods should be marketed. The Supreme Court had held in a number of cases that if the goods are capable of marketing then they will be covered by the provisions of Excise Law.

6. They have submitted that the 'Columns' were fabricated by welding together number of mild steel items like channels, beams, plates etc.

to suit the design of the structure to be erected at site by permanently fastening it to the earth. At the stage of clearance, they were not fastened to the earth, they were moveable goods and it was only at the site that they were going to be fixed to the earth. In these circumstances, we agree with the observations of the Collector of Central Excise (Appeals) that the 'Columns' in these proceedings were goods. They were also marketable goods. Accordingly we find no ground to interfere with the order passed by Collector of Central Excise (Appeals), Bombay. As a result, the appeal is rejected.