Supreme Court of India
M/S. Mittal Engineering Works(P) ... vs Collector Of Central ... on 19 November, 1996
Author: Bharucha
Bench: S.P. Bharucha, K. Venkataswami

PETITIONER:
M/S. MITTAL ENGINEERING WORKS(P) LTD.

Vs.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE,MEERUT

DATE OF JUDGMENT: 19/11/1996

BENCH:
S.P. BHARUCHA, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

J U D U G M E N T BHARUCHA, J.

The order of the Customs, Excise & Gold (Control) Appelate Tribunal under appeal Confirms the levy of excise duty on mono vertical crystallisers.

Mono vertical crystallisers are used in sugar factories. Their function is to exhaust molasses of sugar. A general note placed on the record of the Tribunal by the appellants, who have patented the mono vertical crystalliser, describes its function and manufacturing process. The mono vertical crystalliser is fixed on a solid RCC slab having a load bearing capacity of about 30 tonnes per sq. mt. It is assembled at site in different sections shown by the packing list given to customers with the invoices. This consists bottom plates, tanks, coils, drive frames, supports, plates, distance places, cutters, cutter supports, tank ribs, distance plate angles, water tanks, coil extension pipes, loose bend angles, coil supports, railing stands, intermediate platforms, drive frame railings and flats, oil trough, wormwheels, shafts, housing, stirrer arms and support channels, pipes, floats, heaters, ladders, platforms, etc. The parts aforestated are cleared from the premises of the appellants and the mono vertical crystalliser is assembled and erected at site. The process involves welding and gas cutting. Where the assembly and erection is done by the appellants welding rods, gases and the like are procured from the stores of the customer and the customer sends to the appellants debit notes

for their value . A sketch and photograph produced by the appellants before the authorities shows that the mono vertical crystalliser is a tall structure, rather like a tower with a platform at its summit.

The appellants were required to show cause why they should not pay excise duty on mono vertical crystallisers cleared from their premises during 1982-83. The collector, Central Excise, Meerut, confirmd the demand. He held, relying on orders placed by sugar factories with appellants and correspondence in that behalf, that the manufacture of a mono vertical crystalliser was complete in all respects at the time of its clearance from the appellants premises; its delivery in transport. It was clear that the mono vertical crystallizer was known to the trade and capable of being sold and purchased in the market, at the time and place of removal and before erection and commissioning, and should be termed `goods'. The mono vertical crystallizer had a distinct name and was meant for a definite use. As the finished product was the result of the processes of welding, bending, cutting, drilling, etc. and had a name, character and use different from the raw materials used, the process amounted to manufacture within the meaning of the Central Excises and Salt Act, 1944 (hereinafter referred to as `the Act'). The test of marketability and of being goods was satisfied.

The Tribunal, in the appeal filed by the appellants, noted the debit notes aforementioned and found that in the case of on customer there was no debit note. The Tribunal concluded, thus in the case of this party complete Sugar Mill Machinery which the appellants describe as mono vertical crystallisers in the invoice left the factory. Besides it is also observed that while in the case of Madurantakam Cooperative Suger Mills case the appellants collected erection changes of Rs.40,000/- in some case erection was left to the customers themselves. This destroys the appellants argument that the crystalliser comes into existence only after erection at side. "

The Principle question to which we must address ourselves is whether mono verticle crystallisers are "goos' upon which excise duty under the provisions of the Act can be levied.

In Union of India and anr. vs. Delhi Cloth and General Mills Co. Ltd. AIR 1963 S.C. 791, a Constitution Bench considered the application to the provisions of the Act to the hydrogenated oils that are known as "vanaspati'. 'Goods' were not defined in the Act. The meaning, as found by the Court from dictionaries, showed "that to become 'goods' and article must be something which can ordinarily come to the market to be bought and sold". In Bhor Industries Ltd. Bombay vs. Collector of Central Excise, Bombay, 1989 (1) S.C.C. 602, the view taken in the case of Delhi Cloth and General Mills Co. Ltd. and reiterated in South Bihar Sugar Mills Ltd. etc. vs. Union of India & Ors. 1963 (3) S.C.C. 547, was applied to crude PVC films. It was held that they "were not known in the market and could not be sold in the market and was not capable of being marketable". In Indian Cable Company Ltd. Calcutta vs. Collector of Central Excise Calcutta and Ors. 1994 (6) S.C.C. 610, this Court considered the question of PVC compounds, and observed that marketability was a decisive test for dutiability. It meant that the goods were saleable or suitable for sale. They need no in fact be marketed. They should be capable "Of being sold to consumers in the market, as it is with out anything more". The case that comes closest to that which we have before us is the case of Quality Steel Tubes (P) Ltd. vs, Collector of Central Excise, U.P. 1995 (2) S.C.C. 372. The issue was whether " the tube mill and welding and head erected and installed by the appellant for manufacture

of tubes and pipes out of duty-paid raw material" was assessable to excise duty. The Court observed, having regard to the earlier decisions aforementioned, "The basic test, therefore, of levying duty under the Act is two fold. One, that any article must be goods and second, that it should be marketable or capable of being brought to the market. Goods which are attached to the earth and thus become immovable and do not satisfy the test of being goods within the meaning of the Act not it can be said to be capable or being brought to the market for being brought and sold." It was also said that the "erection and installations of a plant cannot be held to be excisable goods. If such wide meaning is assigned it would result in bringing in its ambit structurs, erections and installations. That surely would not be in consonance with accepted meaning of excisable goods and its exigitility to duty."

Learned counsel for Revenue relied upon the judgment in Narne Tulaman Manufacturers Pvt. Ltd. Hyderabad vs. Collector of Central Excise, Hyderabad, 1988 Supp. (3) S.C.R. 1. An indicating system was one of the thee parts of a weighbridge, namely, (1) a platform, (2) load cell and (3) the Indicating system. The Tribunal found that the appellant brought the three components together at site, fitted and assembled them so that they could work as one machine and, as such, the appellant manufactured a weighbridege. The question, therefore, was whether the activity carried out by the appellant, of assembling the three components of the weighbridege, brought into being a complete weighbridege, which had distinct name, character or use. The argument of the appellant was that it was making only a part of a weighbridge, that is, the indicating system, and that alone was dutiable. It was held that the end product, namely, the weighbridge, was a separate product which came into being as a result of the endeavour and activity of the appellant, and the appellant must be held to have manufactured it. The appellant's case that it was liable only or a component part and not the end product was, therefore, rejected.

Learned counsel for Revenue submitted that if even a weighbridge was excisable, as held in the case of Narne Tulaman Manufacturers Pvt. Ltd. so was a mono vertical crystalliser. The only argument on behalf a Narne Tulaman Manufacturers Pvt. Ltd. was that it was liable to excise duty in respect of the indicating system that it manufactured and not the whole weighbridge. The contention that weighbridges were not 'good' within the meaning of the Act was not raised and no evidence in that behalf was brought on record. We cannot assume that weighbridges sand on the same footing as mono vertical crystallisers in that regard and told that because withbridges were held to be exigible to excise duty so must mono vertical crystalliser. A decision cannot be relied upon in support of a proposition that it did not decide.

Upon the material placed upon record and referred to above, we are in no doubt that the mono vertical crystalliser has to be assembled. created and attached to the earth by a foundation at the site of the sugar factory. It is not capable of being sold as it is, without anything more. As was stated by this Court in the case of Quality Steel Tubes (p) Ltd., the erection and installation of a plant is not excisable. To so hold would, impermissible, bring into the net of excise duty all manner of plants and installations.

The Tribunal took an unreasonable view of the evidence. It was the case of the appellants, not disputed by the Revenue, that mono vertical crystallisers were delivered to the customers in a

knocked down condition and had to be assembled and erected at the customers' factory. Such assembly and erection was done either by the appellants or by the customer. Where it was done by the appellants, fabrication materials of the customer were used and the customer sent to the appellants debit notes in regard to their value. Where the assembly and erection was done by the customer, there was no occasion for it to send to the appellants a debit note. The fact that there was no debit note in respect of one customer could not reasonable have led the Tribunal to conclude that in the case of the customer a complete mono vertical crystalliser had left the appellants factory and that, therefore, mono vertical crystallisers were marketable. The Tribunal ought to have remembered that the record showed that mono vartical crystallisers had, apart from assembly, to be erected and attached by foundations to the earth and therefore, were not, in any event, marketable as they were.

Having regard to the material on record, we come to the conclusion that mono vertical crystallisers are not 'good' within the meaning of the Act and, therefore, not exigible to excise duty.

The appeal is allowed. The judgement and order under appeal is set aside. There shall be no order as to coast.