

CASE NO.:
Appeal (civil) 5391-5393 of 2002

PETITIONER:
Commissioner of Central Excise Indore

RESPONDENT:
M/s. Cethar Vessels Ltd. & Ors

DATE OF JUDGMENT: 15/05/2007

BENCH:
DR. ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

[With C.A. Nos. 6533-6534 of 2002, C.A. No. 4100/2003, and C.A. No. D 3447 of 2006]

Dr. ARIJIT PASAYAT, J.

All these appeals involve identical questions and are, therefore, taken up together for consideration.

In all these appeals challenge is to the final order passed by the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi (in short the 'CEGAT'). The basic question is whether the erection of Boiler at site by assembling various components and parts has brought into existence immovable property or not that is the issue involved in Civil Appeal Nos. 5391-5393 of 2002, 4100 of 2003 and 3447 of 2006. In Civil Appeal Nos. 6533-34 of 2002 the erection related to Membrane Cell Technology and Civil Appeal No. 4156 relates to solvent extraction Plant. Stand of the appellant is that the fabrication of such plants out of duty paid bought out items amounts to manufacture of a new marketable commodity and therefore excise duty is payable.

The CEGAT held that no excise duty is leviable and thus these plants are not subject to excisability. It accepted stand of the respondents that these plants are basically systems comprising of various components and are thus in the nature of systems and are not machines as a whole. Accordingly, such systems as a whole cannot be considered to be excisable goods.

According to learned counsel for the appellant, the view taken by the CEGAT is untenable. The adjudicating authority was justified in holding that fabrication of the plants in question out of duty paid bought out items amounts to manufacture of a new marketable commodity and therefore dutiable.

The issue relating to excisability of plants and machinery assembled at site has been determined by this Court in several cases, e.g. Quality Steel Tubes Pvt. Ltd. v. CCE (1995) 75 E.L.T. 17 (SC); Mittal Engineering Works Pvt. Ltd. v. CCE, Meerut (1996) 88 E.L.T. 622 (SC); Sirpur Paper Mills Ltd. v. CCE, Hyderabad (1998) 97 E.L.T. 3 (SC); Silica Metallurgical Ltd. v. CCE, Cochin (1999) 106 E.L.T. 439 (Tribunal); Duncan Industries Ltd. v. CCE, Mumbai (2000) 88 ECR 19 (SC); Triveni Engineering & Industries Ltd. v. CCE (2000) 120 E.L.T. 273 (SC) and CCE, Jaipur v. Man Structural Ltd. (2001) 130 E.L.T. 401 (S.C.)

As a matter of fact taking into account these decisions Circular No.58/1/2002-CX dated 15th January, 2002 has been issued by the Government of India, Ministry of Finance (Department of Revenue), Central Board of Excise & Customs, New Delhi. The Circular indicates that it was intended to clarify the question of excisability of plant and machinery assembled at site. The relevant portion of the Circular reads as follows:

"Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Sub: Excisability of plant and machinery
assembled at site-Regarding

In exercise of the power conferred under Section 37B of the Central Excise Act, 1944, the Central Board of Excise and Custom considers it necessary, for the purpose of uniformity in connection with classification of goods erected and installed at site, to issue the following instructions.

2. Attention is invited to Section 37B Order No.53/2/98-CX, dated 2.4.98 (F.No.154/4/98-CD.4) (1998 (100 E.L.T.9) regarding the excisability of plant and machinery assembled at site.

3. A number of Apex Court judgments have been delivered on this issue in the recent past. Some of the important ones are mentioned below:

(i) Quality Steel Tubes Pvt. Ltd. v. CCE (1995 (75) E.L.T. 17 (S.C.);

(ii) Mittal Engineering Works Pvt. Ltd. v CCE, Meerut (1996 (88) E.L.T. 622 (S.C.);

(iii) Sirpur Paper Mills Ltd. v. CCE, Hyderabad (1998 (97) E.L.T. 3 (S.C.);

(iv) Silica Metallurgical Ltd. v. CCE, Cochin (1999 (106) E.L.T. 439 (Tribunal) as confirmed by the Supreme Court vide their order dated 22.2.99 (1999 (108) E.L.I. A58 (S.C.);

(v) Duncan Industries Ltd. v. CCE, Mumbai (2000 (88) ECR 19 (S.C.);

(vi) Triveni Engineering & Industries Ltd. v. CCE (2000 (120) E.L.T. 273 (S.C.)

(vii) CCE, Jaipur v. Man Structurals Ltd. (2001 (130) E.L.T. 401 (S.C.)

4. The plethora of such judgments appears to have created some confusion with the assessing officers. The matter has been examined by the

Board in consultation with the Solicitor General of India and the matter is clarified as under:-

- a. For goods manufactured at site to be dutiable they should have a new identity, character and use, distinct from the inputs/components that have gone into its production. Further, such resultant goods should be specified in the Central Excise Tariff as excisable goods besides being marketable i.e. they can be taken to the market and sold (even if they are not actually sold). The goods should not be immovable.
- b. Where processing of inputs results in a new products with a distinct commercial name, identity and use (prior to such product being assimilated in a structure which would render them as a part of immovable property), excise duty would be chargeable on such goods immediately upon their change of identity and prior to their assimilation in the structure or other immovable property.
- c. Where change of identity takes place in the course of construction or erection of a structure which is an immovable property, then there would be no manufacture of "goods" involved and no levy of excise duty.
- d. Integrated plants/machines, as a whole, may or may not be 'goods'. For example, plants for transportation of material (such as handling plants) are actually a system or a net work of machines. The system comes into being upon assembly of its component. In such a situation there is no manufacture of 'goods' as it is only a case of assembly of manufactured goods into a system. This cannot be compared to a fabrication where a group of machines themselves may be combined to constitute a new machine which has its own identity/marketability and is dutiable (e.g. a paper making machine assembled at site and fixed to the earth only for the purpose of ensuring vibration free movement)
- e. If items assembled or erected at site and attached by foundation to earth cannot be dismantled without substantial damage to its components and thus cannot be reassembled, then the items would not be considered as moveable and will, therefore, not be excisable goods.

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5. Keeping the above factors in mind the position is clarified further in respect of specific instances which have been brought to the notice of the Board.

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(iii) Refrigeration/air conditioning plants. These are basically systems comprising of compressors, ducting, pipings, insulators and sometimes cooling towers etc. They are in the nature of systems and are not machines as a whole. They come into existence only by assembly and connection of various components and parts. Though each component is dutiable, the refrigeration/air conditioning system as a whole cannot be considered to be excisable goods. Air conditioning units, however, would continue to remain dutiable as per the Central Excise Tariff.

6. Based on the above clarifications pending cases may be disposed of. Past instructions, Circulars and Orders of the Board on this issue may be considered as suitably modified.

7. Suitable Trade Notice may be issued for the information and guidance of the trade.

8. Receipt of this order may please be acknowledged.

9. Hindi version will follow."

These aspects were highlighted in Commissioner of Central Excise, Indore v. M/s Viridi Brothers and Ors. [2006 (14) SCALE 115].

As the basic factual aspects were not considered by the CEGAT we deem it proper to remit the matter to it for a fresh consideration in the light of the judgment in Viridi Brothers and Ors. case (supra) and Circular referred to above.

The appeals are accordingly disposed of with no orders as to costs.