

CASE NO.:
Appeal (civil) 5823-5832 of 2005

PETITIONER:
M/s. Craft Interiors Pvt. Ltd.

RESPONDENT:
Commissioner of Central Excise, Bangalore & Anr.

DATE OF JUDGMENT: 31/10/2006

BENCH:
Ashok Bhan & Markandey Katju

JUDGMENT:
J U D G M E N T

MARKANDEY KATJU, J.

These appeals have been filed under Section 35L(b) of the Central Excise Act, 1944 against the impugned order of the Customs Excise and Service Tax Appellate Tribunal (hereinafter referred to as 'The Tribunal'), South Zone Bench, Bangalore dated 10.5.2005.

Heard learned counsel for the parties and perused the record.

The appellant is a private limited company which undertakes various activities, which includes civil works, painting, ceiling work, electrical work, laying of vinyl flooring, tables, chairs, sofa sets, erection of immovable items viz., partitions (wooden/glass/aluminium/gypsum board), storages, workstations, laying of wooden flooring, column cladding, skirting, mirror paneling, window sill, wooden steps, doors, huge conference tables and huge reception tables depending on the customer's requirements. The customer places a purchase order to the appellants on a turn-key basis for the entire activity. The customer usually gives a bare open floor which has an exterior wall and internal columns to the appellants for undertaking the work.

In pursuance of the above said activities, the appellant also manufactures furniture as part of the above mentioned activities.

The markings based on the drawings approved by the architect are first made on the floor or the wall, as the case may be, depending on whether the item to be erected is a storage unit, large conference table/reception table, running counter etc. Various materials such as wood and plywood are procured from the open market. Frames of the wood are cut to size and fixed to the wall or floor. The plywood required is cut to size and fixed to the wall using screws and nails. Skeletal boxes are then made and fixed on the wall on marked position. Interior partitions and shelves are then made in the case of storage units, running counters, rear unit etc. Once these activities are completed the whole unit is laminated or veneered which would cover the screws and nails. In other words, after these storage units, kitchen counters or conference tables/reception tables are erected they cannot be removed as such and cannot be moved from one place to another. It cannot be dismantled and removed in complete or semi knocked

condition from one place to another. It can only be cannibalized as a result of which it gets reduced to broken pieces of wood, laminates etc.

The Central Excise authorities issued various show cause notices to the appellants alleging that the appellants had manufactured and assembled excisable goods i.e. furniture and furniture parts falling under Chapter 9404 in the premises of various customers. In response it was contended by the appellants that activities undertaken by them i.e. erection of storage units, kitchen counters, reception tables/conference tables etc. results in emergence of immovable property and could not be considered as excisable goods.

The Commissioner vide his order dated 24.9.2003 held that items like storage units, running counters, large reception tables etc. are classifiable under Chapter 9403 as furniture and liable to excise duty. Aggrieved by the said order the appellants filed an appeal to the Customs, Excise and Service Tax Appellate Tribunal, Bangalore which agreed with the findings of the Commissioner that although these items emerge on a piece by piece fabrication, the commodity is known in the market by name of table, storage counters etc. and as such are classifiable as furniture under Sub-heading 9403 of the Central Excise Tariff as furniture. Aggrieved, the appellants have filed the present appeal.

The issue which arises for consideration in these appeals is whether storage cabinets, kitchen counters, running counters, large reception/conference tables etc. are excisable as furniture.

Learned counsels for the appellants Shri Laxmikumaran and Shri Madhav Rao submitted that these items are fixtures and not furniture, and hence were not subject to the levy of excise duty.

In this connection we may refer to Chapter Sub-heading 9403 of the Central Excise Tariff Act, 1985 which reads as under:

"Other furniture and parts thereof"

Learned counsel for the appellants submits that the word 'furniture' means objects which are moveable and are complete before being placed either on the floor or the ground. Learned counsel also submitted that the word 'furniture' does not cover items which emerge either as part of an immoveable property or are erected stage by stage in its completion. These, he submitted, were fixtures and not furniture. He submitted that several of the items in question were erected piece by piece and fixed to the wall or ground and as such are not moveable property. In other words, the same cannot be removed without cannibalizing i.e. without reducing them into broken piece of wood, laminates etc.

In this connection we may refer to the definition of 'furniture' in various dictionaries. The Concise Oxford English Dictionary (Tenth Edn. Revised) defines 'furniture' as follows :

"the movable articles that are used to make a room or building suitable for living or working in, such as tables, chairs, or desks".

Similarly, Chambers English Dictionary defines 'furniture' as follows :

"movables, either for use or ornament, with which a house is equipped".

New Webster's Dictionary defines 'furniture' as follows:

" the movable articles, such as tables, chairs, desks, required for use or ornament in a house or office"

Thus, a perusal of the definitions given in various dictionaries shows that ordinarily 'furniture' refers to movable items such as desks, tables, chairs, required for use or ornamentation in a house or office. Thus, ordinarily furniture is not something immovable or something which is fixed in a position which can be removed only by cannibalizing. We agree with learned counsel for the appellants that the latter are fixtures and not furniture.

Several of the items in question in the present case e.g. kitchen overhead and below counters, storage units are, in our opinion, clearly not 'furniture' and hence not excisable under Sub-heading 9403 as furniture.

In view of the above discussion, we are of the opinion that these appeals have to be allowed. We hold that items which are ordinarily immovable or which ordinarily cannot be removed without cannibalizing e.g. storage units, running counters, overhead unit, rear and side unit, wall unit, pantry unit, kitchen unit and other items which are ordinarily immovable or cannot be removed without cannibalizing are not furniture. However, items like tables, desks, chairs etc. are furniture and hence excisable.

We may add that sometimes chairs, beds, tables, desks, etc. are affixed to the ground, but nevertheless they will still be called as furniture (one may recall the fixed bed in Sherlock Holme's story 'The Speckled Band'). This is because when we interpret a word we should not only see the dictionary meaning but even more the popular meaning which the word has acquired in common parlance. As stated by K.L. Sarkar in his book "Mimansa Rules of Interpretation" (see second edition published by Modern Law Publication, Allahabad), "the popular meaning overpowers the etymological meaning." *

To give an example, the word 'pankaja' literally means born in mud. The word 'panka' means 'mud', and the word 'ja' means 'which is born in'. Hence the etymological meaning of the word 'pankaja' is that 'which is born in mud'. Many things can be born in mud e.g. insects, vegetation, water flowers, etc. However, by popular usage the word 'pankaja' has acquired a particular meaning in common parlance i.e. lotus. This meaning will, therefore, prevail over the etymological meanings.

Similarly, the word 'furniture' has a meaning in common parlance which every layman understands. It commonly refers to chairs, desks, tables, beds, etc. Hence we should give it this popular meaning.

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The appeals are allowed. The impugned orders are set aside and the matter is remitted to the Tribunal to pass a fresh order after hearing the parties preferably within three months from the date of receipt of this order, in accordance with law and in the light of the observations made above. No costs.

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