

PETITIONER:
M/S. QUALITY STEEL TUBES (P) LTD.

Vs.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE, U.P.

DATE OF JUDGMENT 09/12/1994

BENCH:
SAHAI, R.M. (J)
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SAHAI, R.M. (J)
MAJMUDAR S.B. (J)

CITATION:
1995 SCC (2) 372 JT 1995 (1) 99
1994 SCALE (5) 183

ACT:

HEADNOTE:

JUDGMENT:

R.M. SAHAI, J.:

1. The question of law that arises for consideration in this appeal is whether the tube mill and welding head erected and installed by the appellant for manufacture of tubes and pipes out of duty paid raw material was assessable to duty under residuary tariff item no. 68 of the Schedule being excisable good within the meaning

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of Central Excises & Salt Act, 1944 (Act' for short).

2. To answer the issue, few facts are necessary to be narrated. The appellant was engaged in the manufacture of welded steel pipes and tubes which were classified before 1.8.1983 under item 28AA of the First Schedule to the Act. Later on these items came to fall under tariff item 25 of the Schedule. The steel tubes and pipes produced by the appellant were exempt from duty as they were produced out of duty paid raw material. For the manufacture of these items the appellant had set up plant and machinery at its factory site. The first phase of installation was completed in the year 1974 by putting up all process of tube making such as slitting line, tube rolling plant, welding plant, testing equipment and galvanizing etc. The tube which could be rolled were in the size range of 15 mm to 50 mm. The second phase of expansion was taken up by adding balancing facility for the manufacture of steel tubes of higher diameters ranging upto 150 mm. For the expansion of the project the appellant acquired various plant and machinery, for instance, uncoiler, looper, leveller, stamping and stock guide, forming mill, welding head, cooling zone etc. The project consisted of acquiring various items and components and installing them for making a complete unit for production of steel tubes. Certain items of the plant and machinery such as uncoiler, looper, etc. were purchased from the market and embedded to earth and installed to form a part of the tube mill. Components purchased from the market

were like motors, coupling, gear boxes, bearing, castings etc. These were assembled and installed on the site to form part of the tube mill which was also covered in the process of welding facility. The tube mill, according to appellant, was thus not a specific machine and component but consisted of several machines and components which after the installation got embedded to earth and formed part of the plant.

3. In 1976 and 1980, a dispute arose about eligibility of the goods produced by the appellant from exemption but the proceedings on reply by the appellant were dropped. In 1976, the appellant was informed in reference to its letter sent on 7th April, 1976 that the Government of India vide their notification No. 31/76 dated 28.3.76 having fully exempted the 'iron and steel products' listed at SI. No. 22 of the aforesaid notification from the operation of rule 174 of the Central Excises Rules, 1944, the appellant was not required to take any licence. In 1983, however, the Inspector, Central Excise, sent a letter to the appellant regarding manufacture of Steel pipes and tubes made out of steel strips exceeding 5 mm in thickness informing the appellant that the Superintendent, Central Excise, desires checking of the records to ascertain proof of payment of duty on raw materials received in the factory for manufacture of steel pipes and tubes. The appellant was required to arrange all the relevant records at the factory premises. The letter was replied on 16th January and the Department was requested to verify the records and also inspect the office of the appellant. In February, 1984 the appellant received a letter for producing records from the date of manufacture to satisfy that the raw material was duty paid. The premises were visited by the Assistant Collector on 28th March, 1984 and he instead of recording any note about the inspection of the record relating to whether the tubes were

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produced out of duty paid raw material recorded a note on the status of the working of the factory and observed that this was a thing of major importance and all the plants and machinery worth about Rs. 60 lakhs were added from 1980 onwards. On 30th March the appellant submitted copies of the balance sheets for the years 1981-82 and 1982-83. On the same day the factory was visited by a team of officers who sent a letter, the relevant portion of which is extracted below:

"I have been directed to collect following documents/records and figures in respect of your unit for the last five financial years. I shall be thankful if these figures/ records are made available.

1. Balance Sheet.

2. Project Report submitted to D.G.T.D./Financial Institutions and Progress Report in respect of Plant & Machinery at various times.

3. Figures of Clearances in respect of Pipes & Tubes/Coupling devices/Roll Sets & electricity supplied to your workers colony."

This letter was replied on 5.4.84 giving the details of the project started by the appellant in 1981 and other details about balance sheet etc. On the same day, the plant and machinery installed in the appellant's factory consisting of the tube mill and the welding head were seized by the Preventive Officers. The seizure memo indicates that what was seized was 'Plants & Machinery-Tube Mill & Welding Head

manufactured and installed in premises of M/s. Quality Steel Tube (P) Ltd. during 2nd phase of expansion in 1981-82' On 11th April, 1984, the Assistant Collector sent a letter, the relevant portions of which are extracted below:-

"From perusal of Chapter VI of the project Report and Balance Sheet for the year 1980-81 and 1981-82 submitted by you, it has been observed that estimated cost of plant and machinery i.e. Tube Mill and welding head is Rs. 56,10,000/-.

You are, however, requested to please intimate urgently the cost of welding head exclusively at the time when the goods were actually manufactured and also its present cost as in April, 1984.

Please also intimate the value of Tube Mill. minus welding head separately."

The appellant submitted a reply on 26th April in which it was claimed that since the tube mill and the welding head were not goods, therefore, no duty was leviable on it. In August, 1985 a show-cause notice was issued for contravention of provisions of Sections 6 and 9 of the Act and rules 9, 52A, 173B, 173C, 174 read with Sections 173(Q), 210 and 226 of the Central Excises Rules inasmuch as the appellant had manufactured and installed tube mills and welding head falling under tariff item 58 of the First Schedule of the Act without obtaining central excise licence, without payment of appropriate central excise duty leviable thereon and without observing other excise formalities. The reply was sent by the appellant in October, 1984 and it was claimed that even though the plant and machinery was erected and installed in the premises of the appellant after purchasing various items and components from the market, but it having been embedded to the earth it was immoveable good which was not transportable or transferable nor it could be sold, therefore, it could not be deemed to be excisable good within the meaning of the Act. The

Collector, Central Excise, did not accept the explanation and. it was held that the welding head was imported by the appellant from USA and likewise the tube mill manufactured by the appellant was transportable, transferable and saleable. Consequently, the two machineries under reference did not become a part of immoveable property. It was also held that to become good under the Act it was not necessary that it should be actually bought and sold. Since the unit erected and installed by the appellant was marketable or saleable, the appellant was liable to pay duty on it. The Tribunal also went in detail on the question whether the machinery and tubewell installed by the appellant were goods even though they were embedded to the earth and held that even if it was not a good under any Tariff Schedule, but it being a good it was excisable and the immoveability and moveability of the good had nothing to do with excisability.

4. Levy and collection of duty is provided by Section 3 of the Act on all 'excisable goods other than salt which are produced or manufactured. The power, therefore, to levy and collect the duty under the charging Section arises when excisable goods are produced or manufactured. What is an 'excisable good' is defined by sub-section (d) of Section 2 to mean 'goods specified in the Schedule to the Central Excise Tariff Act, 1985) as being subject to a duty of excise and includes salt'. The words 'excisable good', therefore, has a connotation of its own.

5. In several decisions rendered by this Court commencing from Union of India & Anr., v. Delhi Cloth and General Mills Co., Ltd., 1977 (1) ELT (J177) SC = Am 1963 SC 791 to Indian Cable Co. Ltd. v. Collector of Central Excise, Calcutta 1994 (74) ELT 22 the twin test of eligibility of an article to duty under Excise Act are that it must be a good mentioned either in the Schedule or under Item 68 and must be marketable. In Delhi Cloth Mills (supra) it having been held that the word 'good' applies to those goods which can be brought to market for being bought and sold it is implied that it applies to such goods as are moveable. The requirement of the goods being brought to the market for being bought and sold has become known as the test of marketability which has been reiterated by this Court in Collector of Central Excise v. Ambalal Sarabhai Enterprises, 1989 (43) ELT 214. The Court has held in Union Carbide India Ltd. v. Union of India & Ors. (1986) 2 SCC 547 that even if a good was capable of being brought to market, it would satisfy the test of marketability. The basic test, therefore, of levying duty under the Act is two fold. One, that any article must be a good and second, that it should be marketable or capable of being brought to market. Goods which are attached to the earth and thus become immoveable do not satisfy the test of being goods within the meaning of the Act nor it can be said to be capable of being brought to the market for being bought and sold. Therefore, both the tests, as explained by this Court, were not satisfied in the case of appellant as the tube mill or welding head having been erected and installed in the premises and embedded to earth they ceased to be goods within meaning of Section 3 of the Act.

6. Learned counsel for the revenue urged that even if the goods were capable of being brought to the market it would attract levy. True, but erection and instal-

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lation of a plant cannot be held to be excisable goods. If such wide meaning is assigned it would result in bringing in its ambit structures, erections and installations. That surely would not be in consonance with accepted meaning of excisable goods and its exigibility to duty.

7. In the result, this appeal succeeds and is allowed. The order passed by the Tribunal is set aside. The question of law raised by the assessee is decided by saying that the plant of tube mill and welding head erected by the appellant and installed as a part of expansion programme was not exigible to duty.

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