(2011) 04 SC CK 0112

In the Supreme Court Of India

Case No : Civil Appeal No''s. 4079-4080 of 2003

Commissioner of C. Ex.	APPELLANT
Vs	
Globus Stores (P) Ltd.	RESPONDENT

Date of Decision : 13-04-2011

Acts Referred:

Citation : (2011) 267 ELT 435

Hon'ble Judges : Mukundakam Sharma, J;Anil R. Dave, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. These appeals are directed against the judgment and order dated 16-7-2002 passed by CEGAT, New Delhi. In the aforesaid judgment, while allowing the appeals of the Appellant, reliance was placed on the decision in the case of 2002 (101) ECR 531 ; While relying on the ratio of the aforesaid decision, the Tribunal also referred to the contents of the circular of the Central Board of Excise and Customs which is dated 15-1-2002. In the said circular, what was recorded by the Central Board was to the following effect:

Refrigeration/air-conditioning plants. These are basically system comprising of compressors, ducting, pipings, insulators and sometime cooling towers etc. They are in the nature of system 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 systems 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.

2. This Court while rendering the judgment in the case of Commnr. of Central Excise, Indore Vs. Virdi Brothers and Others, relied upon aforesaid circular issued by the Central Board as also various other decisions of this Court. This Court held that the appeal filed by the Commissioner Excise, had no merit. Case of M/s. Sayaji Hotels Ltd. was also one of the batch matter heard with the case of Virdi

Brothers (supra).

3. In the present appeals also, we are concerned with the air-conditioning plant which is the same good as that of Virdi Brothers (supra) .The learned Counsel appearing for the Appellant, however, has drawn our attention to the decision of this Court in Commissioner of Central Excise, Ahmedabad Vs. Solid and Correct Engineering Works and Others, . In the said decision, this Court had considered the case of setting up of Asphalt Drum/Hot Mix plant. Apart from the fact that the aforesaid good is different from the good in question, even the circular which is referred to and relied upon by this Court in the case of Virdi Brothers (Supra) was not considered in the said decision as the subject matter was totally different. Besides, the air-conditioning plant was an immovable article whereas Asphalt drum/Hot mix plant is a movable article. Therefore, in our considered opinion, the facts of both the cases are different and, therefore, distinguishable. For what is required to be decided in the present case stands already decided by this Court in Virdi Brothers (supra), which applies to the case in hand with full force.

4. Therefore, following the aforesaid decision by Virdi Brothers (supra), we dismiss these appeals but leave the parties to bear their own costs.