(2002) 08 SC CK 0069

In the Supreme Court Of India

Case No : Civil Appeal No. 2747 of 1998

Commissioner of C. Ex. APPELLANT

Vs

Josts Engineering Co. Ltd. RESPONDENT

Date of Decision : 27-08-2002

Acts Referred:
Central Excises and Salt Act, 1944 — Section 2, 3

Citation : (2002) 146 ELT 29 : (2002) 10 SCC 164

Hon'ble Judges : S. S. M. Quadri, J;Ruma Pal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. These appeals are by the Commissioner of Central Excise, Mumbai challenging the correctness of the judgment and order of the Customs, Excise and Gold (Control) Appellate Tribunal/ West Regional Bench at Mumbai in Appeal No. E/375-376/R/97-Bom., dated November 13, 1997.

2. The point that arises for our consideration is whether "spray paint booth" is an excisable goods chargeable to excise duty under Entry 8424.00 of the Schedule to the Central Excise Tariff Act, 1985.

3. To attract excise duty u/s 3 of the Act the article must satisfy the twin attributes of excisable goods - mobility and marketability - or it should find a place by that name in the Schedule to the Act.

4. A perusal of the order, under challenge, shows that in regard to "spray paint booth" the Tribunal recorded findings that the outside portions of the structure are embedded to the earth and that it can never be dismantled without damaging the portions and the system which is touching the earth and the system cannot work thereafter. In view of these findings the test of mobility fails as the "spray paint booth" will be nothing but immovable property and cannot be termed as excisable goods within the meaning of the Act. Though duty is sought to be levied under Entry 8424.00 of the Schedule it is not mentioned therein

under that name even though it has marketability by that name as found by the Tribunal.

5. Further, the question is squarely covered by the judgment of this Court in Triveni Engineering and Industries Ltd. and Another Vs. Commissioner of Central Excise and Another, . In that case, this Court reversed the order of the 1996 (88) ELT 238 which was relied upon by the appellant before the Tribunal in this case. In view of the ratio of the judgment in Triveni's case (supra) and in the light of the findings of the Tribunal, the order under appeal deserves to be confirmed and we, accordingly, do so.

6. It would be apt to record that having taken note of various judgments of this Court including Triveni's case (supra), the Central Board of Excise & Customs in Section 37B Order No. 58/1 /2002-CX, dated January 15, 2002 laid down certain guidelines, which is binding on the Revenue. On the basis of the said order also, there is no case for the Revenue to pursue these appeals.

7. Accordingly, the appeals are dismissed. There shall be no order as to costs.