

(1997) 05 SC CK 0075

In the Supreme Court Of India

Case No : Civil Appeal No. 3977 of 1989

East India Transformer and Switch Gear Pvt. Ltd.	APPELLANT
Vs	
Collector of Central Excise, Meerut, U.P.	RESPONDENT

Date of Decision : 08-05-1997

Acts Referred:

Central Excise Rules, 1944 — Rule 8

Citation : (1997) 92 ELT 449 : (1997) 10 JT 705 : (1997) 6 SCC 64

Hon'ble Judges : S. P. Bharucha, J;M. Jagannadha Rao, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.P. Bharucha, J.—This is an appeal against the order of the Customs, Excise and Gold (Control) Appellate Tribunal.

2. It was the case of the assessee (appellant) that it was merely repairing old transformers and not manufacturing them. This case the Tribunal accepted.

3. Further, it was the case of the assessee that it was entitled to the benefit of an exemption notification dated 30th April, 1975, issued under the provisions of Rule 8 of the Central Excise Rules whereby the Central Government had exempted from the whole of the excise duty leviable thereon goods which fell under Item 68 of the First Schedule to the Central Excises and Salt Act, 1944, which were manufactured in a factory and were intended for use in the factory, in which they were manufactured. The assessee contended that, accordingly, it was not obliged to pay excise duty on parts manufactured by it in its factory which were used by it in the same factory for the repair of old transformers. It was also the assessee's case that, in the course of such repair, it also used parts which were purchased by it from others upon which excise duty had already been paid and, therefore, it was not liable to pay excise duty thereon once again. The Tribunal disposed of this part of the assessee's case by stating:

The appellant is liable to pay duty on the value of spare parts manufactured and

used in the old transformers and no duty is chargeable on the labour charges.

Although the said notification was reproduced in its judgment, the Tribunal did not discuss it nor indicate why its benefit was not available to the assessee.

4. The assessee thereupon filed an application before the Tribunal for rectification and pleaded that the Tribunal should clarify the aforementioned aspect of its case. In its order passed on the clarification application the Tribunal noted the argument on behalf of the assessee based on the said notification. It noted that counsel who appeared on behalf of the Revenue "leaves the decisions to the Bench". It then made the following clarification in the relevant paragraph of its earlier order:

In view of the case law discussed above, we hold that the repair of transformers in the instant case does not amount to 'manufacture'. The appellant is liable to pay duty on the value of spare parts manufactured, if otherwise payable, and used in the old transformers and no duty is chargeable on the labour charges.

5. Learned Counsel for the assessee submitted before us that neither in the principal order nor in the clarificatory order had the Tribunal taken note of the said notification and of the argument based thereon. He submitted that the clarification was no better in that it did not indicate any conclusion but stated only that duty was payable on the value of the spare parts manufactured 'if otherwise payable'.

6. As we see it, the Tribunal was duty bound to consider the impact of the said notification upon the case before it and hold why, in the light thereof, the assessee was liable or not liable to pay excise duty on the value of the parts that were used by it in the repair of old transformers. Certainly, having failed to do so in its principal order, the Tribunal ought to have rectified its error in the clarificatory order. To say that excise duty would be payable "if otherwise payable" is not to render any decision at all.

7. At the hearing of the application for clarification counsel appearing on behalf of the Revenue did not counter the case of the assessee that it was entitled to the benefit of the said notification, and the learned Additional Solicitor General now appearing for the Revenue does not do so either.

8. The said notification applies to the use of goods falling under Tariff Item 68 (which is not in dispute) which are manufactured in a factory and are intended to be used in that factory. The parts that the assessee manufactured in its factory and used in its factory in the repair of old transformers were, therefore, entitled to the benefit of the said notification.

9. Insofar as parts which were purchased from the market and upon which excise duty had already been paid are concerned, there was no obligation to pay excise duty over again.

10. The appeal is allowed. The judgment and order of the Tribunal, insofar as it

deals with parts used in the repair of old transformers, is set aside and it is ordered that the assessee is not to be made liable to pay excise duty on the value of parts that it used in the aforestated manner in the repair of old transformers.

11. No order as to costs.