(1971) 01 P&H CK 0043

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 1469 of 1968

Jiwan Singh and Sons and Another APPELLANT

Vs

Senior Superintendent of Central Excise and Another RESPONDENT

Date of Decision : 12-01-1971

Acts Referred:

Citation : (1989) 20 ECR 233 : (1979) 4 ELT 265

Hon'ble Judges : Balraj Tuli, J

Bench : Single Bench

Judgement

Balraj Tuli, J.—The petitioners are two firms carrying on the business of building bodies for passenger buses. These bodies are fitted with seats made of wood and steel. With effect from March 1, 1968 excise duty was levied on "steel furniture made partly or wholly of steel, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power, whether in assembled or unassembled condition." This item was inserted as Item 40 in the First Schedule to the Central Excises and Salt Act, 1944. On April 30, 1968, the Government exempted from the payment of duty "steel seats and chairs designed for use in automobiles, railway carriages and aircrafts", so that for two months from March 1, 1968 to April 29, 1968, the petitioners were held liable to pay excise duty on the seats of buses manufactured out of steel. The petitioners, through their Association, made representation to the Collector of Central Excise to the effect that the seats manufactured by them and fitted in the buses were not furniture but were fixtures. The representation was turned down and it was held that they were furniture and the petitioners should take out licence under the said Act. The petition was then filed challenging the decision of the Collector Central Excise.

2. Written statement has been filed in which two preliminary objections have been taken that is, a joint petition on behalf of two dealers is not competent as separate notices were issued to each of them. The second objection is that the petitioners should have availed of the statutory remedy so that the departmental authorities could have determined on facts whether the seats fitted in the bodies

of buses amount to furniture or not as the word used in Item 40 connotes. On merits it has been submitted that the chairs fixed or screwed to the bodies of buses remain furniture and do not become fixtures as they can be removed from the bodies of buses and used elsewhere as furniture.

3. There is force in the first preliminary objection of the learned counsel for the respondents and realising the force of that objection, the learned counsel for the petitioners has confined this petition only to petitioner No. 2-This order will, therefore, be in respect of petitioner No. 2 only.

4. The second preliminary objection has no substance because the Collector of Central Excise has already determined that the seats, manufactured by the petitioner and fitted into the buses are covered by Item 40 as furniture and the petitioner is liable to pay the duty in respect thereof. It is correctness of this decision that has been challenged in the writ petition.

5. The word ''furniture'' has not been defined by the Legislature. We have, therefore, to determine whether the seats fitted in the buses amount to furniture or not. ''Furniture'' is derived from the word ''furnish'' is to supplement something or some place with an additional thing for making better use of that thing or place, for example, furniture in a drawing room, furniture in a dining room, furniture in a bed room, furniture in a restaurant etc. But where the vehicle is used for carrying passengers, and the seats have to be provided for the persons travelling in the vehicle the seats so provided do not amount to furniture, but form a part and parcel of the vehicle itself and are more in the nature of fixtures than furniture. The learned counsel for the respondents has vehemently argued that these chairs or seats which are fixed in the buses can be removed and used as furniture in the house or elsewhere because they are only screwed to the bodies and are easily removable. The fact that these chairs, when removed from the buses, can be used as futniture, does not furnish any criterion to determine whether the seats, when fixed to the bodies, of buses by the petitioner amount to furniture or not. I may repeat that when building the body for a bus, the petitioner builds these seats just like the other parts of the body of the bus like roof and other things. The body of the bus is not complete unless the seating facility or places are provided for the passengers . who are intended to travel therein. In this context we have to see whether the seats manufactured by the petitioner amount to furniture or not and not with regard to a possible use which may be made of these seats when removed from the bus. It has to be borne in mind that the seats fixed in the buses are not meant for being removed and used elsewhere. They are meant to be used in the body of the bus itself for providing seating accommodation to the persons travelling in the bus. The notification dated April 30, 1968, issued by the Government itself exempting the seats used in automobiles from the payment of duty clearly shows that the Government never intended to levy duty there on. It is curious that the Government only exempted them from duty with effect from April, 30, 1968 and not from March 1, 1968.

6. For the persons given above, I accept this writ petition and quash the order, copy of which is annexure ''E'' to the writ petition and hold that the petitioner is not liable to pay any duty on the seats manufactured by it for the passenger buses. There is, however, no order as to costs.

