(1995) 07 OHC CK 0011

In the Orissa High Court

Case No : O.J.C. No. 4526 of 1990

Orissa Forest Corpn. APPELLANT

Vs

Additional Collr. of C. Ex. and Cus. RESPONDENT

Date of Decision : 04-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1995) 80 ELT 277

Hon'ble Judges : S. Chatterji, J;R.K. Patra, J

Bench : Division Bench

Advocate : B.K. Mohanti, for the Appellant; None, for the Respondent

Judgement

R.K. Patra, J.—By this petition under Articles 226 and 227 of the Constitution of India, the petitioner M/s. Orissa Forest Corporation seeks quashing of the order, dated 29-12-1989 made by the Additional Collector, Central Excise and Customs, Bhubaneswar - Opposite Party No. l levying Central Excise duty amounting to Rs. 4,665.83 on wooden railway sleepers and sawn sizes manufactured and removed during the period from 1-4-1986 to 2-4-1986. The said order is at Annexure-1.

2 The petitioner has a Saw Mill called M/s. Jagannathpur Saw Mills at Jagannathpur, P.O. : Jeypore, District-Koraput. On the allegation that it manufactured and cleared/removed excisable goods i.e. wooden railway sleepers and sawn sizes without payment of Central Excise duty, the petitioner was issued notice to show cause as to why necessary Excise duty shall not be levied on it. Pursuant to the notice, the petitioner filed its reply contending, inter alia, that railway sleepers and sawn sizes are not excisable goods as no transformation of raw materials is involved through manufacturing process. Opp. Party No. 1 did not accept the stand taken by the petitioner in view of the fact that the goods in question clearly answer to the descriptions specified in Heading Nos. 44.02 and 44.03 of the Schedule to the Central Excise Tariff Act, 1985. As already indicated, the validity of this finding arrived at by Opp. Party No. 1 is the subject-matter of challenge in this petition.

3 A Bench of this Court to which one of us (Hon''ble R.K. Patra, J.) was a party in O.J.C. Nos. 4524, 2525, 4528 and 4529 of 1990 decided on 13-7-1993 held that railway sleeper after having gone through the process of manufacture emerges as distinctly marketable product which has been described as "the goods" by Heading No. 44.02 catalogued in the Schedule to the Central Excise Tariff Act, 1985. With regard to sawn timber and wooden sawn sizes, the Bench further held that they answer the description of ''goods'' mentioned in Heading No. 44.03 of the Schedule. The aforesaid findings were arrived at on the basis of the principle that when legislature intends that wooden sawn or chipped lengthwise, sliced should be taken a distinct commercial goods on which excise duty is leviable, the relevant entries cannot be construed according to the strict or technical meaning of the language contained in it. In course of hearing of the present case, Shri B.K. Mohanty, learned counsel for the petitioner brought to our notice a decision rendered by a coordinate Bench of this Court in O.J.C. Nos. 3151,3153 and 3154 of 1989 decided on 11-9-1992 in which it has been held that timber brought into existence by way of sawing does not invite levy of excise duty. We may note here that in all these cases including the present one, M/s. Orissa Forest Corporation has been the writ petitioner. As such, it should have brought to the notice the judgment of this Court rendered on 11-9-1992 when O.J.C. Nos. 4524, 4525, 4528 and 4529 of 1990 were being heard. In the earlier writ petitions, namely O.J.C. Nos. 3151,3153 and 3154 of 1989, the Bench took the view that timber brought into existence by way of sawing does not invite levy of excise duty basing on the judgment of the Supreme Court in Collector of Central Excise, Madras Vs. Kutty Flush Doors and Furniture Co. (P) Ltd., . The subsequent Bench (as already indicated, to which one of us was a party) also took note of the judgment of the Supreme Court in M/s. Kutty Flush Doors (supra) and for the reasons recorded in paragraphs 10 to 16 of the judgment, the Bench held that the findings recorded by the Excise authority that railway sleepers, sawn timbers and wooden sawn sizes are distinct commercial goods on which excise duty is leviable cannot be upset. This is not a case where the later Bench did not notice the judgment of the Supreme Court in M/s. Kutty Flush Doors (supra). After taking note of the ratio of the Supreme Court in the aforesaid and other judgments of the Supreme Court holding the field, the later Bench declined to interfere with the order of the Excise authority levying excise duty. Apparently, there is conflict of opinion between two coordinate Benches as to whether Central Excise duty is leviable on wooden sleepers and sawn sizes. In order to resolve this conflict of opinion, the matter should be heard by a Larger Bench.

Accordingly the present case may be placed before the Hon''ble Acting Chief Justice for appropriate order and direction.

S. Chatterji, J.

I agree.

