(2001) 03 CAL CK 0027

In the Calcutta High Court

Case No : C.R. No. 16224 (W) of 1975

Sanwalram Modi Carrying on business under the name and style of Shiva Engineering Works APPELLANT

Vs

Joint Secretary, Government of India and Others RESPONDENT

Date of Decision : 15-03-2001

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2001) 2 CALLT 498 : (2001) 132 ELT 16

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Mr. D.K. Dhar and Mr. H.P. Roychowdhury, for the Appellant;

Judgement

A. Lala, J.—Under this writ petition, the petitioner challenged an order being No. 274 of 1975 passed in revisional application by the appropriate Joint Secretary to the Government of India, Ministry of Finance. The inpugned order is as follow:

"The Government of India has considered the points raised in the revision Application and those urged at the time of personal hearing.

The Petitioners have urged that they are not manufacturer of steel furniture, they only fabricate according to the design and drawings given by the customers. The petitioners'' product i.e. "double tier tubuler dismantinable bunk" is used inside the tent by the military by embedding in earth with cement concrete for sleeping purposes. Without dismantling from the earth it cannot be removed. The bunks are not furniture; these are fixtures. Those are not movable articles are those which can be removed, as such but the bunks can be removed only by dismantling by unscrewing the nuts and bolts. Railway bunks are exempted under Collector''s trade notice No. 89/ steel furniture-3/68 dated 41.69 hence petitioners'' product is also exempted likewise. The list appended to the collector''s trade notice dated 4.1.69 contains the names of steel furniture wherein bunk has not included irrespective of the list not being exhaustive, bunk cannot be treated as steel furniture. They have further contended that even assuing but not admitting that the petitioners'' products are steel furniture then in that case the cost of ''Newar'' should be excluded from the assessable value.

Government observe that furniture ordinarily means the movable contents of a house or room e.g. table, chairs, cots, etc. whereas a fixture in a "thing fixed or fastened in position". These tubular bunk frames after fixing with ''newar'' are used as cots for sleeping. It is seen that these were detachable side frames and both upper and lower bunks are also detachable. Even if the structural frame legs may require being embedded in earth by cement of otherwise, the fact of ''detachability makes the item ''furniture''. Excise duty, is therefore, chargeable and it should be paid on the goods in the form those are supplied and cleared.

In view of the foregoing, the Government of India does not find any ground to interfere with the order-in-appeal which is correct in law & based on the facts of the case.

The Revision application is rejected accordingly".

2. Therefore, the only question before the writ Court is whether the authority concerned was justified in holding "Double Tier Tubular Dismantinable Bunk "is furniture or not. A sketch of such tubular bunk is produced before this Court and kept with the record from which it appears that ''Newar'' and four rods on the four sides can be removed from such specialised products. Therefore, the Court goes by the meaning of the furniture. The meaning of the furniture is as follows :

"1. The Concise Oxford Dictionary. Furniture-

1. The movable equipment of a house, room etc. e.g. tables, chairs and beds.

2. Naut. a ship''s equipment esp. tackle etc.

3. Accessories, e.g. the handles and lock of a door.

4. Printing pieces of wood or metal placed round or between type to make blank spaces and fasten the matter in the chase.

2. Collins National Dictionary

Furniture:-equipment, outfit, movables that which is put into a house for use or ornaments.

3. Webster''s New World Dictionary

Furniture-1. the movable things in a room, etc. which equip it for living as chairs, beds, etc. 2, the necessary equipment of a ship, trade etc."

3. Nobody appeared on behalf of the respondents authority. The matter is pending under the ''old matters'' since it is pending from 1975. Today we are in 2001. I find from the record that the respondents have filed an affidavit. It appears from such affidavit that the same is almost reproduction of the order impugned. Apart from the reproduction of the order Impugned, they have placed

their case in para 6 of such affidavit which is as follows:

"With further reference to the said paragraph 3, I say that in the present case the said ''double tier tubular dismaintable bunks'' are made of : (1) 2 Nos. detachable side frames; (ii) 2 Nos. detachable annk; (iii) 8 Nos. Hold Fast: (iv) 24 Nos. bolts and nuts; and (v) 6 Kgs. Newar. These detachable double tier sleeping bunks have been ordered by the Company Commander for the Military Jawans to be used at the camp for sleeping purpose. Since it is double tier the legs of these bunks are embedded by cement to have sufficient strength and stability to stand the lead of two persons while they would be sleeping. It can be dismantled without sufficient labour or cost. The word ''dismantleable'' is significant and it necessarily implies that it can be dismantled as and when necessary so that it can be used at any other place. As these are used for the purpose of sleeping these articles also satisfies the utilitarian aspect of the military personnel. Accordingly it has all the characteristics of a furniture made of steel and are dutiable under Item No. 40 of the First Schedule to the Central Excise and Salt Act, 1944, and the allegations to the contrary are hereby denied".

4. It has further stated in para 8 which is as follows :

"I say that since it is double ''tier sleeping bunk for the purpose of stability and strength its leg ends are embedded almost on the surface ground by cement, but those can always be detached and removed from place to place".

5. In such circumstances, silting in writ Court, I have to go by the legal analysis in this respect in Elpro International Ltd. Vs. Joint Secretary, Govt. of India, Ministry of Finance and Others, in its para 6 and 8 it was held that operation tables used for the specific purpose are not furniture and therefore, they do not came within Item No. 40 in the First Schedule. The Supreme Court entirely agreed with such operation of High Court as recorded under the judgment it has also held by the Supreme Court that Orthopaedic and Fracture Tables do not come within Item No. 40 in the First Schedule to the Act and as such no duty could be levied on these items. The Supreme Court was also pleased to hold that the amount as duly shall be refunded by the respondents to the appellant Company and in case of failure of refund within the prescribed period the amount will carry interest in following such Judgment of the Supreme Court CEGAT, New Delhi held as reported in 1989 (20) ECR 391 by summarising the discussion with reference of the consideration that an article would be called as furniture or not will be decided on the following basis:

"To summarise, an item could be termed as an article of furniture if (1) it is an article of convenience of decoration is used for either purposes in the house of an office of a public building or an industrial establishment: (iii) is not fabricated specially to perform special functions and (iv) is not so constructed as to be not useable in the line of ordinary furniture, as found in the house, office etc.".

6. It appears to this Court that the furniture is not ordinarily made for the house, office and industrial purpose. Therefore, dismentability or detachability or

movability of the furniture is not the criteria but for the use of the same in common parlance. The categorised item as aforesaid with the quoted portion is specific on this point. One of such specification ts that such furniture is not fabricated for common purpose. It is fabricated specialty to perform special function and not usable in the line of ordinary furniture. Therefore, the case of the petitioner is directly hit by the laid down principle. This is the conclusion of the Court.

7. Hence, I am of the view that the appropriate order or orders have to be set aside. Accordingly, all the orders including appellate or revisional order in respect of realisation or recovery or refund, if any, stand set aside.

8. The Rule is, accordingly, made absolute. There will be no order as to costs.

9. As a consequential effect the Bank guarantee as given by the petitioner stands released. The Authority concerned directed to return the document in this respect to the petitioner immediately on communication of this order. United Commercial Bank is directed to release the Bank guarantee money in favour of the petitioner.

10. Since the original Advocate-on-record left the profession about four to five years back without giving any change in favour of the petitioner, leave is granted to the present Advocate-on-record to file the fresh vakalatnama in presence of the petitioner. In addition thereto the petitioner is also directed to affirm affidavit in respect of granting such fresh vakalatnama in favour of the present Advocate-on-record in course of this date which is also to be kept with the record.

Xerox certified copy of the judgment will be supplied by the department to the parties within fortnight from the date of putting requisites.

11. Rule made absolute