(2002) 12 BOM CK 0030

In the Bombay High Court

Case No : Writ Petition No. 325 of 1990

Simplex Concretes Piles (India) Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 20-12-2002

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

Citation : (2003) 157 ELT 394

Hon'ble Judges : H.L. Gokhale, J;A.P. Deshpande, J

Bench : Division Bench

Advocate : A.M. Kanade, for the Appellant; A.G. Godhamgaonkar, CGSC, for the Respondent

Final Decision : Allowed

Judgement

H.L. Gokhale, J.—Heard Mr. Kanade, learned Counsel, in support of this petition and Mr. Godhamgoankar, learned Standing Counsel, appearing for respondent Nos. 1 and 2.

2. The facts in this petition are almost similar to Writ Petition No. 324/1990 Gannon Dunkerley and Co. Ltd., K.L. Morarka, A.D. Chaudhari, C.P. Mehta, A.C. Burman, L.K. Pandey and G.M. Mehta Vs. Union of India (UOI), The Collector of Central Excise and Customs and The Attorney General of India, which we have decided today. The petitioner herein is a Civil Construction Company and it was entrusted with the works contract of setting up a factory shed for M/s. Bajaj Auto Ltd., at Waluj, District Aurangabad. The petitioner was issued with a show cause notice on 20th January, 1989, alleging that with effect from 1st March, 1986, excise duty was payable and that they had manufactured excisable goods and the tax was not paid. The notice called upon the 1st petitioner to pay the requisite excise duty to the tune of Rs. 32,84,126.59 Paise and the penalty leviable for violation of the relevant statutory provisions. The 1st petitioner filed reply and submitted that what was carried on the site was only assembling of various components supplied by M/s. Bajaj Auto Ltd., and then erected a factory

shed as per their specifications.

3. In this case also, certain statements of officers of the 1st petitioner were recorded during the preliminary investigation. The respondent No. 2, who was Collector of Central Excise, at the relevant time relied upon those statements. He also relied upon the fact that the sales tax was paid by the petitioner when the various components were moved from their processing site on the property of Bajaj Auto Ltd., to the place where the final shed was erected. He, therefore, confirmed the demand notice. Being aggrieved by that order dated 13th October, 1989, this petition has been filed.

4. When this petition was admitted, the 1st petitioner was required to deposit an amount of Rs. 5 lakhs and to give Bank Guarantee of the same amount. The petition has thereafter come up for final hearing before this Bench.

5. Mr. Kanade, learned Counsel appearing for the petitioners, submitted that what the petitioners have done on the site did not amount to manufacturing excisable goods within the meaning of Section 3 of the Central Excise Act, 1944. Mr. Kanade submitted that what was manufactured were not goods with move ability and which was embedded into soil. The so called goods could not be said to be excisable goods within the meaning of Section 3 of the Central Excise Act. He relied upon various Judgments of the Apex Court viz. Quality Steel Tubes (P) Ltd. Vs. Collector of Central Excise, U.P., ; Union of India (UOI) and Others Vs. J.G. Glass Industries Ltd. and Others, , and a very recent judgment of Division Bench of this Court. In the case of Sunflag Iron and Steel Co. Ltd. Vs. Additional Collr. of C. Ex., .

6. Mr. Godhamgaonkar, learned Standing Counsel appearing for respondent Nos. 1 and 2, on the other hand, submitted that the marketability was a concept which ought not to be brought into while considering whether the goods are excisable or not. There is no such provision in Section 3 of the Central Excise Act or also in the relevant provisions in the Constitution of India. He also relied upon judgment of the Apex Court in the case of M/s. Indian Cable Company Ltd., Calcutta Vs. Collector of Central Excise, Calcutta and others, , as also, in the case of Triveni Engineering and Industries Ltd. and Another Vs. Commissioner of Central Excise and Another, .

7. The submissions of both the Counsel have been dealt with in our Judgment rendered today in Writ Petition No. 324/1990 Gannon Dunkerley and Co. Ltd., K.L. Morarka, A.D. Chaudhari, C.P. Mehta, A.C. Burman, L.K. Pandey and G.M. Mehta Vs. Union of India (UOI), The Collector of Central Excise and Customs and The Attorney General of India, . For those very reasons, we accept the submissions of Mr. Kanade and hold that the activity of the petitioners on the site of Bajaj Auto Ltd., did not amount to manufacture of excisable goods within the meaning of Section 3 of the Central Excise Act, 1944.

8. We, therefore, allow this petition and make the rule absolute in terms of prayer Clause (c), by quashing and setting aside the order dated 13th October,

1989. The 1st petitioner will be entitled to withdraw the amount of Rs. 5 lakhs which is deposited in the Court and Bank Guarantee given by them will also be released.

9. At this stage, Mr. Godhamgaonkar, learned Standing Counsel appearing for the respondent Nos. 1 and 2, applied for stay of this order for a period of eight weeks. Mr. Kanade, learned Counsel appearing for the petitioner, submits that the law is well laid down at this judgment is in consonance therewith. He, however, leaves it to the Court to pass appropriate order.

In the circumstances, this judgment and order will remain stayed for a period of eight weeks from today, where after subject to any orders to be obtained by the respondents, the deposit will be returned and the Bank Guarantee will be released.

10. In the circumstances of the case, there shall be no order as to costs.

