(1990) 08 MAD CK 0059

In the Madras High Court

Case No : Writ Petition No. 9479 of 1985

Sree Sakthi Saw Mill — APPELLANT

Vs

Assistant Collector of C. Ex. — RESPONDENT

Date of Decision : 07-08-1990

Acts Referred:

Citation : (1991) 52 ELT 356

Hon'ble Judges : S. Ramalingam, J

Bench : Single Bench

Advocate : Mr. V. Radhakrishnan, for the Appellant; Mr. K. Jayachandran, Additional Central Government Standing Counsel, for the Respondent

Judgement

1. Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein, and in the affidavit filed therewith the High

Court will be pleased to issue a Writ of Mandamus forbearing the Respondents herein from applying the provisions of the Central Excises and Salt

Act, 1944 to the Petitioners pursuant to the Notice O.C. No. 1306/85/etc., dated 20-8-1985.

ORDER :

This Writ Petition coming on for hearing on this day upon perusing the petition and the affidavit filed in support thereof, the order of the High Court,

dated 6-9-1985 and made herein, and the records relating to the prayer the aforesaid and upon hearing the arguments of Mr. V. Radhakrishnan,

Advocate for the Petitioner, and of Mr. K. Jayachandran, Additional Central Government Standing Counsel, on behalf of the Respondents the

Court made the following order :-

The petitioner is a saw mill and it is was issued with a show cause notice by the

Superintendent of the Central excise, asking it to file a declaration

under Notification 2/81 dated 17-1-1981 as amended and read with Notification 85/85-C.E. dated 17-6-1985 for duty exemption and also for

exemption from licensing control. The petitioner has also submitted its representation stating that it is to liable to pay excise duty and also claiming

exemption from licensing control. Apprehending that an order prejudicial to it may be passed, it filed this writ petition praying for a mandamus to

forbear the respondents from applying the provisions of the Central Excise and Salt Act, 1944 to the petitioners pursuant to the notice issued by

the Superintendent of Central Excise.

2. During the pendency of this writ petition, the Supreme Court had occasion to consider this question as to whether any manufacturing process is

involved when timber logs are cut into sawn timber. In the decision reported in Collector of Central Excise, Madras Vs. Kutty Flush Doors and

Furniture Co. (P) Ltd., the Supreme Court held that the word ''Manufacture'' would imply a change, but, every change is not a manufacture and

manufacturing process would be involved only when there is a transformation, when a new and different articles emerges having a distinct name,

character or use. In this view, the Supreme Court held that the petitioner therein was entitled to exemption and Tariff Item 68 would not be

attracted. Since the petitioners has already submitted its representation, it is for the respondents to pass orders in the light of the decisions of the

Supreme Court already referred to.

3. The writ petition is disposed of in the above manner. No order as to costs.