

(1996) 09 SC CK 0029

In the Supreme Court Of India

Case No : Civil Appeal No. 4949 of 1984

Thiagaraja Engineering Enterprises

APPELLANT

Vs

Assistant Collector of Central Excise

RESPONDENT

Date of Decision : 26-09-1996

Acts Referred:

Citation : (1997) 68 ECR 41 : (1996) 88 ELT 312 : (1997) 10 SCC 241

Hon'ble Judges : S. P. Bharucha, J;K. S. Paripoornan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.P. Bharucha and K.S. Paripoornan, JJ.—These appeals arise upon decisions of the Customs, Excise & Gold (Control) Appellate Tribunal upon substantially similar facts.

2. The Excise duty exemption notification in question provided that the exemption would not apply to bolts, nuts and screws manufactured by a manufacturer if the total value of the bolts, nuts and screws cleared by such manufacturer during a financial year exceeded Rs. 5 lakhs.

3. The nuts, bolts and screws in question were manufactured by the various appellants for M/s. Enfield India Ltd. (Enfield). It was the case of the appellants that they were doing job work under works contracts for Enfield; they were independent manufacturers who were entitled to the benefit of the exemption notification. It was found by the authorities below that the manufacturer was really Enfield.

4. The appellants filed appeals before the Tribunal. The Tribunal found that the contention of the appellants that they were independent contractors could not be accepted. There were tripartite agreements entered into between M/s. K.R. Sundaram Industrial Estate Pvt. Ltd., Enfield and the appellants. The first named was of an associate of Enfield and ran the industrial estate in which premises were leased out to several units, including the appellants. The object of the lease

was to manufacture and supply the requirements of Enfield. The premises were not to be used for any purpose other than the aforesaid. The process and production schedules were stipulated by Enfield. The units had been set up by Enfield. Enfield had a right to inspect the accounts of the units. Enfield was to provide loans for the purchase of tools, fixtures and equipment by the units. Enfield was to give technical advice. Machinery to be used by the units was to be selected by Enfield. Staff and workmen were to be taken on loan from Enfield. The units shared common facilities.

5. The Tribunal found a clause in the agreements which contemplated permission being given to the appellants for manufacture for third parties. Counsel appearing for the appellants stated that he would file before the Tribunal a statement showing such manufacture for a third party by one of the appellants, but it was not done. The counsel stated that there was no documentary evidence in this behalf in regard to the other appellants.

6. In these circumstances, the Tribunal found that the appellants were not independent contractors carrying out job work for Enfield. The fact that they were paying sales-tax or filing income tax returns did not tilt the scales in their favour.

7. Having regard to the findings of the Tribunal, we do not disagree with its conclusion that the appellants were not individually entitled to the benefit of the exemption in question.

8. The appeals are, accordingly, dismissed. No order as to costs.