

SIRPUR PAPER MILLS LTD.

v.

COLLECTOR OF CENTRAL EXCISE, HYDERABAD

DECEMBER 11, 1997

[SUHAS C. SEN AND K.T. THOMAS, JJ.]

Central Excises and Salt, 1944 : Section 3.

Excise duty—Levy of—Paper-making machine—Erected in the assessee's factory by using duty paid components—Such machine permanently embedded in earth—Tribunal found that the said machine was attached to earth merely for operational efficiency, was not immovable, was saleable and liable to excise duty—Held : Such findings, being findings of fact wherein no material fact was overlooked or the decision perverse, upheld—Even otherwise such a machine, merely because it was permanently embedded in earth for better functioning, cannot become immovable property—Further, such a machine can be sold by dismantling and reassembling at another site.

Excise duty—Levy of—Test to determine—Held : Whether the goods can be sold in the market and not whether they are embedded in earth.

Excise duty—Manufacture—Paper-making machine erected by using various components—Test to determine—Held : Whether a new marketable commodity has emerged or not.

The appellant-assessee erected a paper-making machine in its factory by using duty paid components purchased from the market. The said machine was embedded in a concrete base and permanently attached to the ground. The excise authority imposed duty on the said paper-making machine under Section 3 of the Central Excises and Salt Act, 1944.

Being aggrieved the appellant-assessee filed a petition before the Customs, Excise and Gold (Control) Appellate Tribunal. The Tribunal held that the machine was attached to earth for operational efficiency. The whole purpose behind attaching the machine to a concrete base was to prevent wobbling of the machine and to secure maximum operational efficiency and also for safety. The Tribunal further held that the paper-making machine was saleable. Accordingly, the Tribunal dismissed the

A petition. Hence this appeal.

On behalf of the appellant it was contended that the machine was permanently attached to the ground and was really immovable; and that the machine could not ordinarily be sold in the market.

B Dismissing the appeal, the Court

C HELD : 1. In view of the finding of fact by the Customs, Excise and Gold (Control) Appellate Tribunal that the paper-making machine was saleable it is not possible to hold that the machinery assembled and erected by the appellant at its factory site was immovable property as something attached to earth like a building or a tree. The Tribunal has pointed out that it was for the operational efficiency of the machine that it was attached to earth. If the appellant wanted to sell the paper-making machine it could always remove it from its base and sell it. [434-A-C]

D 2. The test is whether the paper-making machine can be sold in the market. The Tribunal has found as a fact that it can be sold. In view of that finding, it is not possible to uphold the contention of the appellant that the machine must be treated as a part of the immovable property of the company. Just because plant and machinery are fixed in the earth for better functioning, it does not automatically become an immovable property.

E [434-D-E]

F 3. What the appellant has erected in its factory is a paper-making machine. It may have purchased various components to make the machine but nonetheless what has been produced is something quite different from the components that had been purchased. A new marketable commodity has emerged as a result of the manufacturing activity of the appellant. [435-A-B]

4. Marketability being a question of fact, there is no scope for interference with the order passed by the Tribunal. It cannot be said that the Tribunal has overlooked any material fact or its decision is perverse.

[435-C]

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 527 of 1988.

H From the Judgment and Order dated 1.1.87 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in Order bearing No. 1177 of 1982-BI in (Order No. 57/87-BI).

Jaideep Gupta and Ms. Gauri for Khaitan and Co. for the Appellant. A

M.S. Usgaokar, Additional Solicitor General, Dhruv Mehta and V.K. Verma for the Respondent.

The Judgment of the Court was delivered by

SEN, J. The dispute in this case is about the leviability of excise duty on paper making machine which was erected by the appellant-company by using duty paid components purchased from the market and also by fabricating certain parts of the machinery in their factory. The duty paid components purchased from the market worked out to about 90% of the parts required for the machine. In respect of the parts fabricated inside the factory of the appellant, no duty was leviable under Notification No. 118/75 dated April 30, 1975 issued by the Government. The case of the appellant is that the excise authority erroneously imposed duty on the paper making machine installed in the factory of the appellant because the Central Excise Act imposes a duty on "all excisable goods produced or manufactured in India". It is well-settled that the "goods" contemplated by Section 3 which is the charging section of the Act must be movable and marketable. The case of the appellant is that the various components of the paper making machine purchased by the appellant had to be put together at the site where the machine was erected and embedded in the ground. Certain components were also to be fabricated at site. This machine was really immovable property and did not come within the mischief of the charging section of the Central Excise Act. B
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Mr. Jaideep Gupta, appearing on behalf of the appellant, has contended that the machine was permanently attached to the ground. In fact the machine cannot be worked until and unless the same was attached to the earth as a permanent fixture. It was further argued that the machine cannot ordinarily be sold in the market. The nature of the machine is such that it cannot be transferred and offered for sale to any other party. An argument was also advanced that the machine was erected on turn key basis at the very place where the machine was ultimately embedded in a concrete base to make it a permanent fixture. F
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The Tribunal, however, rejected these contentions advanced before it on the basis of some findings of fact. The Tribunal held that the machine was attached to earth for operational efficiency. The whole purpose behind H

A attaching the machine to a concrete base was to prevent wobbling of the machine and to secure maximum operational efficiency and also for safety. The Tribunal further held that the paper making machine was saleable and observed "if somebody wants to purchase, the whole machinery could be dismantled and sold to him in parts".

B In view of this finding of fact, it is not possible to hold that the machinery assembled and erected by the appellant at its factory site was immovable property as something attached to earth like a building or a tree. The Tribunal has pointed out that it was for the operational efficiency of the machine that it was attached to earth. If the appellant wanted to sell
C the paper making machine it could always remove it from its base and sell it.

Apart from this finding of fact made by the Tribunal, the point advanced on behalf of the appellant, that whatever is embedded in earth must be treated as immovable property is basically not sound. For example,
D a factory owner or a house-holder may purchase a water pump and fix it on a cement base for operational efficiency and also for security. That will not make the water pump an item of immovable property. Some of the components of water pump may even be assembled on site. That too will not make any difference to the principle. The test is whether the paper
E making machine can be sold in the market. The Tribunal has found as a fact that it can be sold. In view of that finding, we are unable to uphold the contention of the appellant that the machine must be treated as a part of the immovable property of the company. Just because a plant and machinery are fixed in the earth for better functioning, it does not auto-
F matically become an immovable property.

A further argument was made that the entire machinery as it is cannot be bought and sold because the machinery will have to be dis-
G dismantled before being sold. The Tribunal has pointed out that the appellant had himself bought several items and completed the machinery. It had purchased a large number of components and fabricated a few and manufactured the paper making machine at site. If it is sold it has to be dismantled and reassemble at another site. We do not find any fault with the reasoning of the Tribunal on this aspect of the matter.

Lastly, it was contended that the paper making machine was not
H really manufactured by the appellant. Various components and parts were

purchased and a few of the parts were fabricated at the factory and the assessee ultimately assembled various parts of the machine. We are unable to uphold this argument also because it has to be seen whether a final product is something distinct and apart from the components that have gone into its production. What the appellant has erected in its factory is a paper making machine. It may have purchased various components to make the machine but nonetheless what has been produced is something quite different from the components that had been purchased. A new marketable commodity has emerged as a result of the manufacturing activity of the appellant.

Marketability being a question of fact, we are of the view there is no scope for interference with the order passed by the Tribunal. It cannot be said that the Tribunal has overlooked any material fact or its decision is perverse.

The appeal fails and is dismissed. No order as to costs.

V.S.S.

Appeal dismissed.