

SUPREME COURT OF INDIA

Collector of C. Ex.

Vs.

Damodar Ropeways & Construction Co. (P) Ltd.

(M Shah, A Pasayat and D Dharmadhikari JJ.)

14.11.2002

ORDER

1. Heard the learned Counsel for the parties.

2. These appeals are filed against the judgment and order dated 22nd June, 1999, in Appeal Nos.E/838/1998-NB and E/872/1998-NB, passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi, whereby the Tribunal set aside the order passed by the department confirming the demand of duty on Damodar Ropeways & Construction Co. (P) Ltd., by holding that erection of ropeway for carrying passengers by trolley system was not a manufacturing activity as contemplated under the *Central Excise Act, 1944*. The Tribunal relied upon the decision rendered by this Court in *Mittal Engineering Works (P) Ltd. v. Collector of Central Excise, Meerut*¹ wherein this Court held that such erection or assembly on a fixed foundation would not be marketable. For this Court relied upon an earlier decision in *Quality Steel Tubes Pvt. Ltd. v. Collector*² wherein it was observed as under:

"The issue was whether 'the tube mill and welding head erected and installed by the appellant for manufacture of tubes and pipes out of duty-paid raw material' was assessable to excise duty. The Court observed, having regard to the earlier decisions aforementioned. 'The basic test, therefore, of levying duty under the Act is two-fold. One, that any article must be goods and second, that it should be marketable or capable of being brought to the market. Goods which are attached to the earth and thus become immovable and do not satisfy the test of being goods within the meaning of the Act nor it can be said to be capable of being brought to the market for being bought and sold. 'It was also said that the erection and installation of a plant cannot be held to be excisable goods. If such wide meaning is assigned it would result in bringing in its ambit structures, erections and installations. That surely would not be in consonance with accepted meaning of excisable goods and its exigibility to duty."

3. Same is position in the present case. Hence, these appeals are dismissed.

¹1996 (88) E.L.T. 622

²1995 (75) E.L.T. 17