

# SUPREME COURT OF INDIA

T.N. State Transport Corporation Limited

Vs.

Collector of Central Excise, Madurai

C.A.No.4149 of 1998

(S. N. Variava and H. K. Sema JJ.)

01.04.2004

## JUDGMENT

### **S.N.Variava, J.**

1. This Appeal is against the Judgment dated 5th March, 1998 passed by the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as "CEGAT").

2. Briefly stated the facts are as follows:

“The Appellants are manufacturers of bodies of Buses. During inspection by the Officers of the Respondent, it was noticed that the Appellants were also manufacturing Aluminium Paint and applying it on the bodies of the Buses. In respect of this Aluminium Paint the Appellants had made no declarations nor paid any duty. A show cause notice was therefore issued to them. On 20th November 1991 an Order levying duty was passed by the Additional Collector. The Appellants filed an Appeal to CEGAT, which has been dismissed by the impugned Judgment.”

3. It is submitted that there is no manufacture and thus there can be no levy of duty. It was submitted that the Appellants only mix Aluminium paste, metal lacquer and thinner which process does not amount to "manufacture". It was submitted that since the shelf life of the Aluminium Paint was very short the same would not be marketable and could not be bought or sold in the market.

4. We see no substance in these submissions. After the aluminium paste, metal lacquer and thinner are mixed in exact proportions, a separate and distinct product with a distinct identity comes into existence. It is a Paint, which is known in the market as "Aluminium Paint". We see no substance in the submission that it is not marketable because it has a very short shelf life. As per the statement given by the Manager and the Managing Director of the Appellants' Company the product has a shelf life of 8 to 10 hours. This is enough to market it. Even otherwise, the Department has produced from the market stickers pasted on Aluminium Paint tins sold in the market. Further, at the time of hearing before the Additional Collector the

counsel for the Appellants produced a box of Aluminium Paint manufactured by ICI Limited. This showed that the Appellants had got the product from the market. That the product could be purchased in the market is also clear from the statement of the Managing Director of the Appellants, dated 1st June 1989, wherein he has inter alia stated that the Appellants have since stopped making the product and started purchasing Aluminum Paint from the market. When asked whether there was any difference between the product which they purchased from the market and the mixtures which they used to manufacture, the answer was that he could not say.

5. On the above facts both the authorities below were right in holding that a distinct product had come into existence and that it was a marketable.

6. It was next urged that the extended period of limitation could not have been invoked. We find no substance in the submission. It is clear that the Appellants had not disclosed to the Department that they were manufacturing this product. They maintained no account and paid no duty. It is only after inspection that it was found that this product was being manufactured. Therefore, both the authorities have correctly held that the extended period of limitation could be invoked.

7. In the circumstances, we see no infirmity in the impugned Judgment. The Appeal stands dismissed. There will be no order as to costs.