

SUPREME COURT OF INDIA

White Machines

Vs.

Commissioner of Central Excise

C.A.No.2155 of 2002

(Ashok Bhan and Dalveer Bhandari, JJ.)

21.02.2008

ORDER

1. Assessee-appellant (hereinafter referred to as 'the assessee') claimed the C.I. Chilled Rolls being manufactured by the appellant under chapter heading 84.37 which in turn is exempted from the payment of excise duty vide exemption Notification No.56/95-CE dated 16.3.1995. A show cause notice dated 27th September, 1996 was issued to the assessee alleging that the assessee first manufactures C.I.castings which are later on captively consumed for producing the C.I.Chilled Rolls; that since the assessee was producing intermediary product, it was liable to pay the excise duty on the C.I.castings under chapter heading 7207.10. Assessee in reply to the show cause notice had taken the point that C.I.castings which are intermediary product were not marketable and, therefore, excise duty could not be levied. According to the assessee, C.I.castings are in the process of manufacturing C.I.Chilled Rolls. CIVIL APPEAL No.2155 of 2002 The adjudicating authority in its order dated 29.1.1999 recorded a finding to the following effect:

"Both the circulars issued by Board as mentioned above do not speak anything about marketability of castings and as such marketability of castings have got no bearing on the classification of the product. Even otherwise the castings manufactured by the market are capable of being sold in the market."

2. Assessee, being aggrieved, filed appeal before the appellate authority. Appellate authority in its order dated 20th February, 2001 reiterated the finding recorded by the adjudicating authority and held that:

"I also observe that the appellants in para 3.1 of their grounds of appeal have stated that these castings were sold to the customers who placed orders for the same and not in the open market. Even where the goods are manufactured as per the specifications and the requirements of a customer, the same satisfy the criteria of the marketability."

3. The Tribunal has not recorded any finding regarding marketability of the intermediary product i.e. C.I.castings. Counsel appearing for the assessee very fairly concedes that if the

intermediary product is marketable, then the excise duty would be payable because the final product i.e. C.I.Chilled Rolls is Civil Appeal No.2155 of 2002 exempted from payment of excise duty. Since, there is no finding recorded by the Tribunal regarding marketability, excise duty could not be levied on the intermediary product i.e. C.I.castings. Counsel for the assessee relied upon a number of judgments to contend that unless the intermediary product is marketable, excise duty could not be levied. (cases referred: *Union Carbide India Ltd. vs. Union of India & Others* reported in¹ *Gujarat Narmada Valley Fertilizer Co. Ltd. vs. Collector of Excise & Customs* reported in²

4. In the absence of any finding recorded by the Tribunal regarding marketability, we are handicapped and cannot proceed with the case any further. Accordingly, we accept this appeal; set aside the impugned order of the Tribunal and remit the case to the Tribunal for passing a fresh order in accordance with law including the point regarding marketability of the intermediary product i.e. C.I.castings. All contentions are left open.

Judgment Referred.

¹(1986) 2 SCC 0547

²(2005) 7 SCC 0094