SUPREME COURT OF INDIA

Commnr.of Central Excise, Ahmedabad

Vs.

Solid & Correct Engg. Works

C.A.Nos.960-966 of 2003

(D.K. Jain and T.S. Thakur JJ.)

08.04.2010

JUDGEMENT

T.S.Thakur, J.

1. These appeals under Section 35L(b) of the *Central Excise Act, 1944* arise out of orders dated 19th August, 2002 and 8th April, 2003 passed by the Customs Excise and Gold (Control) Appellate Tribunal, West Regional Bench, Mumbai, whereby the Tribunal has set aside the order passed by the 2 Commissioner of Customs & Central Excise, Ahmedabad, confirming the duty demanded from the respondents as also levying penalties upon them under different provisions of the Central Excise Act, 1944. The controversy in the appeals lies in narrow compass, but before we formulate the precise questions that fall for our determination, it is necessary to briefly set out the factual backdrop in which the same arises.

2. M/s Solid and Correct Engineering Works, M/s Solid Steel Plant Manufacturers and M/s Solmec Earthmovers Equipment are partnership concerns engaged in the manufacture of parts and components for road and civil construction machinery and equipments like Asphalt Drum/Hot Mix Plants and Asphalt Paver Machine etc. M/s Solex Electronics Equipments is, however, a proprietary concern engaged in the manufacture of Electronic Control Panels Boards. It is not in dispute that the three partnership concerns mentioned above are registered with Central Excise Department nor is it disputed that the proprietary concern is a small scale industrial unit that is availing exemption from payment of duty in terms of the relevant exemption notification. M/s Solidmec Equipments Ltd. (hereinafter referred to as `Solidmec' for short) the fifth unit with which we are concerned in the present appeals is a marketing company engaged in the manufacture of Asphalt Drum/Hot Mix Plants at the sites provided by the purchasers of such plants. It is common ground that Solidmec advertises its product and undertakes contracts for supplying, erection, commissioning and after sale services relating thereto. It is also admitted that all the five concerns referred to above are closely held by Shri Hasmukhbhai his brothers and the members of their families.

3. An inspection of the factories of the respondents by a team of officers from Central Excise, Preventing Wing, Headquarters, Ahmedabad, led to the issue of a notice dated 30th November 1999 to the four manufacturing units as well as to Solidmec calling upon them to show cause why the amounts mentioned in the said notice be not recovered from them towards central excise duty. The notice accused the four manufacturing units of having wrongly declared and classified parts and components being manufactured by them as complete plants/systems, even when they were merely parts and components and not machines or plants functional by themselves. The erroneous classification and declaration was, according to the notice, intended to avoid payment of higher rate of duty applicable to parts of such plants and machinery at the material point of time. The notice also pointed out that the units manufacturing parts and components of the plants had availed benefit of exemption wrongly and in breach of the provisions of Rules 9(1) and 173F and other rules regulating the grant of such benefit.

4. In so far as Solidmec marketing company was concerned, the show cause notice alleged that Solidmec was engaged in the manufacturing of Asphalt Batch Mix, Drum Mix/Hot Mix Plant by assembling and installing the parts and components manufactured by the manufacturing units of the group. According to the notice the process of assembly of 5 the parts and components at the site provided by the purchasers of such plants was tantamount to manufacture of such plants as a distinct product with a new name, quality, usage and character emerged out of the said process. Resultantly the end-product; namely, Asphalt Drum/Hot Mix Plants became exigible to Central Excise duty, which duty Solidmec had successfully avoided. The notice also proposed to levy penalties upon all the five concerns under appropriate provisions of the Central Excise Act.

5. The respondents filed their responses to the show cause notice, which were duly considered by the Commissioner who confirmed the duty demanded in the show cause notice and levied suitable penalties upon each one of the units. Aggrieved by the order passed by the Commissioner the respondents preferred appeals before the Customs, Excise and Gold (Control) Appellate Tribunal (for short `CEGAT') which were partly allowed by the Tribunal by its order dated 19th August, 2002. Relying upon the material on record and the depositions of the partners comprising the concerns, the Tribunal held that Solidmec had supplied all the components at the buyer's site some of which had been manufactured by the manufacturing units of the group while others were purchased from the market. The cost of erection, commissioning etc. was also charged by Solidmec from the buyers. Solidmec was, therefore, engaged in the manufacture of the plants in question declared the Tribunal in the following words:

> "The sum total of the aforesaid evidence is that M/s Solidmec supplied all the essential components to make a hot mix plant at the buyer's site. Some of the components were manufactured by the manufacturing units and the other components were purchased from the market. These were erected and commissioned by Solidmec and the cost of erection, commissioning, etc., were charged from the buyers. In these circumstances they deserve to be termed as manufacturers."

6. The Tribunal next examined the question whether the plants so manufactured could be termed as "goods". Relying upon the decision of this Court in *Triveni Engineering & Industries Ltd. & Anr. V. Commissioner of Central Excise*[1] the Tribunal held that since the dimensions of the plant were substantial comprising three main components namely, 4 bin feeder, the conveyor and dryer unit and since the said components had to be separately embedded in earth on a foundation 1.5 feet deep what was manufactured could not be said to be "goods" especially when the same could not be dismantled and re-assembled without undertaking the necessary civil works. The duty demand raised against Solidmec was on that basis set aside leaving open certain other related issues including the question of jurisdiction of the Commissioner. The Tribunal further held that the manufacturing units were entitled to the benefit of exemption under Notification 1/93. The use of brand name "Solidmec" for the plants or their components manufactured by the sister concerns did not, according to the Tribunal, disentitle the said units to the benefit of exemption having regard to the fact that the size of the stickers giving the brand name of the manufacturing units was bigger than that of Solidmec the marketing company. The plea of limitation raised by the respondents was, however, left undecided by the Tribunal keeping in view the fact that the erection of plants by Solidmec did not in the opinion of the Tribunal amount to manufacture of exigible goods. In the ultimate analysis the Tribunal upheld the demand of Rs.1,97,875/- against M/s Solmec Earthmovers Equipments and Rs.2,16,347/- against M/s Solid and Correct Engineering Works but reduced the penalty levied upon them to Rs.2 lakhs each. The penalty levied upon the partners was, however, remitted. The order of confiscation of the plant, land and building was in consequence of the findings recorded by the Tribunal set aside.

7. An application seeking rectification of the above order was then filed before the Tribunal by the respondents. It was argued that the Tribunal had upheld the duty and penalties levied upon the respondents-applicants on the premise that the respondents had not contested the classification of the products under Sub-heading 8474.90 as parts and components in place of Sub-heading 8474.10 applicable to complete machines. It was urged that although the applicants had not questioned the classification determined by the Department in the order passed by the Commissioner it had specifically pleaded that the entire demand for duty was barred by limitation. The Tribunal accepted that argument and accordingly by its order dated 8th April, 2003 modified its earlier order and deleted the demand of duty as also the penalty in toto. The subsequent order deleting the duty and penalty in toto has been questioned in CA Nos.5461-5462/2003.

8. We have heard Mr. P.P. Malhotra, learned Additional Solicitor General for the appellants and Mr. S.K. Bagaria, learned senior counsel for the respondents at length. Two questions in our opinion arise for our determination:

> "(1) Whether setting up of an Asphalt Drum Mix Plant by using duty paid components tantamounts to 1 manufacture of excisable goods within the meaning of Section 2(d) of the *Central Excise Act, 1944?* and (2) Whether the respondents engaged in the manufacture of parts and components used for setting up of Asphalt

Drum/Hot Mix Plant were entitled to the benefit of Notification No.1/93-CE, dated 28th February, 1993 issued under sub-section (1) of Section 5A of the Central Excise Act, 1944 as amended from time to time?"

9. We shall take up the questions ad seriatim.

Re: Question No.1

10. Section 3 of the Central Excise Act, 1944, inter alia, sanctions what was during the relevant period called `central excise duty' on all "excisable goods" produced or manufactured in India at the rates set forth in First Schedule to the Central Excise Tariff Act, 1985. The term "excisable goods" appearing in Section 3 has been defined under 1 Section 2(d) of the said Central Excise Act which reads as under:

"2(d): "excisable goods" means goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt.

Explanation: For the purposes of this clause, "goods" includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable."

11. Entry 8474 in the First Schedule to the *Central Excise and Tariff Act, 1985* stipulates the rate at which excise was payable on machinery of the kind enumerated in that Entry which reads:

"Machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or moulding solid mineral fuels, ceramic paste, unhardened cements, plastering materials or other mineral products in powder or paste form; machines for forming foundry moulds of sand."

12. It is evident from the above that any machinery which is used for mixing is dutiable. That Asphalt Drum/Hot Mix Plant is a machinery meant for mixing etc. was not disputed before us. It was fairly conceded by Mr. Bagaria that assembling, installation and commissioning of Asphalt Drum/Hot Mix Plants amounted to manufacture inasmuch as the plant that eventually came into existence was a new product with a distinct name, character and use different from what went into its manufacture. Super added to the above is the fact that Section 2(f) of the Central Excise Act does not define the term "manufacture" exhaustively. The definition is inclusive in nature and has been understood to mean bringing into existence a new product with a distinct name, character and use. (See (i) *Union of India V. Delhi Cloth and General Mills Co. Ltd.*[2], (ii) *BPL India Ltd. V. CCE*[3] (iii) *Sirpur Paper Mills Ltd. V. Collector of Central Excise, Hyderabad*[4].

13. Mr. Bagaria strenuously argued that even when the setting up of the plant has been held to be tantamount to manufacture of a plant and even when the plant may be machinery covered by Entry 8474 of the First Schedule to the Central Excise Act, the same would not necessarily amount to manufacture of `exigible goods' keeping in view the fact that such plants have to be permanently embedded in earth. Reliance in support was placed by Mr. Bagaria upon the finding recorded by the Tribunal that the plant is required to be fixed to a foundation that is 1 and = ft. deep for the sake of stability of the plant which causes heavy vibrations while in operation. The following passage from the Tribunal's order was in particular relied upon by Mr. Bagaria in support of his submission that the size and nature of the plant was such as made its fixing to the ground essential:

> "The individual element such as feeder bins, conveyor, rotary mixing drum, asphalt tank, fuel tanks, etc. have to be separately embedded into the earth. This is done on a civil foundation of 1.5 deep. This is because 1 the weight of the material as well as the vibrations caused by the movement thereof is very substantial. The drier at one time holds 40MT of raw material."

14. Relying upon certain decisions of this Court, Mr. Bagaria argued that the plants in question did not satisfy the test of marketability and moveability. According to Mr. Bagaria, the setting up of the plant was no more than an accretion/annexation to immovable property which was far from manufacture of goods exigible to excise duty. We shall presently refer to the decisions relied upon by Mr. Bagaria, but before we do so we may briefly refer to the relevant statutory provisions to examine, what would constitute moveable or immoveable property.

15. The expression "moveable property" has been defined in Section 3(36) of the General Clauses Act, 1897 as under:

> "Section 3(36) : "movable property" shall mean property of every description, except immovable property."

16. From the above it is manifest that the answer to the question whether the plants in question are movable property, would depend upon whether the same are immovable property. That is because anything that is not immovable property is by this very definition extracted above "moveable" in nature.

17. Section 3 of the *Transfer of Property Act, 1882* does not spell out an exhaustive definition of the expression "immovable property". It simply provides that unless there is something repugnant in the subject or context `immovable property' under the Transfer of Property Act, 1882 does not include standing timber, growing crops or grass. Section 3(26) of the General Clauses Act, 1897, similarly does not provide an exhaustive definition of the said expression. It reads:

"Section 3(26) : "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth."

18. It is not the case of the respondents that plants in question are per se immoveable property. What is argued is that they become immovable as they are permanently imbedded in earth in as much as they are fixed to a foundation imbedded in earth no matter only 1= feet deep.

"That argument needs to be tested on the touch stone of the provisions referred to above. Section 3(26) of the General Clauses Act includes within the definition of the term "immovable property" things attached to the earth or permanently fastened to anything attached to the earth.

The term "attached to the earth" has not been defined in the General Clauses Act, 1897. Section 3 of the Transfer of Property Act, however, gives the following meaning to the expression "attached to the earth":

"(a) rooted in the earth, as in the case of trees and shrubs;

(b) imbedded in the earth, as in the case of walls and buildings;

1 (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached."

19. It is evident from the above that the expression "attached to the earth" has three distinct dimensions, viz.

"(a) rooted in the earth as in the case of trees and shrubs (b) imbedded in the earth as in the case of walls or buildings or (c) attached to what is imbedded for the permanent beneficial enjoyment of that to which it is attached.

Attachment of the plant in question with the help of nuts and bolts to a foundation not more than 1= feet deep intended to provide stability to the working of the plant and prevent vibration/wobble free operation does not qualify for being described as attached to the earth under any one of the three clauses extracted above. That is because attachment of the plant to the foundation is not comparable or synonymous to trees and shrubs rooted in earth. It is also not synonymous to imbedding in earth of the plant as in the case of walls and buildings, for the obvious reason that a building imbedded in the earth is permanent and cannot be 1 detached without demolition. Imbedding of a wall in the earth is also in no way comparable to attachment of a plant to a foundation meant only to provide stability to the plant especially because the attachment is not permanent and what is attached can be easily detached from the foundation. So also the attachment of the plant to the foundation at which it rests does

not fall in the third category, for an attachment to fall in that category it must be for permanent beneficial enjoyment of that to which the plant is attached."

20. It is nobody's case that the attachment of the plant to the foundation is meant for permanent beneficial enjoyment of either the foundation or the land in which the same is imbedded.

21. In English law the general rule is that what is annexed to the freehold becomes part of the realty under the maxim quidcquid plantatur solo, solo cedit. This maxim, however, has no application in India. Even so, the question whether a 1 chattel is imbedded in the earth so as to become immovable property is decided on the same principles as those which determine what constitutes an annexation to the land in English law. The English law has evolved the twin tests of degree or mode of annexation and the object of annexation.

"In *Wake V. Halt*[5] Lord Blackburn speaking for the Court of Appeal observed:

"The degree and nature of annexation is an important element for consideration; for where a chattel is so annexed that it cannot be removed without great damage to the land, it affords a strong ground for thinking that it was intended to be annexed in perpetuity to the land."

22. The English law attaches greater importance to the object of annexation which is determined by the circumstances of each case. One of the important considerations is founded on the interest in the land wherein the person who causes the annexation possesses articles that may be removed without structural damage and even articles merely resting on their own weight are fixtures only 2 if they are attached with the intention of permanently improving the premises. The Indian law has developed on similar lines and the mode of annexation and object of annexation have been applied as relevant test in this country also. There are cases where machinery installed by monthly tenant was held to be moveable property as in cases where the lease itself contemplated the removal of the machinery by the tenant at the end of the tenancy. The mode of annexation has been similarly given considerable significance by the courts in this country in order to be treated as fixture. Attachment to the earth must be as defined in Section 3 of the Transfer of Property Act. For instance a hut is an immovable property, even if it is sold with the option to pull it down. A mortgage of the super structure of a house though expressed to be exclusive of the land beneath, creates an interest in immovable property, for it is permanently attached to the ground on which it is built.

23. The courts in this country have applied the test whether the annexation is with the object of permanent 2 beneficial enjoyment of the land or building. Machinery for metal-shaping and electro-plating which was attached by bolts to special concrete bases and could not be easily removed, was not treated to be a part of structure or the soil beneath it, as the attachment was not for more beneficial enjoyment of either the soil or concrete.

"Attachment in order to qualify the expression attached to the earth, must be for the beneficial attachment of that to which it is attached. Doors, windows and shutters of a house are attached to the house, which is imbedded in the earth.

They are attached to the house which is imbedded in the earth for the beneficial enjoyment of the house. They have no separate existence from the house. Articles attached that do not form part of the house such as window blinds, and sashes, and ornamental articles such as glasses and tapestry fixed by tenant, are not affixtures."

24. Applying the above tests to the case at hand, we have no difficulty in holding that the manufacture of the plants in 2 question do not constitute annexation hence cannot be termed as immovable property for the following reasons:

"(i) The plants in question are not per se immovable property.

(ii) Such plants cannot be said to be "attached to the earth" within the meaning of that expression as defined in Section 3 of the Transfer of Property Act.

(iii) The fixing of the plants to a foundation is meant only to give stability to the plant and keep its operation vibration free.

(iv) The setting up of the plant itself is not intended to be permanent at a given place.

The plant can be moved and is indeed moved after the road construction or repair project for which it is set up is completed."

25. We may, at this stage, refer to the decisions of this Court which were relied upon by learned counsel for the parties in support of their respective cases.

26. In Sirpur Paper Mills Ltd. (supra) this Court was dealing with a near similar situation as in the present case.

"The question there was whether the paper machine assembled at site mainly with the help of components bought from the market was dutiable under the Central Excise Act, 1944. The argument advanced on behalf of the assessee was that since the machine was embedded in a concrete base the same was immovable property even when the embedding was meant only to provide a wobble free operation of the machine. Repelling that contention this Court held that just because the machine was attached to earth for a more efficient working and operation the same did not per se become immovable property. The Court observed:

"5. 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, a factory owner or a householder 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 the water pump may even be assembled on site. That too will not make any difference to the principle. 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, we are unable to uphold the contention of the appellant that the machine 2 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 automatically become an immovable property."

27. In *M/s Narne Tulaman Manufacturers Pvt. Ltd. Hyderabad V. Collector of Central Excise, Hyderabad*[6] , this Court was examining whether the assembly of parts of machine by an assessee to bring into existence a weighbridge as a complete machine amounted to manufacture hence liable to duty even when its parts are separately taxable. Answering the question in the affirmative this Court held that the assembling of the components of the weighbridge brought into existence a complete weighbridge which had a distinctive name, character and use hence exigible to duty. The fact that the assessee was himself manufacturing only one part of the component used in the erection of a weighbridge did not mean that the complete machine once the same was assembled by using duty paid parts was not exigible to excise duty.

28. In Triveni Engineering's case (supra), the question that fell for consideration was whether a turbo alternator comprising two components (i) steam turbine and (ii) complete alternator and fixing the same on a platform brought about a new dutiable product. The Court held that the process of fixing the same on a platform and aligning them in a specified manner that turbine was nothing but a manufacturing process and a new commodity come into existence in the said process. The machine so manufactured was, however, erected on a platform specially constructed for that purpose which made the machine immovable in character. The Court declared that while determining whether an article is permanently fastened to anything attached to the earth both the intention as well as the factum of fastening has to be ascertained from the facts and circumstances of each case. The following passage is apposite in this regard:

"There can be no doubt that if an article is an immovable property, it cannot be termed as "excisable goods" for purposes of the Act.

From a combined reading of the definition of "immovable property" in Section 3 of the Transfer of Property Act, Section 3(25) of the General Clauses Act, it is evident that in an immovable property there is neither mobility nor marketability as understood in the excise law. Whether an article is permanently fastened to anything attached to the earth requires determination of both the intention as well as the factum

of fastening to anything attached to the earth. And this has to be ascertained from the facts and circumstances of each case."

(emphasis supplied)

29. Applying the above test to the case at hand, the plants in question were neither attached to earth within the meaning of Section 3(26) of the General Clauses Act nor was there any intention of permanently fastening the same to anything attached to the earth.

30. Reliance was placed by Mr. Bagaria upon the decision of this Court in *Quality Steel Tubes (P) Ltd. V. CCE, U.P.*[7] *and Mittal Engineering Works (P) Ltd. V. CCE, Meerut*[8]. In Quality Steel Tubes case (supra) this Court was examining whether `the tube mill and welding head' erected and installed by the assessee for manufacture of tubes and pipes out of duty paid raw material was assessable to duty under residuary Tariff Item No.68 of the Schedule being excisable goods. Answering the question in negative this Court held that tube mill and welding head erected and installed in the premises and embedded to earth ceased to be goods within the meaning of Section 3 of the Act as the same no longer remained moveable goods that could be brought to market for being bought and sold. We do not see any comparison between the erection and installation of a tube mill which involved a comprehensive process of installing slitting line, tube rolling plant, welding plant, testing equipment and galvanizing etc., referred to in the decision of this Court with the setting up of a hot mix plant as in this case. As observed by this Court in Triveni Engineering & Industries case (supra), the facts and circumstances of each case shall have to be examined for determining not only the factum of fastening/attachment to the earth but also the intention behind the same.

31. In Mittal Engineering Works case (supra), this Court was examining whether the mono vertical crystallisers erected and attached by a foundation to the earth on the site of the sugar factory could be treated as goods within the meaning of *Central Excise Act, 1944*. This Court on facts noted that mono vertical crystallisers are fixed on a solid RCC slab having a load bearing capacity of about 30 tonnes per sq. mt. and are assembled at site with bottom plates, tank coils, drive frames, supports, plates, distance places, cutters, cutter supports, tank ribs, distance plate angles, water tanks, coil extension pipes, loose bend angles, coil supports, railing stands, intermediate platforms, drive frame railings and flats, oil trough, worm wheels, shafts, housing, stirrer arms and support channels, pipes, floats, heaters, ladders, platforms, etc. The Court noted that the mono vertical crystallisers have to be assembled, erected and attached to the earth on a foundation at the site of the sugar factory and are incapable of being sold to consumers in the market as it is without anything more. Relying upon the decision of this Court in Quality Steel Tubes case (supra), the erection and installation of mono vertical crystallisers was held not dutiable under the Excise Act. This Court observed that the Tribunal ought to have remembered that mono vertical crystallisers had, apart from assembly, to be erected and attached by foundation to the earth and, therefore, were not, in any event marketable as they were.

> "This decision also, in our opinion, does not lend any support to the case of the assessee in these appeals as we are not dealing with the case of a machine like mono vertical crystallisers which is permanently embedded in the structure of a sugar factory as was the position in the Mittal Engineering Works case (supra). The plants with which we are dealing are entirely over ground and are not assimilated in any structure. They are simply fixed to the foundation with the help of nuts and bolts in order to provide stability from vibrations during the operation."

32. So also in *T.T.G. Industries Ltd. V. CCE, Raipur*[9] the machinery was erected at the site by the assessee on a specially made concrete platform at a level of 25 ft. height. Considering the weight and volume of the machine and the processes involved in its erection and installation, this Court held that the same was immovable property which could not be shifted without dismantling the same.

33. It is noteworthy that in none of the cases relied upon by the assessee referred to above was there any element of installation of the machine for a given period of time as is the position in the instant case. The machines in question were by their very nature intended to be fixed permanently to the structures which were embedded in the earth. The structures were also custom made for the fixing of such machines without which the same could not become functional. The machines thus becoming a part and parcel of the structures in which they were fitted were no longer 3 moveable goods. It was in those peculiar circumstances that the installation and erection of machines at site were held to be by this Court, to be immovable property that ceased to remain moveable or marketable as they were at the time of their purchase. Once such a machine is fixed, embedded or assimilated in a permanent structure, the movable character of the machine becomes extinct. The same cannot thereafter be treated as moveable so as to be dutiable under the Excise Act. But cases in which there is no assimilation of the machine with the structure permanently, would stand on a different footing. In the instant case all that has been said by the assessee is that the machine is fixed by nuts and bolts to a foundation not because the intention was to permanently attach it to the earth but because a foundation was necessary to provide a wobble free operation to the machine. An attachment of this kind without the necessary intent of making the same permanent cannot, in our opinion, constitute permanent fixing, embedding or attachment in the sense that would make the machine a part and parcel of the earth permanently. In that view of the matter we see no difficulty in holding that the plants in question were not immovable property so as to be immune from the levy of excise duty.

34. Our answer to question no.1 is accordingly in the affirmative.

Re: Question No.2

35. The Tribunal, as noticed in the earlier part of this order, has taken the view that the respondents-manufacturing units were entitled to the benefit of exemption under Notification No.1/93 as amended from time to time as the use of brand name Solidmec for the plants or the components manufactured by such units did not disentitle the said units from claiming

the benefit of the exemption having regard to the fact that the size of the sticker giving the brand name of the manufacturing units was bigger than that of Solidmec, the marketing company. Mr. Bagaria learned senior counsel for the respondent fairly conceded that the reasoning given by the Tribunal based on the size of the sticker was not legally sustainable. He, however, urged that since the manufacturing units had also raised some other defences including one on the ground of limitation, even if the order passed by the Tribunal was set aside, the matter may have to go back to the Tribunal to enable it to examine the said alternative contentions. Mr. Malhotra did not have any serious objection to this course being followed.

> "He urged and, in our opinion rightly so, that since the Tribunal's view on the question of exemption was unsustainable the order passed by the Tribunal has to be set aside and the matter remitted back for a fresh disposal qua the said units by reference to the other contentions urged on behalf of the units which the Tribunal has not examined. In that view of the matter our answer to question No.2 is in the negative."

36. In the result we allow these appeals, set aside orders dated 19th August 2002 and 8th April 2003 passed by the Tribunal and remand the matter back to the Tribunal for 3 passing fresh orders on the subject appropriately dealing with the alternative contentions which the respondents may urge keeping in view the observations made hereinabove.

The appellants shall also be entitled to one set of costs assessed at Rs.25,000/- only.

[1]*2000 (120) ELT 273 (SC)*
[2]*(1977) 1 ELT 199*
[3]*(2002) 5 SCC 167*
[4]*(1998 (1) SCC 400)*
[5]*(1883) 8 App Cas 195*
[6]*(1989 (1) SCC 172)*
[7]*1995 (75) ELT 17 (SC)*
[8]*1996 (88) ELT 622 (SC)*
[9]*2004 (167) ELT 501 (SC)*