A M/S. MITTAL ENGINEERING WORKS (P) LTD.

v.

COLLECTOR OF CENTRAL EXCISE, MEERUT

NOVEMBER 19, 1996

B [S.P. BHARUCHA AND K. VENKATASWAMI, JJ.]

Central Excise and Salt Act, 1944 :

Mono Vertical Crystallisers—Held, are not 'goods' within the meaning of the Act and, therefore, not eligible to excise duty.

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Stare decisis—A decision cannot be relied upon in support of a proposition that it did not decide.

The appellant--assessee was required to pay excise duty on mono vertical crystallisers patented by it. The said crystalliser, which was used in sugar factories to exhaust molasses of sugar was a tall structure, like a tower, with a platform at its summit. The assessee resisted the demand stating that the parts of the crystalliser came into existence only after assembling and erection done at the site; that the process involved welding and gas cutting; and that the assembly and erection was done by the assessee but the fabrication materials were procured from the stores of the customer for which customer sent to the appellant the debit notes.

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The Collector of Central Excise confirmed the demand holding that the mono vertical crystalliser should be termed as 'goods' and its manufacture was complete in all respects at the time of its clearance from the assessee's premises, and its delivery in knocked down condition was only to facilitate transport. The appeal filed by the asseess was dismissed by the Customs Excise and Gold (Control Appellate Tribunal. Aggrieved, the assessee filed the present appeal.

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Allowing the appeal, this Court

HELD : 1.1. Mono vertical crystallisers are not 'goods' within the meaning of Central Excises and Salt Act, 1944, and, therefore, not exigible to excise duty. The cyrstalliser has to be assembled, erected and attached to the earth by a foundation at the site of the sugar

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factory. It is not capable of being sold as it is, without anything more. The erection and installation of a plant is not excisable. To so hold would, impermissibly, bring into the net of excise duty all manner of plants and installations. [801-A,C]

Quality Steel Tubes (P) Ltd. **v.** *Collector of Central Excise,* **U.P., [1995] 2 SCC 372, relied on.**

Narne Tuleman Manufactures Pvt. Ltd., Hyderabad **v.** *Collector of Central Excise, Hyderabad,* **[1988] Supp. 3 SCR 1, distinguished.**

Union of India and anr. **v.** *Delhi Cloth and General Mills Co. Ltd. AIR (1963) SC 791; Bhor Industries Ltd., Bombay* **v.** *Collector of Central Excise, Bombay,* **[1989] 1 SCC 602;** *South Bihar Sugar Mills Ltd. Etc.* **v.** *Union of India and Ors.,* **[1968] 3 SCR 21;** *Union Carbide India Ltd.* **v.** *Union of India,* **[1986] 2 SCC 547 and** *Indian Cable Company Ltd., Calcutta* **v.** *Collector of Central Excise Calcutta & Ors.,* **[1994] 6 SCC 610, referred to.**

1.2 The Tribunal took an unreasonable view of the evidence. The fact that there was no debit note in respect of one customer could not reasonably have led the Tribunal to conclude that in the case of that customer a complete mono vertical crystalliser had left the appellant's factory and that, therefore, mono vertical crystallisers were marketable. [801-E-F]

2. A decision cannot be relied upon in support of a proposition that it did not decide. [801-B]

Narne Tulaman Manufactures Pvt. Ltd., Hyderabad **v.** *Collector of Central Excise, Hyderabad,* **[1988] Supp. 3 SCR 1, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2919 of 1986.

From the Judgment and Order dated 14.5.86 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in A. No. E. 1631 of 1984-B-I in (Order No. 239/86-B-I)

V. Lakshmikumaran, V. Sridharan and V. Balachandran for the

A Appellant.

R. Mohan, S.D. Sharma and Ms. Sushma Suri for the Respondent.

The Judgment of the Court was delivered by :

B **BHARUCHA, J.** The order of the Customs, Excise and Gold (Control) Appellate Tribunal under appeal confirms the levy of excise duty on mono vertical crystallisers.

Mono vertical crystallisers are used in sugar factories. Their function is to exhaust molasses of sugar. A general note placed on the record of the C Tribunal by the appellants, who have patented the mono vertical crystalliser, describes its function and manufacturing process. The mono vertical crystalliser is fixed on a solid RCC slab having a load bearing capacity of about 30 tones per sq. mt. It is assembled at site in different sections shown by the packing list given to customers with the invoices. This consists D of bottom plates, tanks, 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, wormwheels, shafts, housing stirrer arms and support channels pipes, floats, heaters, ladders, platforms, etc. The parts aforestated are cleared from the premises of the E appellants and the mono vertical cyrstalliser is assembled and erected at site. The process involves welding and gas cutting.Where the assembly and erection is done by the appellants welding rods, gases and the like are procured from the stores of the customer and the customer sends to the appellants debit notes for their value. A sketch and photograph produced by the appellants before the authorities shows that the mono vertical F crystalliser is a tall structure, rather like a tower with a platform at its summit.

The appellants were required to show cause why they should not pay excise duty on mono vertical crystallisers cleared from their premises during G 1982-83. The Collector, Central Excise, Meerut, confirmed the demand. He held, relying on orders placed by sugar factories with the appellants and the correspondence in that behalf, that the manufacture of a mono vertical crystalliser was complete in all respects at the time of its clearance from the appellant's premises; its delivery in knocked down condition was only to facilitate transport. It was clear that the mono vertical crystalliser H was known to the trade and capable of being sold and purchased in the

market, at the time and place of removal and before erection and commissioning, and should be termed 'goods'. The mono vertical crystalliser had a distinct name and was meant for a definite use. As the finished product was the result of the processes of welding, bending, cutting, drilling, etc. and had a name, character and use different from the raw materials used, the process amounted to manufacture within the meaning of the Central Excises and Salt Act, 1944 (hereinafter referred to as 'the Act'). The test of marketability and of being goods was satisfied.

The Tribunal, in the appeal filed by the appellants, noted the debit notes aforementioned and found that in the case of one customer there was no debit note. The Tribunal concluded, "Thus in the case of this party complete Sugar Mill Machinery which the appellants describe as mono vertical crystallisers in the invoice left the factory. Besides it is also observed that while in the case of *Madurantakam Cooperative Sugar Mills case* the appellants collected erection charges of Rs. 40,000 in some cases erection was left to the customers themselves. This destroys the appellants argument that the crystalliser comes into existence only after erection at site."

The principal question to which we must address ourselves is whether mono vertical crystallisers are 'goods' upon which excise duty under the provisions of the Act can be levied.

In *Union of India and Anr.* v. *Delhi Cloth and General Mills Co. Ltd.,* AIR (1963) SC 791, a Constitution Bench considered the application of the provisions of the Act to the hydrogenated oils that are known as 'vanaspati'. 'Goods' were not defined in the Act. The meaning, as found by the Court from dictionaries, showed "that to become 'goods' an article must be something which can ordinarily come to the market to be bought and sold". In *Bhor Industries Ltd., Bombay* v. *Collector of Central Excise, Bombay,* [1989] 1 SCC 602, the view taken in the case of *Delhi Cloth and General Mills Co. Ltd.,* and reiterated in *South Bihar Sugar Mills Ltd. etc.* v. *Union of India and Ors.,* [1968] 3 SCR 21, and *Union Carbide India Ltd.* v. *Union of India,* [1986] 2 SCC 547, was applied to crude PVC films. It was held that they "were not known in the market and could not be sold in the market and was not capable of being marketable". In *Indian Cable Company Ltd., Calcutta* v. *Collector of Central Excise, Calcutta and Ors.,* [1994] 6 SCC 610, this Court considered the question of PVC compounds, and observed that marketability was a decisive test for dutiability. It meant that the goods were saleable or suitable for sale. They need not in fact be marketed. They should be capable "of being sold to

A consumers in the market, as it is-without anything more". The case that comes closest to that which we have before us is the case of *Quality Steel Tubes (P) Ltd.* v. *Collector of Central Excise, U.P.*, [1995] 2 SCC 372. 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 B to the earlier decisions aforementioned, "The basic test, therefore, of levying duty under the Act is twofold. 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 C 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 structure, erections and installations. That surely would not be in consonance with accepted meaning of excisable goods and its exigibility to duty."

D Learned counsel for Revenue relied upon the judgment in *Narne Tulaman Manufactures Pvt. Ltd., Hyderabad* v. *Collector of Central Excise, Hyderabad,* [1988] Supp. 3 SCR 1. An indicating system was one of the three parts of a weighbridge, namely, (1) a platform, (2) load cells and (3) the Indicating system. The Tribunal found that the appellant brought the E three components together at site, fitted and assembled them so that they could work as one machine and, as such, the appellant manufactured a weighbridge. The question, therefore, was whether the activity carried out by the appellant, of assembling the three components of the weighbridge, brought into being a complete weighbridge, which had a distinct name, character or use. The argument of the appellant was that it was making F only a part of the weighbridge, that is, the indicating system, and that alone was dutiable. It was held that the end product, namely, the weighbridge, was a separate product which came into being as a result of the endeavor and activity of the appellant, and the appellant must be held to have manufactured it. The appellant's case that it was liable only for a G component part and not the end product was, therefore, rejected.

Learned counsel for the Revenue submitted that if even a weighbridge was excisable, as held in the case of *Narne Tulaman Manufactures Pvt. Ltd.,* so was a mono vertical crystalliser. The only argument on behalf of Narne Tulaman Manufacturers Pvt. Ltd. was that it was liable to excise H duty in respect of the indicating system that it manufactured and not the

whole weighbridge. The contention that weighbridges were not 'goods' within the meaning of the Act was not raised and no evidence in that behalf was brought on record. We cannot assume that weighbridges stand on the same footing as mono vertical crystallisers in that regard and hold that because weighbridges were held to be exigible to excise duty so must mono vertical crystallisers. A decision cannot be relied upon in support of a proposition that it did not decide. A B

Upon the material placed upon record and referred to above, we are in no doubt that the mono vertical crystalliser has to be assembled, erected and attached to the earth by a foundation at the site of the sugar factory. It is not capable of being sold as it is, without anything more. As was stated by this Court in the case of *Quality Steel Tubes (P) Ltd.*, the erection and installation of a plant is not excisable. To so hold would, impermissibly, bring into the net of excise duty all manner of plants and installations. C

The Tribunal took an unreasonable view of the evidence. It was the case of the appellants, not disputed by the Revenue, that mono vertical crystallisers were delivered to the customers in a knocked down condition and had to be assembled and erected at the customer's factory. Such assembly and erection was done either by the appellants or by the customer. Where it was done by the appellants, fabrication materials of the customer were used and the customer sent to the appellants debit notes in regard to their value. Where the assembly and erection was done by the customer, there was no occasion for it to send to the appellants a debit note. The fact that there was no debit note in respect of one customer could not reasonably have led the Tribunal to conclude that in the case of that customer a complete mono vertical crystalliser had left the appellants factory and that, therefore, mono vertical crystallisers were marketable. The Tribunal ought to have remembered that the record showed that mono vertical crystallisers had, apart from assembly, to be erected and attached by foundations to the earth and, therefore, were not, in any event, marketable as they were. D E F

Having regard to the material on record, we come to the conclusion that mono vertical crystallisers are not 'goods' within the meaning of the Act and, therefore, not exigible to excise duty. G

The appeal is allowed. The judgment and order under appeal is set aside. There shall be no order as to costs.

R.P. Appeal allowed. H