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C.A.No. 2747-2748 OF 1998
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IN THE SUPREME COURT OF INDIA@@
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CIVIL APPELLATE JURISDICTION@@
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CIVIL APPEAL NOS.2747-2748 OF 1998@@
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Commnr. of Central Excise, Mumbai ...Appellant(s)

versus

M/s. Josts Engineering Co. Ltd. ...Respondent(s)

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These appeals are by the Commissioner of Central Excise, Mumbai challenging the correctness of the judgment and order of the Customs, Excise and Gold (Control) Appellate Tribunal, West Regional Bench at Mumbai in Appeal No.E/375-376/R/97-Bom., dated November 13, 1997.

The point that arises for our consideration is whether "spray paint booth" is an excisable goods chargeable to excise duty under Entry 8424.00 of the Schedule to the Central Excise Tariff Act, 1985.

To attract excise duty under Section 3 of the Act the article must satisfy the twin attributes of excisable goods - mobility and marketability - or it should find a place by that name in the Schedule to the Act.

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A perusal of the order, under challenge, shows that in regard to "spray paint booth" the Tribunal recorded findings that the outside portions of the structure are embedded to the earth and that it can never be dismantled without damaging the portions and the system which is touching the earth and the system cannot work thereafter. In view of these findings the test of mobility fails as the "spray paint booth" will be nothing but immovable property and cannot be termed as excisable goods within the meaning of the Act. Though duty is sought to be levied under Entry 8424.00 of the Schedule it is not mentioned therein under that name even though it has marketability by that name as found by the Tribunal.

Further, the question is squarely covered by the judgment of this Court in Triveni Engineering & Industries@@
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Ltd. vs. Commissioner of Central Excise [2000 (12) ELT@@
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273 (SC)]. In that case, this Court reversed the order of the Tribunal in C.C.E vs. Triveni Engineering & Industries

