

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 4399 OF 2003

COMMNR. OF CENTRAL EXCISE, SHILLONG

Appellant (s)

VERSUS

M/S. INDIA CARBON LTD.

Respondent(s)

(With appln(s) for stay and office report)

Date: 19/04/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA
HON'BLE MR. JUSTICE ANIL R. DAVE

For Appellant(s)

Mr. Harish Chandra, Sr. Adv.
Mr. R.P. Bhatt, Sr. Adv.
Mr. D.L. Chidananda, Adv.
Mr. Gaurav Dhingra, Adv.
Mr. B.K. Prasad

Mr. P. Parmeswaran, Adv.

For Respondent(s)

Mr. S.K. Bagaria, Sr. Adv.
Mr. Ramesh Singh, Adv.
Mr. A.T. Patra, Adv.
Mr. Gaurav Kejriwal, Adv.
Ms. Aradhana Patri, Adv.
M/S. O.P. Khaitan & Co., Adv.

UPON hearing counsel the Court made the following
O R D E R

There is no merit in this appeal which is dismissed leaving the parties to bear their own costs in terms of the signed order.

(DEEPAK MANSUKHANI)
Court Master

(RENU DIWAN)
Court Master

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 4399 OF 2003

COMMNR. OF CENTRAL EXCISE, SHILLONG

Appellant (s)

VERSUS

M/S. INDIA CARBON LTD.

Respondent(s)

O R D E R

This appeal is directed against the judgment and order dated 22nd August, 2002 passed by the Customs, Excise and Gold(Control) Tribunal, Eastern Bench at Kolkata allowing the appeal filed by the respondent herein, from the order passed by the Commissioner.

We have heard the learned counsel appearing for the parties who have taken us through the records of this case. after referring to the stand taken by the assessee has held that the excisable goods were delivered by the assessee premises but the closer scrutiny of the records would indicate that the assessee had arranged for the transportation delivered at the buyer's premises and the transportation charge was paid by the assessee who was subsequently reimbursed by the buyers. It is also indicated from the records that the place of removal and sale of the goods were at the factory gate and the ownership of the excisable goods were transferred to the buyers at the factory gate only. The decision of this Court in Escorts Commissioner of Central Excise, Delhi-II reported in 2003(1) SCC 281 wherein this Court after referring to various decisions and also the provisions of Sale of Goods Act, upheld the decision of the Tribunal in Associated Strips Ltd. Vs. CCE 2002(143) ELT 131(Tri). context thereof, it was held by this Court that after sale of goods had taken place at the factory gate, therefore, the place of removal was not the premises of the buyer. It was also held that in that event, the amount claimed by way of transportation charge cannot be considered for determining the value of the goods.

The Commissioner
at the buyer's
of goods to be
JCB Ltd. Vs.

In the

-2-

In our considered opinion, identical are the facts of this case with that of the said decision in Escorts JCB Ltd.(supra). There is yet another decision of this Court which is rendered in the case of Commissioner of Central Excise, NOIDA Vs. Accurate Meters Limited 2009(6) SCC 52 wherein this Court approved the decisions rendered by the Tribunal in Associated Strips Ltd.(supra) and Escorts JCB Ltd.(supra). This Court held that the amount by way of transportation charges and insurance cannot be considered for determining the value of electric meter supply.

In our considered opinion, the ratio laid down by this Court in the aforesaid two decisions are squarely applicable to the facts of the present case. Therefore, there is no merit in this appeal which is dismissed leaving the parties to bear their own costs.

.....J.
(DR. MUKUNDKAM SHARMA)

.....J.
(ANIL R. DAVE)

NEW DELHI
APRIL 19, 2011