

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). 4581 OF 2000

COMMISSIONER OF CENTRAL EXCISE, COCHIN

Appellant (s)

VERSUS

M/S. KERALA STATE BAMBOO CORPORATION LTD.

Respondent(s)

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

Date: 04/10/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA

HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Appellant(s)

Mr. Mohit Chaudhary, Adv.

Mr. P. Parmeswaran, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following

O R D E R

The Appeal stands dismissed in terms of the signed order.

There

will be no order as to costs.

(K.K. Chawla)

Court Master

(Jasbir Singh)

Court Master

[signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4581 OF 2000

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M/S. KERALA STATE BAMBOO CORPORATION LTD.

Respondent(s)

O R D E R

Respondent's Advocate has taken a discharge. In spite of notice from

the Registry the Respondents are not appearing either personally or through any Advocate.

This Appeal is against the Judgment of the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as "CEGAT") dated 22nd September, 1999.

Briefly stated the facts are as follows:-

The Respondents are manufacturers of Resin Bonded Bamboo Mats.

One of the inputs for manufacture of this product is Phenol Form aldehyde

Resin. By Notification No.175/86-C.E. dated 1st March, 1986 the above

mentioned input was exempted from duty provided the first clearance did not

exceed Rupees Seven and a Half Lakhs. By Notification No.216/86-CE, dated

2nd April, 1986 the limit was raised to Rs.30 Lakhs. A further Notification

No.217/86-CE, dated 2nd April, 1986 was issued wherein it was specified that if

duty was paid on the final product, then all inputs would be free of duty.

Subsequently, by Notification dated 164/90-C.E., dated 17th December, 1990 the

final product was exempted from duty.

The Appellants issued a show cause notice dated 21st May, 1991

claiming duty and penalty on the basis that Notification No. 164/90-C.E., dated

17th December, 1990 exempted the final product from duty and therefore, duty

was payable on the inputs.

By an order dated 1st June, 1992 the Assistant Collector levied duty.

This duty was levied not on the ground that the inputs were dutiable as the final

product was exempted. The duty was levied on the ground that the clearances

exceeded Rs.30 Lakhs during the relevant period. This was not the basis of the

show cause notice. It is well settled law that duty cannot be levied on a basis not

set out in the show cause notice.

The Collector (Appeals) set aside the duty by following the decision of

the Tribunal in the case of Purushotham Gokuldas Plywood Company Vs. CCE

reported in 1990 (47 ELT 30(T)). The decision holds that if the total clearance

does not exceed Rs.30 Lakhs then the benefit of the Notification can be availed

of. CEGAT has refused to interfere on the ground that the earlier decision has

not yet been over-ruled. We are told that now the question covered by

Purushotham Gokuldas Plywood Company has been referred to a larger Bench

for reconsideration.

As we have already held that this the ground on which duty was not the ground on which duty was levied, we see no need to go into this question. We leave this question open to be decided by the larger Bench.

In this view we have taken, we see no reason to interfere.

The Appeal stands dismissed. There will be no order as to costs.

.....J.

(S.N. Variava)

.....J.

(P.P. Naolekar)

New Delhi;

October 04, 2005.