

**(2012) 01 P&H CK 0316**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** C.W.P. No. 897 of 1991

Bharat Heavy Electricals Ltd.

APPELLANT

Vs

Collector of C. Ex., Chandigarh

RESPONDENT

**Date of Decision:** Jan. 9, 2012

**Acts Referred:**

- Central Excises and Salt Act, 1944 - Section 3
- Customs Tariff Act, 1975 - Section 3

**Citation:** (2013) 289 ELT 293

**Hon'ble Judges:** M.M. Kumar, J; Ajay Kumar Mittal, J

**Bench:** Division Bench

**Advocate:** P.C. Goyal, for the Appellant;

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

Ajay Kumar Mittal, J.

Challenge is to notice dated 13-9-1990, Annexure P. 3 by the petitioner-company which is a Government of India Undertaking registered under the Companies Act, 1956. Briefly, the facts as narrated in the petition may be noticed. Tenders were invited for fabrication and erection work which was originally awarded to the petitioner-company by Punjab State Electricity Board. The petitioner transferred the job of fabrication of steel structures to M/s. Amarnath Aggarwal Construction (P) Limited, Panchkula - the contractor. The petitioner-company also provided steel, trusses, angles, channels and other raw material to the contractor. The contractor fabricated the structure in accordance with the drawings of the petitioner-company under their supervision at the site and the inspection was carried by the Site Engineer of the petitioner-company. The Central Excise Preventive Staff Patiala, visited the project site of the petitioner and issued a show cause notice dated 13-9-1990, Annexure P. 3 to the petitioner-company as to why excise duty

amounting to Rs. 12,72,619.60 not paid on the steel structures be not recovered from it under Rule 9(2) of the Central Excise Rules, 1944 (in short, "the Rules") read with Section 11A of the Central Excise and Salt Act, 1944 (in short, "the 1944 Act") and also penalty be not imposed under Rule 173Q of the Rules. Hence this petition.

2. Learned counsel for the petitioner-company contended that the petitioner-company was not engaged in the manufacture of steel structures, columns and trusses etc. The petitioner was fabricating and erecting at site for the project of Punjab State Electricity Board for which fabrication of trusses, columns, purlins and roofing sections were undertaken and this did not amount to manufacture of any standard product which was marketable. The petitioner was fabricating as per specific drawings and designs which was embedded in the earth and could be considered to be immovable property. Further, the contract was given to M/s. Amarnath Aggarwal Construction (Pvt.) Limited on job charge basis who had fabricated and erected the steel structures whereas the material had been supplied by the petitioner. It was urged that the petitioner-company was getting the work done of fabrication of structural shape from M/s. Amarnath Aggarwal Construction (Pvt.) Limited which was at the site of construction itself, the same would not be covered u/s 2(f) of the 1944 Act defining "manufacture". It was pleaded that no excise duty was, thus, leviable u/s 3 of the 1944 Act. According to the learned counsel, the Government of India had issued a Notification No. 61/90-C.E. dated 20-3-1990 (Annexure P. 7) in exercise of powers conferred u/s 5A(1) of the 1944 Act whereby goods falling under Heading 73.08 of the Schedule to the Central Excise Tariff Act, 1985 (in short, "the 1985 Act") had been exempted which were fabricated at the site of construction work for use in such construction work from the whole of the duty of excise leviable thereon.

3. No one has appeared on behalf of the respondent to oppose the prayer made.

4. In the written statement, the claim of the petitioner has been controverted. The defence taken in the written statement is that the activity of the petitioner was covered under manufacture and excise duty was leviable. Further, the petitioner was not entitled to the benefit of notification Annexure P. 7 prior to the period of issuance of notification i.e. 20-3-1990.

5. After hearing learned counsel for the petitioner and perusing the record, we find force in the submissions made by counsel for the petitioner.

6. It would be expedient to refer to the definition of "manufacture" given in the 1944 Act. According to Section 2(f) of the 1944 Act, the term "manufacture" has been defined to mean as under:-

"Manufacture" includes any process-

(i) incidental to the completion of a manufactured product; and

(ii) which is specified in relation to any goods in the section or Chapter notes of the Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture;

and the work "manufacture" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account.

7. Section 3 of the Excise Act enjoins that excise duty shall be levied and collected on all excisable goods "manufactured" in India.

8. It is not in dispute that the contract for fabrication of power project has been awarded by the petitioner-company to M/s. Amarnath Aggarwal Construction (Pvt.) Limited, Panchkula. The petitioner-company had provided steel, trusses, angles, channels and other raw material. The contractor has carried out the fabrication job on job charge basis. The fabrication was carried out by the contractor at site under the supervision of Site Manager (Erection) of the petitioner-company. The job work undertaken by the contractor does not fit in the term "manufacture" which is normally associated with movables, i.e. articles and goods and is never connected with the fabrication of the structure embedded in earth. There has, thus, not been any manufacture or production at the site except fabrication carried out by the contractor. In other words, the petitioner-company is not manufacturing any item and is not covered u/s 2(f) of 1944 Act which defines "manufacture". Therefore, no excise duty is leviable u/s 3 of the 1944 Act.

9. The aforesaid interpretation has the legislative approval as the respondent had issued notification, Annexure P. 7 accepting the above interpretation. It reads thus:-

Exemption to goods fabricated at site out of duty paid on iron and steel. In exercise of the powers conferred by sub-section (1) of Section 5A of the Central Excise and Salt Act 1944 (1 of 1944) the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods falling under heading 73.08 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1985) fabricated at the site of construction work for use in such construction work from the whole of duty of excise leviable thereon which is specified in the said schedule:

Provided that the said goods are manufactured out of iron or steel products on which the appropriate duty of excise leviable thereon under the said schedule or the additional duty leviable thereon u/s 3 of the Customs Tariff Act, 1975 (51 of 1975) as the case may be, has already been paid.

10. In view of the above, the Show Cause Notice Annexure P. 3 issued to the petitioner was beyond jurisdiction as the petitioner was not liable to pay any excise duty thereon. Accordingly, this petition is allowed and the notice dated 13-9-1990, Annexure P. 3 is quashed.