

**(2015) 04 SC CK 0043**

**SUPREME COURT OF INDIA**

**Case No:** Civil Appeal No. 8076 of 2004.

Cimmco Birla Ltd. - Appellant  
@HASH Commissioner of Central  
Excise, Jaipur

APPELLANT

Vs

RESPONDENT

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**Date of Decision:** April 27, 2015

**Citation:** (2015) 319 ELT 552

**Hon'ble Judges:** A.K. Sikri and Rohinton Fali Nariman, JJ.

**Bench:** Division Bench

**Advocate:** Ms. Meenakshi Arora, Sr. Advocate, S/Shri Prashant Kumar, Mohit D. Ram and Joseph Pookkatt for M/s. AP and J Chambers, Advocates, for the Appellants; S/Shri Arijit Prasad and B. Krishna Prasad, Advocates, for the Respondents

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

1. The appellant was getting contract for manufacturing of Railway wagons from the Indian Railways. Inputs for manufacture of these wagons were supplied by the Indian Railways, meaning thereby the appellant was only doing job work. Insofar as Railway wagons are concerned, they are exempted from duty w.e.f. 1-3-1993. The only question as to whether the inputs/parts which were used for manufacturing of Railway wagons are to be subjected to Excise duty. It is not in dispute that these are intermediate products and captively used and would come within the definition of "manufacture". However, before these goods could be exigible to the Excise duty, it was also incumbent upon the Department to prove that the said parts were marketable. We find that a specific contention was taken by the assessee that the goods in question are not marketable. However, the Department did not lead any evidence to demonstrate that these products are marketable. On this ground alone the present appeal is liable to succeed.

2. We, thus, set aside the impugned order of the Tribunal which has not even gone to this essential aspect of the matter.

3. The appeal is accordingly allowed.