

(2018) 09 RAJ CK 0055

Rajasthan High Court

Case No: Civil Writ No. 5106 of 2013, 8498, 8519, 8638, 8639, 8713, 8729, 8734, 8735, 8981, 9038, 9041, 10294, 10295, 11652, 211, 9039 of 2009

M/s. Manda Developers And
Builders @APPELLANT@Hash
State of Rajasthan & Ors

APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 14, 2018

Acts Referred:

- Central Excise Act, 1944 - Section 3
- Additional Duties of Excise (Goods of Special Importance) Act, 1957 - Section 3(1)
- Constitution of India, 1950 - Article 226

Hon'ble Judges: Sandeep Mehta, J

Bench: Single Bench

Advocate: Rekha Borana, Hemant Choudhary, Keshav Pareek, N.S. Rajpurohit, D.P. Dhaka

Final Decision: Allowed

Judgement

Ã~-la-,Lkexzh dk fooj.k,ek=k,"mRikn â€~kqYd

esa NqV dh nj","mRikn â€~kqYd

esa izkÎr NqV

dh dqy

jkfâ€™™k

1-,lhesUV csx,57039 ux,RS 20@izfr ux,RSÂ 1140780/-

vuqPNsn dk laf{kÎr fooj.k,dk;kZy; }kjk izLrqr vuqikyuk,"v/khvfHk- dh

fVIi.kh",eq-vdh fVIi.kh,"ys[kk ijh{kk dh

fVIi.kh

mRikn æœkqYd NwV dk izek.k i= vfu;fer
:i ls tkjh djus esa foQy jgus ls ifj;kstuk dh
ykxr esa deh dk vHkko jkfâ€k :i;s 70-09
yk[kA vkj-MCY;w-,l-vkj-ih- ls IEcfU/kr
dk;ksaZ chds&6 o chds&7 dh vfHkys[kksa
dh tkap esa ik;k fd fcM ds Hkkx lh ds
vkbVe 13-3 esa vafdr mYys[kkuqlkj fcMj
}kjk izLrqr dh tkus okyh njksa esa lHkh
VsDI] M~;wVht ,oe~ ysoht lEefyr ekuh
tkosxhA blh vuqlkj ,LVhesV cuk, x,A blds
vfrfjDr vkbVe 13-3 ds uhps fn;s x;s uksV
esa mYys[k fd;k x;k Fkk fd ;ksX;rk lwpuk
ds lkFk layXu izi= esa] fcM ds lkFk gh lHkh
oLrqvksa dk uke o ek=k dk mYys[k fcMj
}kjk fd;k tkosxk] ftu oLrqvksa ij fcMj }kjk
NwV dk ykHk izkIr fd;k tkuk gksA ysfdu
nksuksa dk;ksaZ ds fcMj }kjk bl fooj.k ds
fcuk gh fufonk vfHkys[k foHkkx dks izLrqr
fd,A ftlls fl) gksrk gS fd laosndksa }kjk
lHkh VsDI ,oe M~;wVh dks lEefyr djrs gq,
njsa izLrkfor dh xbZa vkSj mRikn æœkqYd
dk ykHk ugha ysuk pkgrs FksA ysfdu
fufonk Lohd`fr mijkUr lhesaV o LVhy ij
mRikn NwV izkIr djus ds fy, vkosnu izLrqr
fd;k x;k] fti ij funsâ€kdÂ¼rduhfdÂ½ O;;
vks-,l-Mh-] flapkbZ jktLFkku t;iqj }kjk
nksuksa iSdstksa ds fy,] NwV izkIr djus
gsrq izek.k i= tkjh fd, x,A bl NwV dk ykHk

jkT; ljdkj dks LFkkukarfjr ugha fd;k x;kA
tkjh izek.k&i= vuqlkj nksuksa dk;ksaZ ds
fuâ€™iknu gsrq 17180 eSfVÂ^ad Vu
Â¼3]43]606 cSxÂ½ lhesaV dh vkoâ€;drk
FkhA ftl ij 400@& :i;s izfr eSfVÂ^ad Vu
mRikn â€œœkqYd] bl ij 2 izfrâ€kr dh nj ls
fâ€k{k vkf/kHkkj ls dqy jkfâ€k
70]09]440@& :i;s dk ykHk nksuksa
QeksaZ dks izkIr gksxkA foHkkx }kjk bl
izek.k&i= dks vukoâ€;d tkjh djus ,oa NwV
ds ykHk dks jkT; ljdkj dks LFkkukarfjr ugha
djus dk izko/kku vuqca/k esa lfEefyr ugha
fd;k x;kA bl izdkj Vs.Mj Lohd`fr ds ckn
izkIr vkosnu ds vk/kkj ij NwV dk izek.k&i=
izkIr djus ls laosndksa dks jkfâ€k 70- 09", "Â¼1Â½ DykWt 13-3 esa ftu djksa vkSj
izHkkjksa dk mYys[k fd;k x;k gS] ftudks
lfEefyr djrs gq, nj izLrkfor dh tkuh Fkh
ds dj ,oa izHkkj lkekU;r% fuekZ.k
dk;ksaZ ij tks fuft QeksaZ@laosndksa ls
djok;s tkrs gSA mu ij yxus okys dj ,oa
izHkkj gS u fd mRikn â€œœkqYd dh
NwVA Â¼2Â½ 13-3 ds uhps vafdr
uksV ds vuq:i ftl NwV dk mYys[k fd;k
x;k gS] og dj ds :i esa izkfIr u gksdj
dsUnz }kjk jkT; dks nh tkuhs okyh NwV
gS] tks vizR;k :i ls izkIr dh tk ldrh gS
rFkk ;g NwV foâ€o cSad ds
Ã~sfMV@_.k ls gksus okys leLr

dk;ksaZ ij Lor% ykxw gSA vr % ;g
NwV bl dk;Z foâ€™ksâ€™k ds fy, ugha
gS rFkk bl NwV dh fujarj miyC/krk Hkh
fufâ€™pr ugha gS D;ksafd uksV esa
laosnd dks ;g funsZâ€™k fn;k x;k gS fd
og ,slh miyC/k NwV ij fopkj dj ldsxk ,oa
NwV ugha miyC/k gksusa ij jkT; ljdkj
{kfriwfrZ ugha djsxh rFkk og O;fDrxr :i
ls mRrjnk;h gksxkA vr% NwV dk ykHk
vizR;{k :i ls fy;k tkuk Fkk tks fd fy;k x;k
gS] D;ksafd nj Lohd`r gksrs gh QeZ }kjk
izek.k i= gsrq vkosnu fd;k x;kA
mYys[kuh; gS fd dsUnz ljdkj dk ;g
Notification la0 108@95 lh-bZfnukad 28-
05-95] ftlds vuqlkj foâ€™o cSad ls foRr
iksfâ€™kr ifj;kstukvksa esa fuekZ.k ds
dke vkus okyh oLrqvksa] tks fd dsUnzh;
mRikn VsjhQ dh ch lwph esa lfEefyr gS]
bu oLrqvksa dks mRikn â€™œkqYd ls
eqDr fd;k x;kA ;g uksfVfQdsâ€™ku
loZfofnr ,oa izdkfâ€™kr gS ftldk fd bl Js.kh
ds QeksaZ@laosndks dks fufâ€™pr :i ls
bldk Kku gksxkA pwafd fuekZ.k dk;Z
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â€™œkqYd izR;{k :i ls dVksfr laHko ugha
gS] D;ksafd QeZ }kjk fuekZ.k lkexzh

[kqys cktkj ls Ã~; dh tkosxh vkoâ€;d" ,,,
yk[k :i;s dk vns; ykHk nsdj] jkT; dksâ€™™k
dks gkfu igqapkbZA","ugha gS fd mlesa bldks NwV izkIr gqbZ
gks ,slh fLFkfr esa foHkkx lkexzh dh
xq.koRrk dh tkap dj ldrk gS] u fd mRikn
â€œœkqYd dh NwV dhA vr% ,slh fLFkfr
esa lkexzh ij mRikn â€œœkqYd dh NwV
dh izkfÎr lqfufâ€™pr djuk laHko ugha gSA
vr% ,slh fLFkfr esa DykWt 13-3 ds
mn~nsâ€™; ds vuq:i QeksaZ }kjk nj bl
NwV dk fopkjkFkZ j[krsa gq, gh dh xbZ
Fkh] ftldk vizR;{k :i ls dk;Z dh ykxr ij
izHkko iM+k gSA fcM MkD;wesaV ds
izek:i esa] laosnd }kjk lkexzh dh ek=k dk
mYys[k ugha fd;k x;k tks fd NwV ugha
izkIr djus dk izek.k ugha gS] blds vfrfjDr
ek=k dk vfUre fu/kkZj.k ,Eiyks;j }kjk gh
fd;k tkuk Fkk rFkk uksV ds
funsZâ€™kkuqlkj ,slh ek=k dk mYys[k] nj
izLrkoksa ds lkFk@le; djus dk mYys[k u
gksdj ;g funsZfâ€™kr fd;k x;k gS fd
vkoâ€™™;d izek.k i= tkjh djokus gsrq
fu/kkZfjr izi= esa lwpuk,a izLrqr djsxkA
rn~ukuqlkj losand@QeZ }kjk i`Fkd ls
fn;s x;s vkosnu ij jkT; ljdkj }kjk NwV dk
izek.k i= tkjh fd;k x;k gSA tks fd mfpr
,oa oS/k gSA uksV ds vuq:i mDr DykWt
dh vuqikyuk lqfufâ€™™pr ugha gksus dh

fLFkfr esa ^^nj izLrko Non Responsive
treat djrs gq, Reject dj fn;k tkosxk^^]
tcfd mPp Lrjh; lfefr }kjk bl izdj.kksa dks
Lohd`r fd;k x;k gSaA vr% ;g ekuuk mfpr
gS fd NqV ij fopkj djusa ds mijkUr gh
njsa izkIr gqbZ gSa rFkk rnukuqlkj NwV
ds fy, izek.k i= Hkh mPp Lrjh; lfefr }kjk
tkjh fd;k x;k gSA blh ifjis{; esa fu;ekuqlkj
gh Bsdsnkj }kjk mRikn æœkqYd dh
NwV yh xbZ gSA vr% iSjk fujLr djus dk
Je djkosA",,,