M/S. T.T.G. INDUSTRIES LTD., MADRAS

v.

COLLECTOR OF CENTRAL EXCISE, RAIPUR

MAY 7, 2004

[RUMA PAL AND B.P. SINGH, JJ.]

Central Excise Act, 1944 :

Sections 2(d) and 3—Erection and installation of Mudguns and Drilling Machines by assessee at the site of the Steel Plant—Several components imported and also manufactured by assessee in factory and thereafter transported at the site for manufacturing and commissioning of machines—Process, nature of—If erection of 'immovable property' or emergence of 'good'—Excise duty—Levy of—Held : Mudguns and Drilling Machines were erected at the site on specially made concrete platform at a level of 25 feet above the ground on a base plate secured to concrete platform—It cannot be shifted without first dismantling it and then re-erecting it at another site—Hence, taking into account the volume and weight of the machine, the process undertaken and erection done, machines cannot be described as 'excisable goods' within the meaning of the Act but 'immovable property'—As such assessee not liable to pay excise duty on manufacture and removal of Mudgun and Drilling Machines and also not liable to pay penalty imposed—Central Excise Tariff Act, 1944—Heading 84.59 and 84.24—Transfer of Property Act, 1882—Section 3—General Clauses Act, 1897—Section 3(25).

Section 11A—Extended period of limitation—Invocation of—Assessee manufacturing and erecting Hydraulic Mudguns and Tap Hole Drilling Machines at the site of the Steel Plant out of imported components and also components manufactured in assessee's factory—Steel Plant under jurisdiction of one Collectorate and factory under the jurisdiction of other Collectorate—Assessee paying duty with regard to components manufactured at his factory and seeking classification of Drilling Machines under heading 84.59 and Mudguns under heading 84.24—However, non-intimation of manufacturing and erecting activities at the site to Collectorate having jurisdiction over Steel Plant and also did not file necessary

classification list nor complied with necessary excise formalities—Held: On account of suppression of facts from the authorities, extended period of limitation attracted and demand of duty not barred by limitation—Central Excise Tariff Act, 1944—Heading 84.59 and 84.24.

The appellant company-assessee entered into an agreement with the Steel Plant for design, supply, supervision of erection and commissioning of sets of Hydraulic Mudguns and Tap Hole Drilling Machines required for blast furnace of the Steel Plant. The appellant imported several components of the machines and also manufactured some of the components of the machines at their factory. Thereafter, these components were transported to the site of the Steel Plant where the manufacturing and commissioning of the machines took place. The appellant paid excise duty in respect of the components manufactured at its factory. It also filed classification list seeking classification of Hydraulic Drilling Machines under heading 84.59 and Mudguns under heading 84.24 of the Central Exicise Tariff Act, before the Central Excise Authority having jurisdiction over their factory. However, the appellant did not pay excise duty on manufacture of Mudguns and Drilling Machines which were erected and commissioned at site and also did not inform the Collector having jurisdiction over the Steel Plant with regard to the assembly and manufacture of machines at the site and also did not file the classification list nor complied with the Central formalities under the Rules. The Department issued notice to the appellant demanding Central and Special Excise Duty on the machineries erected by him and also imposed penalty. The Collector upheld the demand of duty on Hydraulic Mudguns and Tap Hole Drilling Machines and imposed penalty for suppression of the fact of such manufacture and removal of excisable goods from the Department without payment of duty. The Tribunal dismissed the appeal filed by the appellant. Hence the present appeal.

The appellant-assessee contended that the erection of Mudguns and Drilling Machines at the site of the Steel Plant results in erection of immovable property and not goods and as such excise duty is not leviable; that it cannot be moved from the place where it is erected as it is and if it becomes necessary to move it, it has first to be dismantled and then re-erected at another place; and that the demand of duty

having been raised beyond the period of six months is barred by limitation since the appellant had made full and complete disclosure of all relevant facts to the excise authorities and as such no penalty can be imposed. A

Allowing the appeal, and Court B

HELD : 1.1. The Hydraulic Mudguns and Tap Hole Drilling Machines erected at site by the appellant on a specially made concrete platform at a level of 25 feet above the ground on a base plate secured to the concrete platform, brought into existence is not excisable goods but immovable property which could not be shifted without first C dismantling it and then re-erecting it at another site. Such drilling machines and mudguns are not equipments which are usually shifted from one place to another' nor it is practicable to shift them frequently. Therefore, having regard to the processes undertaken, the manner in which these machines are assembled and erected, their volume and D weight and the nature of structure erected for basing these machines, what ultimately emerged as a result of processes undertaken and erections done cannot be described as 'goods' within the meaning of the Central Excise Act and exigible to excise duty. Hence, the appellant is not liable to pay excise duty on the manufacture and removal of the E mudgun and drilling machines installed in the Steel Plant and the order imposing penalty is set aside. [675-D-H; 676-A-B]

Narne Tulaman Manufacturers Pvt. Ltd. v. *Controller of Central Excise,* (1988) 38 ELT 566 SC, distinguished. F

Mittal Engineering Works Pvt. Ltd. v. *CCE,* (1996) 88 ELT 622 SC and *Quality Steel Tubes (P) Ltd.* v. *Collector of Central Excise, U.P.,* (1995) 75 ELT 17 SC, relied on.

Gwalior Rayon Silk Manufacturing (Weaving) Co. Ltd. v. *CCE,* G (1993) 65 ELT 121; *Municipal Corporation of Greater Bombay and Ors.* v. *The Indian Oil Corporation Ltd.,* [1991] Supp. 2 SCC 18; *Triveni Engineering and Indus Ltd.* v. *CCE,* (2000) 120 ELT 273 and *Sirpur Paper Mills Ltd.* v. *Collector of Central Excise, Hyderabad,* (1998) 97 ELT 3 SC, referred to. H

1.2. Having regard to the provisions of Section 11-A of the Central Excise Act, 1944 the demand of duty is not barred by limitation. Some of the components were manufactured by the appellant at its factory. In the classification list, they had sought classification of Hydraulic Drilling Machines under heading 84.59 and the Mudguns under heading 84.24 of the Central Excise Tariff Act. This description in the classification list was misleading because the complete machinery was manufactured and erected only at the site of the Steel Plant. The concerned officers of Central Excise, which had jurisdiction over the site of the Steel Plant, were never informed about the manufacturing activities of the appellant at the Steel Plant where the machines were finally manufactured. They neither filed the necessary classification list with the Central Excise Officers having jurisdiction, not did they comply with other necessary Excise formalities required by the Excise Rules. Therefore, there is no fault in the finding of the Tribunal that on account of suppression of facts from the concerned authorities, Section 11-A came into play, and the demand notice cannot be held to be barred by limitation invoking the extended period of limitation.

[669-E-H; 670-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10911 of 1996.

From the Judgment and Order dated 18.12.95 of the Central Excise, Customs and Gold (Control) Appellate Tribunal, New Delhi in F.O. No. E/529/95-B in A. No. E/2299/93-B1 with E/Cross. 71/94-B1.

A.R. Madhav Rao, Vishwanath Shukla and V. Balachandran for the Appellant.

Ms. Nisha Bagchi, Ms. Rekha Pandey, P. Manish and B.K. Prasad, for the Respondent.

The Judgment of the Court was delivered by

B.P. SINGH, J. : In this appeal the appellant has impugned the final order of the Customs, Excise and Gold (Control) Appellate Tribunal (for short 'CEGAT') dated 28.12.1995 dismissing its appeal against the order

of the Collector of Central Excise, Raipur, confirming the demand of duty on Hydraulic Mudguns and Tap Hole Drilling Machines, and imposing a penalty of Rs. 8 lakhs for suppressing the fact of such manufacture and removal of excisable goods from the Department of Central Excise, failure to obtain Central Excise Licence and its failure to maintain statutory records and to file the required returns.

The facts of the case are not in dispute. The appellant-Company pursuant to the acceptance of its tender, entered into an agreement with M/s SAIL, Bhilai Steel Plant for design, supply, supervision of erection and commissioning of four sets of Hydraulic Mudguns and Tap Hole Drilling Machines required for blast furnace Nos. 4 and 6 of the Bhilai Steel Plant. For this purpose, it imported several components and also manufactured some of the components at their factory in Marai Malai Nagar, Chennai. These components were transported to the site at Bhilai where the manufacture and commissioning of the aforesaid machines took place. It is undisputed that duty was paid in respect of the components manufactured at its workshop in Chennai, but no duty was paid on manufacture of the aforesaid Mudguns and Drilling Machines which were erected and commissioned on site.

A show cause notice dated 3.4.1992 was issued to the appellant demanding Central and Special Excise Duty amounting to Rs. 8961525 on the total assessable value of the aforesaid machines of Rs. 85347855. The notice also proposed initiation of penal action against the appellant. The appellant filed a detailed reply explaining the processes undertaken by it for the manufacture/erection and commissioning of the equipments, the purpose of the equipments so erected, their size and weight etc. After considering the plea of the appellant, the Collector of Central Excise, who was the Adjudicating Authority, concluded that the processes undertaken by the appellant resulted in the manufacture of two distinct equipments having their own name, character and use and which were specifically included in the Central Excise Tariff, and were therefore excisable goods and had to discharge duty liability. It rejected the plea of the appellant that the Mudguns and Drilling Machines were immovable property and hence not excisable. The Adjudicating Authority relied upon the decision of this Court in *Narne Tulaman Manufacturers Pvt. Ltd.* v. *Controller of Central Excise,* (1988) (38) ELT 566 (SC); where the issue related to the

A manufacture of weigh bridge, and held that the principles laid down therein squarely applied, particularly having regard to the similarity of facts. Accordingly, it confirmed the demand and imposed a penalty of Rs. 8 lakhs by order dated 27.5.1993.

B The appellant preferred an appeal before the CEGAT which was heard by a bench of two members. Of the several grounds urged in the Memorandum of Appeal, only three grounds were pressed before the CEGAT namely :-

C "a) erection of mudgunds and tap hole drilling machine at the site of the Bhilai Steel Plant would result in erection of immovable property and not goods and, therefore, no excise duty is leviable thereon.

D b) the appellants had made a full disclosure even at the time of dispatch of the goods from their factory at Marai Malai Nagar, Madras and drilling tap hole machines at Bhilai Steel Plant in their price list and thus the demand of duty having been raised beyond the period of six months is barred by limitation.

E c) for the same reason as in (b), no penalty can be imposed on the appellants".

The cross objection filed by the Collector was not pressed.

F The members of the CEGAT differed in their opinions. While the judicial member was in favour of allowing the appeal, having found in favour of the appellant on all the three grounds urged by it, none of the grounds found favour with the technical member who was of the view that the appeal deserved to be dismissed. The matter was, therefore, referred to a third member who agreed with the technical member and was in favour G of rejection of the appeal. In the light of the majority opinion, the appeal was dismissed by order dated 18.12.1995, which is the order impugned in this appeal.

Before us also the same three grounds have been pressed by the H appellant. We shall deal with the submissions urged before us later in this

judgment, but we consider it appropriate to notice at the threshold, the undisputed facts shorn of unnecessary details. A

As noticed earlier, the appellant had agreed to design, supply, supervise the erection and commissioning of four sets of Hydraulic Mudguns and Drilling Machines falling under Chapter Heading No. 8424 and 8465 of the CETA, 1985. Some of the components were imported while some others were manufactured at their factory in Chennai. These were then brought to the site at Bhilai. The appellants thereafter carried out the manufacture and assembly of these machines at a distance of about 100 metres from the place of erection whereafter the same were removed for commissioning to the blast furnace concerned. B C

In their reply to the show cause, the respondents explained the processes involved, the manner in which the equipments were assembled and erected as also their specifications in terms of volume and weight. It was explained that the function of the drilling machine is to drill hole in the blast furnace to enable the molten steel to flow out of the blast furnace for collection in ladles for further processing. After the molten material is taken out of the blast furnace, the hole in the wall of the furnace has to be closed by spraying special clay. This function is performed by the mudgun which is brought to its position and locked against the wall for exerting a force of 240-300 tons to fill up the hole in the furnace. The blast furnace in which the inputs are loaded is a massive vessel of 1719 m cubic metre capacity and the size of its outer diameter is 10.6 metres, and the height 31.25 metres. Hot air at 1200 degrees centigrade is fed into the blast furnace at various levels to melt the raw materials. With a view to protect the shell against heat, the blast furnace is lined with refractory brick of one metre thickness. Thus, the drilling machine has to drill a hole through one metre thickness of the refractory brick lining. The drilling machine as well as the mudgun are erected on a concrete platform described as the cast house floor which is in the nature of a concrete platform around the furnace. The cast house floor is at a height of 25 feet above the ground level. On this platform concrete foundation intended for housing drilling machine and mudgun are erected. The concrete foundation itself is 5 feet high and it is grouted to earth by concrete foundation. The first step is to secure the base plate on the said concrete platform by means of foundation bolts. The base plate is 80 mm mild sheet of about 5 feet diameter. It is D E F G H

A welded to the columns which are similar to huge pillars. This fabrication activity takes place in the cast house floor at 25 feet above ground level. After welding the columns, the base plate has to be secured to the concrete platform. This is achieved by getting up a trolley way with high beams in an inclined posture so that base plate could be moved to the concrete B platform and secured. The same trolley helps in the movement of various components to their determined position. The various components of the mudgun and drilling machine are mounted piece by piece on a metal frame, which is welded to the base plate. The components are stored in a store-house away from the blast furnace and are brought to site and physically lifted by a crane and landed on the cast house floor 25 feet high near the C concrete platform where drilling machine and mudgun has to be erected. The weight of the mudgun is approximately 19 tons and the weight of the drilling machine approximately 11 tons. The volume of the mudgun is 1.5 x 4.5 x 1 metre and that of the drilling machine 1 x 6.5 x 1 metre. Having regard to the volume and weight of these machines there is nothing like D assembling them at ground level and then lifting them to a height of 25 feet for taking to the cast house floor and then to the platform over which it is mounted and erected. These machines cannot be lifted in an assembled condition.

E So explaining the nature of the processes involved, the appellant contended that the mudgun and the drilling machine came into existence as identifiable units only after assembly on the metal frame, and once assembled they were no longer "goods" within the meaning of the Central Excise Act.

F The judicial member noticing these facts observed that it is a physical and engineering impossibility to assemble mudguns or the drill tap hole machines elsewhere in a fully assembled condition and thereafter erect or install the same at a height of 25 feet on the cast floor of the blast furnace. She found that even the Adjudicating Authority conceded the fact that the G equipments have to be assembled/ erected on the base frame projection of the furnace. She also accepted the submission urged on behalf of the appellant that if the machines are to be removed from the blast furnace, they have to be first dismantled into parts and brought down to the ground only by using cranes and trolley ways considering the size, and also H considering the fact that there is no space available for moving the

machines in assembled condition due to their volume and weight. She considered the authorities on the subject and came to the conclusion that erection of mudgun and tap hole drilling machine results in erection of immovable property. She noticed the judgment of this Court in *Narne Tulaman Manufacturers Pvt. Ltd.* (supra) and also noticed the judgment of the *Tribunal in Gwalior Rayon Silk Manufacturing (Weaving) Co. Ltd.* v. *CCE,* (1993) (65) ELT 121; which held that the issue of immovable property was never raised before the Supreme Court in Narne *Tulaman Manufacturers Pvt. Ltd.* She found support for her conclusion in the decision of this Court in *Municipal Corporation of Greater Bombay & Ors.* v. *The Indian Oil Corporation Ltd.,* [1991] Supp. (2) SCC 18; and held that the twin tests laid down by this Court to determine whether assembly/ erection would result in immovable property or not were fully satisfied in the facts of this case. She concluded :-

> "The test laid down by the Supreme Court is that if the chattel is movable to another place as such for use, it is movable but if it has to be dismantled and reassembled or re-erected at another place for such use, such chattel would be immovable. In the present appeal, even according to the finding of the Collector, mudguns and drill tap hole machines have to be dismantled and disassembled from the cast floor before being erected or assembled elsewhere. We have also arrived at the same conclusion independently, in para 10 above. Accordingly applying the test laid down by the Supreme Court we hold that the erection and installation of mudguns and drill tap hole machines result in immovable property. In the light of the ratio of the above case law, we hold that the mudguns and tap hole drilling machines do not admit of the definition of goods and, therefore, excise duty is not leviable thereon".

On the question of limitation, she came to the conclusion that the appellant could not be held guilty of any suppression. She rejected the contention of the respondent that the suppression was attributable in the face of the non-intimation of erection to the Indore Collectorate being the Collectorate having jurisdiction over the Bhilai Steel Plant. Accordingly, she held that the entire demand was barred by limitation, as the show cause notice for recovery of duty for the period from 25.6.1990 to 22.1.1991 was

A issued on 3.4.1992/8.4.1992. For the same reasons, the penalty imposed was not sustainable.

The technical member after considering the facts of the case and the submissions urged before the Tribunal held that the principle laid down
B by the Supreme Court in *Municipal Corporation of Greater Bombay & Ors. (P) Ltd.* (supra) did not help the appellant because the catalogue issued by M/s Paul Wurth SA Luxembourg, an international firm which supplies and erects tap hole guns and drilling machines for use in steel plants had offered such equipment for sale and export to different parts of the world.
C He held that even though on account of the immense size and weight it may be necessary to shift or transport them in parts for assembly and erection at the site in the steel plants, they have to be deemed as individual machines having specialised functions. He also placed considerable reliance on the judgment of this Court in *Narne Tulaman Manufacturers Pvt. Ltd.* (supra) which related to manufacture of a weigh bridge and on the basis
D of the observation in the aforesaid judgment came to the conclusion that assembly and erection of Hydraulic Mudgun and Drilling Machine in question at site amounted to manufacture within the meaning of Section 2(f) of the Central Excise and Salt Act attracting Central Excise duty even though they have necessarily to be attached to earth for reasons such as
E large size and weight, proper functioning etc. He rejected the contention of the appellant as having no force that in *Narne Tulaman Manufacturers Pvt. Ltd.* (supra), the aspect whether the goods in question were movable or not was not gone into by this Court. He, therefore, concluded that the machines in question were movable and had individual well defined
F functions and were therefore classifiable under Chapter 84 of the Central Excise Tariff.

He further held that under these circumstances, in respect of the individual machines in question the tests for determining whether a property is immovable or movable as laid down by this Court in *Municipal*
G *Corporation of Greater Bombay & Ors.* (supra) was not of any assistance to the appellant. In view of the aforesaid findings he was of the view that the demand was justified.

On the second question, as to whether, the demand was barred by
H limitation, he noticed that the appellant had filed classification list before

the Central Excise Authority having jurisdiction over their factory in Tamil Nadu. However, on deciding to undertake the assembly and manufacture of the machines in question at site in the Bhilai Steel Plant, the appellants did not file the necessary classification list with the Central Excise Officers having jurisdiction and did not comply with the prescribed Central Excise formalities as laid down in the Central Excise Rules. He, further, held that the appellant was guilty of suppressing material facts from the concerned authorities and, therefore, the demand was not barred by limitation.

The third member to whom the matter was referred in view of the differing opinions, agreed with the technical member and held that the appeal deserved to be dismissed. The final order dismissing the appeal is impugned before us.

We shall first consider the appellants submission that the demand of duty having been raised beyond the period of six months is barred by limitation. The submission proceeds on the assumption that the appellant had made full and complete disclosure of all relevant facts to the excise authorities and was therefore not guilty of suppression of material facts.

Having considered the reasons recorded in the differing opinions, we are satisfied that the demand of duty is not barred by limitation having regard to the provisions of Section 11 A of the Act. Learned counsel for the parties took us through the documentary evidence on record, including the correspondence exchanged between the appellant and the Collectorate of Excise authorities having jurisdiction over their factory at Chennai. We have noticed earlier that some of the components were manufactured by the appellant at its factory in Chennai. In the classification list, they had sought classification of Hydraulic Drilling Machines under heading 84.59 and the Mudguns under heading 84.24. This description in the classification list was misleading, because the complete machinery was manufactured and erected only at Bhilai. The concerned officers of Central Excise, namely the Indore Collectorate which had jurisdiction over Bhilai were never informed about the manufacturing activities of the appellant at Bhilai where the machines were finally manufactured. They neither filed the necessary classification list with the Central Excise Officers having jurisdiction, nor did they comply with other necessary Excise formalities as required by the Excise Rules. In these circumstances, we find no fault

A with the finding of the CEGAT that on account of suppression of facts from the concerned authorities, Section 11A came into play, and the demand notice cannot be held to be barred by limitation invoking the extended period of limitation.

B The core question that still survives for consideration is whether the processes undertaken by the appellant at Bhilai for the erection of mudguns and drilling machines resulted in the emergence of goods leviable to excise duty or whether it resulted in erection of immovable property and not "goods".

C Considerable reliance has been placed in the majority opinions of the tribunal on the principle enunciated in *Narne Tulaman Manufacturers Pvt. Ltd.* (supra) which was held applicable to the facts of the case, and therefore there was no option but to hold that since a new product known in the market and known under the excise items came into being, the appellant D as manufacturer thereof was liable to duty. The judicial member however held that the question whether the process undertaken resulted in the emergence of an immovable asset and not "goods" exigible to excise duty, was neither raised nor decided in that case. She placed reliance on an earlier decision of the CEGAT in *Gwalior Rayon Silk Manufacturing Co.* (supra) E which held to this effect. Now in view of the authoritative pronouncement of this Court in *Mittal Engineering Works (P) Ltd.* v. *C.C.E., Meerut,* (1996) 88 ELT 622 SC, the matter stands clarified. This Court held :-

> "Learned counsel for Revenue relied upon the judgment in *Narne* F *Tulaman Manufacturers Pvt. Ltd. Hyderabad* v. *Collector of Central Excise, Hyderabad,* 1988 (38) ELT 566 (SC) = [1988] Supp. 3 S.C.R. 1. An indicating system was one of the three parts of a weighbridge, namely, (1) a platform, (2) load cells and (3) the Indicating system. The Tribunal found that the appellant brought the three components together at site, fitted and assembled G them so that they could work as one machine and, as such, the appellant manufactured a weighbridge. The question, therefore, was whether the activity carried out by the appellant, of assembling the three components of the weighbridge, brought into being a complete weighbridge, which had a distinct name, character or H use. The argument of the appellant was that it was making only

a part of the weighbridge, that is, the indicating system, and that alone was dutiable. It was held that the end product, namely, the weighbridge, was a separate product which came into being as a result of the endeavour and activity of the appellant, and the appellant must be held to have manufactured it. The appellant's case that it was liable only for a component part and not the end product was, therefore, rejected.

Learned counsel for the Revenue submitted that if even a weighbridge was excisable, as held in the case of *Narne Tulaman Manufacturers Pvt. Ltd.*, so was a mono vertical crystalliser. The only argument on behalf of *Narne Tulaman Manufacturers Pvt. Ltd.* was that it was liable to excise duty in respect of the indicating system that it manufactured and not the whole weighbridge. The contention that weighbridges were not 'goods' within the meaning of the Act was not raised and no evidence in that behalf was brought on record. We cannot assume that weighbridges stand on the same footing as mono vertical crystallisers in that regard and hold that because weighbridges were held to be exigible to excise duty so must mono vertical crystallisers. A decision cannot be relied upon in support of a proposition that it did not decide".

In view of the above observation, it must be held that reliance placed by the majority members on the decision in *Narne Tulaman* was not justified, as the aforesaid decision did not decide the question which arises for consideration in the instant case.

The appellant has placed considerable reliance on the principles enunciated and the test laid down by this Court in *Municipal Corporation of Greater Bombay* (supra) to determine what is immovable property. In that case the facts were that the respondent had taken on lease land over which it had put up, apart from other structures and buildings, six oil tanks for storage of petrol and petroleum products. Each tank rested on a foundation of sand having a height of 2 feet 6 inches with four inches thick asphalt layers to retain the sand. The steel plates were spread on the asphalt layer and the tank was put on the steel plates which acted as bottom of the tanks which rested freely on the asphalt layer. There were no bolts and nuts for holding the tanks on to the foundation. The tanks remained in

A position by its own weight, each tank being about 30 feet in height 50 feet in diameter weighing about 40 tons. The tanks were connected with pump house with pipes for pumping petroleum products into the tank and sending them back to the pump house. The question arose in the context of ascertaining the rateable value of the structures under the Bombay Municipal B Corporation Act. The High Court held that the tanks are neither structure nor a building nor land under the Act. While allowing the appeal this Court observed :-

> "The tanks, though, are resting on earth on their own weight without being fixed with nuts and bolts, they have permanently C been erected without being shifted from place to place. Permanency is the test. The chattel whether is movable to another place of use in the same position or liable to be dismantled and re-erected at the later place? If the answer is yes to the former it must be a movable property and thereby it must be held that it is not attached D to the earth. If the answer is yes to the latter it is attached to the earth".

Applying the permanency test laid down in the aforesaid decision, counsel for the appellant contended that having regard to the facts of this E case which are not in dispute, it must be held that what emerged as a result of the processes undertaken by the appellant was an immovable property. It can not be moved from the place where it is erected as it is, and if it becomes necessary to move it, it has first to be dismantled and then re-erected at another place. This factual position was also accepted by the F Adjudicating Authority.

The technical member, however, held that the aforesaid decision was of no help to the appellant inasmuch as a leading international manufacturing firm had offered such machines for export to different parts of the world. He further observed that though on account of their size and weight, it may G be necessary to shift or transport them in parts for assembly and erection at the site in the steel plant, they must nevertheless be deemed as individual machines having specialized functions. We are not impressed by this reasoning, because it ignores the evidence brought on record as to the nature of processes employed in the erection of the machine, the manner H in which it is installed and rendered functional, and other relevant facts

which may lead one to conclude that what emerged as a result was not merely a machine but something which is in the nature of being immovable, and if required to be moved, cannot be moved without first dismantling it, and then re-erecting it at some other place. Some of the other decisions which we shall hereafter notice clarify the position further.

In *Quality Steel Tubes (P) Ltd.* v. *Collector of Central Excise, UP* (1995) 75 ELT 17 SC; the facts were that a tube mill and welding head were erected and installed by the appellant, a manufacturer of steel pipes and tubes by purchasing certain items of plant and machinery in market and embedding them to earth and installing them to form a part of the tube mill and purchasing certain components from the market and assembling and installing them on the site to form part of the tube mill which was also covered in the process of welding facility. After noticing several decisions of this Court, the Court observed that the twin tests of exgibility of an article to duty under the Excise Act are that it must be a goods mentioned either in the Schedule or under Item 68 and must be marketable. The word "goods" applied to those which can be brought to market for being bought and sold and therefore, it implied that it applied to such goods as are movable. It noticed the decisions of this Court laying down the marketability tests. Thereafter this Court observed :-

> "The basic test, therefore, of levying duty under the Act is two fold. One, that any article, must be a goods and second, that it should be marketable or capable of being brought to market. Goods which are attached to the earth and thus become immoveable do not satisfy the test of being goods within the meaning of the Act nor it can be said to be capable of being brought to the market for being bought and sold. Therefore, both the tests, as explained by this Court, were not satisfied in the case of appellant as the tube mill or welding head having been erected and installed in the premises and embedded to earth they ceased to be goods within meaning of Section 3 of the Act".

In *Mittal Engineering Works Pvt. Ltd.* v. *CCE,* (1996) (88) ELT 622 (SC); this Court was concerned with the exigibility to duty of mono vertical crystallisers which are used in sugar factories to exhaust molasses of sugar. The material on record described the functions and manufacturing process.

A mono vertical crystaliser is fixed on a solid RCC slab having a load bearing capacity of about 30 tons per square meter. It is assembled at site in different sections and consists of bottom plates, tanks, coils, drive frames, supports, plates etc. The aforesaid parts were cleared from the premises of the appellants and the mono vertical crystalliser was assembled and erected at site. The process involved welding and gas cutting. The mono vertical crystalliser is a tall structure, rather like a tower with a platform at its summit. This Court noticed that marketability was a decisive test for dutiability. It meant that the goods were saleable or suitable for sale, that is to say, they should be capable of being sold to consumers in the market, as it is, without anything more. The Court then referred to the decision in *Quality Steel Tubes* (supra) and distinguished the judgment in *Narne Tulaman* (supra) holding that the contention that the weigh bridges were not goods within the meaning of the Act was neither raised nor decided in that case. After considering the material placed on the record it was held that the mono vertical crystalliser has to be assembled, erected and attached to the earth by a foundation at the site of the sugar factory. It is not capable of being sold as it is, without anything more. This Court, therefore, concluded that mono vertical crystallisers are not "goods" within the meaning of the Act and, therefore, not exigible to excise duty. In *Triveni Engineering & Indus Ltd.* v. *CCE,* (2000) (120) ELT 273; a question arose regarding excisability of turbo alternator. In the facts of that case, it was held that installation or erection of turbo alternator on a concrete base specially constructed on the land cannot be treated as a common base and, therefore, it follows that installation or erection of turbo alternator on the platform constructed on the land would be immovable property, as such it cannot be an excisable goods falling within the meaning of heading 85.02. In reaching this conclusion this Court considered the earlier judgments of this Court in *Municipal Corporation of Greater Bombay, Quality Steel Tubes* and *Mittal Engineering Works Pvt. Ltd.* (supra) as also the earlier judgment of this Court in *Sirpur Paper Mills Ltd.* v. *Collector of Central Excise, Hyderabad,* (1998) (97) ELT 3 (SC). This Court observed :-

> "There can be no doubt that if an article is an immovable property, it cannot be termed as "excisable goods" for purposes of the Act. From a combined reading of the definition of 'immovable property' in Section 3 of the Transfer of Property Act, Section 3(25) of the

General Clauses Act, it is evident that in an immovable property there is neither mobility nor marketability as understood in the Excise Law. Whether an article is permanently fastened to anything attached to the earth require determination of both the intentions as well as the factum of fastening to anything attached to the earth. And this has to be ascertained from the facts and circumstances of each case". A B

It was also held that the decision of this Court in *Sirpur Paper Mills Ltd.* must be viewed in the light of the findings recorded by the CEGAT therein, that the whole purpose behind attaching the machine to a concrete base was to prevent wobbling of the machine and to secure maximum operational efficiency and also safety. In view of those findings it was not possible to hold that the machinery assembled and erected by the appellant at its factory site was immovable property as something attached to earth like a building or a tree. C D

Keeping in view the principles laid down in the judgments noticed above, and having regard to the facts of this case, we have no doubt in our mind that the mudguns and the drilling machines erected at site by the appellant on a specially made concrete platform at a level of 25 feet above the ground on a base plate secured to the concrete platform, brought into existence not excisable goods but immovable property which could not be shifted without first dismantling it and then re-erecting it at another site. We have earlier noticed the processes involved and the manner in which the equipments were assembled and erected. We have also noticed the volume of the machines concerned and their weight. Taking all these facts into consideration and having regard to the nature of structure erected for basing these machines, we are satisfied that the judicial member of the CEGAT was right in reaching the conclusion that what ultimately emerged as a result of processes undertaken and erections done cannot be described as "goods" within the meaning of the Excise Act and exigible to excise duty. We find considerable similarity of facts of the case in hand and the facts in *Mittal Engineering and Quality Steel Tubes* (supra) and the principles underlying those decisions must apply to the facts of the case in hand. It cannot be disputed that such drilling machines and mudguns are not equipments which are usually shifted from one place to another, nor it is practicable to shift them frequently. Counsel for the appellant E F G H

A submitted before us that once they are erected and assembled they continue to operate from where they are positioned till such time as they are worn out or discarded. According to him they really become a component of the plant and machinery because without their aid a blast furnace cannot operate. It is not necessary for us to express any opinion as to whether the B mudgun and the drilling machines are really a component of the plant and machinery of the steel plant, but we are satisfied that having regard to the manner in which these machines are erected and installed upon concrete structures, they do not answer the description of "goods" within the meaning of the term in the Excise Act.

C In the result this appeal is allowed and the order of the CEGAT dated 28.12.1995 is set aside and it is held that the appellant is not liable to pay excise duty on the manufacture and removal of the mudgun and drilling machines in question which have been installed in the Bhilai Steel Plant. Consequently, the order imposing a penalty of Rs. 8 lakhs is also quashed. D There will be no order as to costs.

N.J. Appeals allowed.