

A COMMISSIONER, CENTRAL EXCISE, NAGPUR

v.

M/S. WAINGANGA SAHKARI S. KARKHANA LTD.

APRIL 18, 2002

B [S.P. BHARUCHA, CJ., N. SANTOSH HEGDE AND
SHIVARAJ V. PATIL, JJ.]

C *Excise Laws:*

Trusses, Columns and purlines—Making of—Whether amounts to manufacture—Held, Tribunal noted that it had been found as a fact by the Collector that assessee had undertaken fabrication work at site—Decision of Aruna Industries case applied to instant case—Tribunal's order cannot be faulted.

D *Aruna Industries Vishakhapatnam v. C.C.E. Guntur, (1986) 25 ELT 580, relied on.*

E *Structurals and Machineries (Bokaro) Pvt. Ltd. v. Collector of Central Excise, (1984) (17) ELT 127 and Richardson and Cruddas, (1972) Ltd. v. Collector of Central Excise, (1988) 38 ELT 176, referred to.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 496 of 1998.

F From the Judgment and Order dated 7.5.97 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in A. No. E/739/89-BL in F.O. No. E/866/97-B.

Mukul Rohatgi, Additional Solicitor General, Jaideep Gupta and B.K. Prasad for the Appellant.

G V. Lakshmikumaran, M.P. Devnath and V. Balachandran for the Respondent.

The following Order of the Court was delivered

The Tribunal was concerned with whether making trusses, columns and purlines amounted to manufacture. The Tribunal followed an earlier decision in the case of *Aruna Industries, Vishakhapatnam v. C.C.E., Guntur* (1986) 25 ELT 580. It did not follow another decision in the case of *Structurals and Machineries (Bokaro) Pvt. Ltd. v. Collector of Central Excise*. (1984) 17 ELT 127.

It is submitted on behalf of the Revenue that there are conflicting views taken by the Tribunal and that such conflicting views have been taken even after the impugned order.

In one of these subsequent judgments, in the case of *Richardson and Cruddas (1972) Ltd. v. Collector of Central Excise*, [1988] 38 ELT 176, the case of *Aruna Industries* (supra) has been considered and found to be applicable to a situations where the assessee was erecting the structures at the constructions site and fabricating materials on the spot; it was therefore found that this could not be considered to be fabrication in a factory. Now, in the instant case, the Tribunal noted that it had been found as a fact by the Collector that the assessee had undertaken fabrication work at site. This was a case, therefore, to which the decision of *Aruna Industries* (supra) applied and the Tribunal's order cannot be faulted.

The appeal is dismissed. No order as to costs.

R.P.

Appeal dismissed.