THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Writ Petition No.18021 of 2002

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The action of the 1st respondent in levying and collecting excise duty on the old machinery, sold in a public auction, is questioned by the auction purchaser as being illegal and arbitrary. It is the petitioner's case that in the auction, held by the 1st respondent on 25.03.2002, one TATA 320 P&H Crane and 2 Fork Lifts were sold as scrap. They claim that thought no excise duty is liable to be charged on scrap, excise duty was collected from the petitioner.

In the counter affidavit filed by them, the 1st respondent stated that the Crane and Fork lifts sold in public auction were in a working condition, and was not scrap; excise duty was payable thereon; the petitioner was informed that they had to pay 16% towards excise duty on the above items; Clause No.10 of the terms and conditions of the auction stipulated that the bid price shall be exclusive of excise duty, that excise duty shall be charged at the applicable rates, and shall be payable by the successful bidders over and above the bid price; in the description of the items under auction, against the relevant Lot Numbers, the percentage of excise duty payable i.e 16% was also clearly indicated in the terms and conditions of auction; excise duty was collected from the petitioner on 06.04.2002 on Lot No.849; the petitioner was liable to pay excise duty on old machinery; after purchasing the Crane, the petitioner had let it out to M/s.Simplex Concrete Files India Limited, Singarayakonda; both the Crane and two Fork lifts were in a working condition, and were not items of scrap; and excise duty was payable thereon.

While it is no doubt true that excise duty is levied on the manufacture of goods, its collection can be at a later stage also. The liability to pay excise duty is that of the 1st respondent, and any dispute regarding their liability to pay excise duty to the 2nd respondent can only be urged by them, and not by the petitioner who merely participated in the auction. As the goods sold in the auction are said to be in a working condition and not to be scrap, and as the terms and conditions of auction clearly required the petitioner to pay excise duty in addition to the auction price, we see no reason to examine whether the 1st respondent was liable to pay excise duty to the 2nd respondent in a writ petition filed by the auction purchaser i.e the petitioner herein.

The writ petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date:06.04.2016
JSU

<u>THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN</u>

AND

<u>THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY</u>

-
-
-
-
-
-
-
-
-

-

-

-

-

-

-

-

-

-

-

-

-

Writ Petition No.18021 of 2002

-

-

Date:06.04.2016

JSU