

'Jetty' using conveyor belt to load iron core to vessels is temporary structure; entitled to 100% depreciation

Summary – The High Court of Madras in a recent case of Anand Transport, (the Assessee) held that Merely because functioning of Jetty was done by using a conveyor belt, same would not convert a Jetty into a plant; Temporary jetty/loading platform was eligible for 100 per cent depreciation

Facts

- The assessee was in the business of loading and unloading of bulk cargo, relating to exports and imports, transportation of cargo, both within and outside the ports and by sea and, attending to all works, incidental to the works connected with the main business. The assessee entered into a contract with MMTC according to which a Jetty/loading platform was erected temporarily by the assessee to facilitate loading of iron ore onto vessels. The assessee had claimed and was granted 100 per cent depreciation on loading platform.
- The re-opening notice was issued against assessee on grounds that the Jetty was in the nature of a 'plant' and not a temporary structure, therefore, 100 per cent depreciation could not be claimed on it.
- On appeal, the Commissioner (Appeals) sustained the findings of the Assessing Officer.
- On further appeal, the Tribunal had retained a finding of fact that the Jetty/Loading platform was a temporary structure. Therefore, it would be entitled to depreciation at the rate of 100 per cent.
- On revenue's appeal to the High Court:

Held

- The matter would turn on what is the nature of the structure of Jetty, purpose for which it is erected, the periodicity for which, it is put in place, and lastly, the use to which the structure is put by the person/entity responsible for its erection.
- Therefore, first and foremost, one needs to discern is, what exactly is a 'Jetty'. The dictionary meaning of Jetty, as found, in the Oxford English Dictionary, is "a landing stage or small pier at which boats can dock or be moored; a bridge or staircase used by passengers boarding an aircraft; a breakwater constructed to protect or defend a harbour, stretch of coast or riverbank."
- A bare perusal of the meaning of the word Jetty would show that, it is, in the nature of a construction, which is used, either as a landing stage, a small pier, bridge, staircase or a construction, built into the water to protect the harbour.
- The utility of a Jetty is limited by its construct. It is used to obtain either access to a vessel, or, protect the harbour.

- The provisions of the contract would show that, the Jetty/loading platform was constructed, in this particular case, by the assessee, on BOT basis, for a period of three (3) years, from the date of commencement of the vessel loading operation.
- This was the initial arrangement between the assessee and the MMTC, which was modified, to enable operation of the Jetty, till such time, the Ennore Port allowed operations, or, for a period of three months from initial arrangement on 24-6-2009. In addition thereto, under the terms of the contract, MMTC, as it appears, could use the Jetty, till 31-3-2010, on the same terms and conditions as per mutually agreed terms arrived at between parties.
- Quite clearly, the Jetty/loading platform, in this case, was erected by the assessee, in order to effectuate its business under the contract, entered into with MMTC, which was tenure based, and, therefore, could not have been treated as anything else, but a temporary erection. Upon completion of the contract, the assessee was required to dismantle it. The fact that the Jetty had other contraptions attached to it, such as, a conveyor belt, to facilitate the process of loading, cannot convert such a structure into a plant. Therefore, even, if, the functional test is employed, the main function of a Jetty, in the facts of the instant case, was to provide a passage or, a platform to ferry articles onto the concerned vessels. This could have been done manually. That it was done by using a conveyor belt, would not, convert a Jetty into a plant.