

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.951 OF 2004

COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI. APPELLANT

VERSUS

M/S.KONKAN SYNTHETIC FIBRES

RESPONDENT

O R D E R

1.This Civil Appeal is directed against the judgment and order passed by the Customs, Excise and Service Tax Appellate Tribunal (for short 'CESTAT'), Mumbai in Appeal No.C/43/02-Mumbai, dated 04.09.2003. By the impugned judgment and order, the CESTAT has granted relief to the assessee by giving a liberal interpretation to the beneficial Notification No.17/01-Cus dated 1.3.2001, as amended by Notification No.44/01-Cus, dated 26.4.2001.

2. The assessee is an importer. It has imported one unit of equipment which was declared as "Kari Mayer High Speed Draw Warping Machine with 1536 ends along with essential spares". On such importation, it had presented the Bill of Entry No.207814 dated 25.9.2001 before the Customs authorities, *inter alia*, seeking clearance of the same by extending the benefit of the Notification No.17/01-Cus dated 1.3.2001, as amended by Notification No.44/01-Cus, dated 26.04.2001. The Customs authorities had refused to accept the request of the assessee and accordingly, had directed the assessee to pay the duty under the provisions of the Customs Act, 1962 ("the Act" for short). Therefore, the assessee was constrained to pay the duty in order to clear the goods. The said payment was made under protest so that it could carry the matter further in appeal before the First Appellate

Authority.

3. In the appeal filed, the First Appellate Authority has confirmed the view of the Customs authority. Dissatisfied with the order so passed, the assessee had carried the matter in appeal before the CESTAT and the CESTAT has granted relief to the assessee.

4. The Revenue, being aggrieved by the same is, before us in this appeal.

5. We have heard Shri. V. Shekhar, learned senior counsel assisted by Smt. B. Sunita Rao for the Revenue and Shri. S. K. Bagaria, learned senior counsel for the assessee.

6. Shri. Shekhar, learned senior counsel for the Revenue, after bringing to our notice the Notification under which the assessee had claimed benefit for the imported goods, would

submit, that, what was imported by the assessee was not in consonance with the exemption notification and, therefore, the authorities under the Act were justified in denying the benefit available under the notification to the assessee. The learned senior counsel further submits, what is imported by the assessee is High Speed Draw Warping Machine with yard tensioning without the pneumatic suction device but with a drawing machine. The learned counsel would submit, since what was imported is not in accordance with Entry 8 of the table appended to the Notification, the assessee is not entitled to the benefit of the exemption notification.

7. *Per contra*, Shri Bagaria, learned senior counsel would submit that the beneficial notification should be given a liberal construction and if it is done, then, what is

imported by the assessee would fall within Entry 8 of the table appended to the exemption notification.

8. The Central Government, in exercise of its power under Section 25(1) of the Act, has issued an exemption notification in public interest, exempting certain articles notified under the table appended to the notification from payment of the duty under the Act. Several items are enumerated under the table. Entry 130 of the table speaks of drawing machine. Entry 8 of the notification speaks of the High Speed Warping Machine with yarn tensioning, pneumatic suction devices and accessories. A reading of the said entry would indicate that the said machine is a composite machine. The pneumatic suction devices are machines used for the purpose of sucking of vapour/gas, while the High speed warping machine is activated or warped. There

is no dispute that the assessee has imported High speed warping machine but without pneumatic suction device, but with drawing unit. The textile commissioner, who is well conversant with these machines, has stated vide his letter dated 27.9.2001 that the goods imported by the assessee are covered under Entry-8 of the Table appended to the notification. He further stated vide his letter dated 24.10.2001 that drawing unit is just an essential accessory to the machines imported by assessee and, therefore, is covered under said Entry. The opinion so furnished is taken note of by the Tribunal while granting relief to the assessee.

9. It is a settled proposition in a fiscal or taxation law that while ascertaining the scope or expressions used in a particular entry, the opinion of the expert in the field of trade, who deals in those goods, should not be

ignored, rather it should be given due importance. In *Collector of Customs v. Swastic Woollens (P) Ltd.*, 1988 Supp SCC 796, this Court has observed thus:

"4. We are of the opinion that when no statutory definition is provided in respect of an item in the Customs Act or the Central Excises Act, the trade understanding, meaning thereby the understanding in the opinion of those who deal with the goods in question is the safest guide. See *Union of India v. Delhi Cloth & General Mills*, *South Bihar Sugar Mills Ltd. v. Union of India*, *Dunlop India Ltd. v. Union of India*, *In re Colgate Palmolive (India) Pvt. Ltd.*, *CST v. S.N. Bros., Kanpur*, and also the famous observations of Justice Cameron in *His Majesty The King v. Planters Nut and Chocolate Co. Ltd.* "

10. Before we discuss the issue involved, we intend to notice how this Court has construed beneficial notifications issued under the Act. In *Commissioner of Customs (Preventive)*,

Mumbai v. M. Ambalal and Company, (2011) 2 SCC 74, (in which one of us was the party) has observed that the beneficial notification providing the levy of duty at a concessional rate should be given a liberal interpretation:

"16. It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. The rule regarding exemptions is that exemptions should generally be strictly interpreted but beneficial exemptions having their purpose as encouragement or promotion of certain activities should be liberally interpreted. This composite rule is not stated in any particular judgment in so many words. In fact, majority of judgments emphasise that exemptions are to be strictly interpreted while some of them insist that exemptions in fiscal statutes are to be liberally interpreted giving an apparent impression that they are contradictory to each other. But this is

only apparent. A close scrutiny will reveal that there is no real contradiction amongst the judgments at all. The synthesis of the views is quite clearly that the general rule is strict interpretation while special rule in the case of beneficial and promotional exemption is liberal interpretation. The two go very well with each other because they relate to two different sets of circumstances."

11. In *Commissioner of Sales Tax v. Industrial Coal Enterprises*, (1999) 2 SCC 607, this Court has observed:

"11. In *CIT v. Straw Board Mfg. Co. Ltd.* this Court held that in taxing statutes, provision for concessional rate of tax should be liberally construed. So also in *Bajaj Tempo Ltd. v. CIT* it was held that provision granting incentive for promoting economic growth and development in taxing statutes should be liberally construed and restriction placed on it by way of exception should be construed in a

reasonable and purposive manner so as to advance the objective of the provision."

12. In Commissioner of Central Excise, Shillong v. North-Eastern Tobacco Co. Ltd., (2003) 1 SCC 161, this Court has held:

"10. The other important principle of interpreting an exemption notification is that as far as possible liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed."

13. In Associated Cement Companies Ltd. v. State of Bihar, (2004) 7 SCC 642, this Court while explaining the nature of the exemption notification and also the manner in which it should be interpreted has held:

"12. Literally "exemption" is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in a growing economy. In fact, an exemption provision is like an exception and on

normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden of progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking, liberal and strict construction of an exemption provision is to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in the nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. (See *Union of India v. Wood Papers Ltd.* and *Mangalore Chemicals and Fertilisers Ltd. v. Dy. Commr. of Commercial Taxes* to which reference has been made earlier.)"

14. In *G.P. Ceramics Private Limited v. Commissioner, Trade Tax, Uttar Pradesh*, (2009) 2 SCC 90, this Court has observed thus:

"29. It is now a well-established principle of law that whereas eligibility criteria laid down in an exemption notification are required to be construed strictly, once it is found that the applicant satisfies the same, the exemption notification should be construed liberally. [See *CTT v. DSM Group of Industries* (SCC para 26); *TISCO v. State of Jharkhand* (SCC paras 42 to 45); *State Level Committee v. Morgardshammar India Ltd.*; *Novopan India Ltd. v. CCE & Customs*; *A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala* and *Reiz Electrocontrols (P) Ltd. v. CCE.*]"

15. Since the Tribunal has taken note of the correct principles enunciated by this Court while granting relief to the assessee, we cannot find fault with the impugned judgment.

Accordingly, the appeal requires to be rejected and it is rejected. No costs.

Ordered accordingly.

.....J.
(H.L. DATTU)

.....J.
(ANIL R. DAVE)

NEW DELHI;
FEBRUARY 29, 2012

