CASE NO.:
Appeal (civil) 537-38 of 1994

PETITIONER:
SODANI CEMENT AND CHEMICALS (P) LTD.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE, JAIPUR

DATE OF JUDGMENT: 10/09/2002

BENCH:
SYED SHAH MOHAMMED QUADRI & S.N. VARIAVA

JUDGMENT:
JUDGMENT

2002 Supp(2) SCR 220

The following Order of the Court was delivered

In these appeals, challenge is made to the judgment and order of the Customs, Excise and Gold (Control) Appellate Tribunal in E/Appeal No. 2155/92-C with E/3058/92-C dated 29th October, 1993.

The short question that arises for consideration is whether the cement manufactured by the appellant is entitled to the benefit of the exemption notification, No. 23/1989-CE dated 1st March, 1989, issued by the Central Government under sub-section (I) of Section 5-A of the Central Excises and Salt Act, 1944, [for short, 'the notification']

The appellant is a small scale industry. It manufactures ordinary Portland cement, which is classified under sub- heading 2502.20 of the Schedule to the Central excise Tariff Act, 1985. The excise duty leviable under that sub-heading is Rs. 215 per metric tonne. However, 'cement' falling under the said sub- heading, if entitled to evil the benefit of the notification, would be liable to excise duty at the reduced rate of Rs. 115 per metric tonne. The Excise authorities as well as the Tribunal held that the cement manufactured by the appellant was not entitled to the benefit of the said notification, so the appellant is in appeal before this Court.

It would be apt to read the said notification here:

"G.S.R. In exercise of the powers conferred by sub-section (1) of Section 5 A of the Central Excise and Salt Act, 1944 (1 of 1944), the Central government being satisfied that it is necessary in the public interest so to do, hereby exempts cement falling under sub-heading No. 2502.02 of the schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and manufactured in a factory using vertical shaft kiln with the total licensed capacity as certified by the Director of Industries in the State Government or the Development Commissioner for Cement in the Government of India, Ministry of Industry not exceeding 200 tonnes per day, from so much of the duty of excise leviable thereon under the said schedule as in excess of the amount calculated at the rate of Rs. 115 per tonne.

Provided that nothing contained in this notification shall apply to such cement in respect of which a manufacturer avails of the exemption contained in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 175/86- Central Excise date 1st March, 1986"

A perusal of the notification shows that, on fulfilment of the following requirements, cement, irrespective of who is the manufacturer, would be covered by the said notification if: (1) cement in question is classified under sub-heading 2502.20 of the Schedule to the Central Excise Tariff Act, (2) such cement is manufactured in a factory using vertical shaft kiln, (3)

the total licenced capacity of the kiln is not exceeding 200 tonnes per day, and (4) the afore-mentioned requirements must be certified by the Director of Industries in the State Government or the Development Commissioner for Cement in the Government of India, Ministry of Industry. The proviso says that the notification does not apply to cement manufactured by a person who avails exemption under Notification No. 175/1986-CE dated 1st March, 1986.

The appellant approached the office of the Development Commissioner of Industry for certification of total licensed capacity. The reply says that as S.S.I, units are not required to take industrial licence, the question of certifying 'licenced capacity' by that office does not arise. He had also produced a certificate from the Deputy Director of the District Industries Centre. The certificate notes that the appellant was registered with the District Industries Central, Government of Rajasthan, vide Registration No. 17/24/00225 (ABU) PMT/SSI dated 15th February, 1986, and manufactures Portland cement, the capacity being 12,000 metric tonnes per annum. The certificate was found to be not in conformity with the requirements of the notification by the Assistant Collector, so he declined to extend the benefit of the said notification to the appellant. That order was upheld, as noted above, by the Collector (Appeals). It appears, before the Tribunal, a certificate from the Director of Industries, being Reference No. F/22/36-C/16-CA/88 dated 1st December, 1990, was placed on record. We have verified this fact by looking into the original record and perusing the certificate. It, inter alia, mentions the installed production capacity of the unit from 15th January, 1986 to 1st February, 1989 as 20 tonnes per day and thereafter as 40 tonnes per day. It further certifies that the unit is producing with the capacity of 40 tonnes per day with effect from 2nd February, 1989 and is having vertical shaft kiln technology. It is also stated therein that the unit is producing less than 200 tonnes per day and, therefore, eligible to the benefit of the notification.

A perusal of the order under appeal shows that, with reference to this certificate, a contention was raised that it satisfied the requirements of the notification and, therefore, the appellant ought to be granted the benefit thereunder, However, the Tribunal confirmed the order of the Collector (Appeals) taking the view that the certificate does not answer the description required under notification.

Mr. Ramesh Singh, learned counsel for the appellant, submits that the appellant, being a small scale industry is exempt from the provisions of the Industries (Development and Regulation) Act, 1951, and, therefore, the requirements of licensed production capacity is incapable of compliance. He further submits that the proviso directs that a manufacturer who avails the exemption contained in Notification No. 175/1986-CE, which applies only to S.S.I., cannot avial the benefit of exemption Notification No. 23/1989-CE. In other words, what the learned counsel submits is that as the exemption notification applies to cement manufactured by a small scale industry (for which no licensed capacity could be certified), so to prevent S.S.I, units availing double advantage, the proviso excludes the application of the notification where the benefit of Notification No. 175/1986-CE was availed.

A reading of Notification No. 175/1986-CE shows that it relates to small scale industry, as is evident from paragraph (4) thereof. From the certificate issued by the Development Commissioner, it is evident that S.S.I. units are not required to take industrial licence, therefore, the question of certifying licensed capacity does not arise. So far as the production capacity of the S.S.I, unit is concerned, the certificate issued by the Director mentions that the production capacity of the appellant is 40 tonnes per day, which is far less that 200 metric tonnes per day. It is gainsaying that the licensed capacity will always be less than the production capacity. It has never been the case of the Revenue that the notification does not apply to cement manufactured by S.S.I. It cannot also be disputed that an S.S.I, unit, being exempt under the Industries

(Development and Regulation) Act, 1951, is not required to have licenced production capacity. There being no controversy about the fulfilment of the other requirements of the notification by the appellant, we are of the view that Portland cement manufactured by the appellant is entitled to the benefit of the notification.

For the reasons mentioned above, the order under challenge is set aside. The authorities are directed to extend the benefit of the exemption Notification No. 23/1989-CE to the cement manufactured by the appellant.

Accordingly, the civil appeals are allowed. There shall be no order as to costs.