CASE NO.:
Appeal (civil) 3940 of 1998

PETITIONER:
M/S.SHRIRAM VINYL & CHEMICAL INDUSTRIES

Vs.

RESPONDENT:
COMMISSIONER OF CUSTOMS, MUMBAI

DATE OF JUDGMENT: 20/03/2001

BENCH:
S.P. Bharucha, N. Santosh Hegde & Y.K. Sabharwal.

JUDGMENT:

Y.K.SABHARWAL,J.
L...I...T.....T.....T.....T.....T.....T.....T..J

After dismantling in their factory the existing furnaces, the appellants assembled modernized furnaces partly using imported parts, partly indigenously procured parts and partly serviceable components/parts recovered from the dismantled furnaces. In respect of imported parts used in the assembly of the furnaces, the appellants claimed benefit of Notification No.155/86-Cus dated 1st March, 1986 which provides for lower rate of duty. The Director General of Technical Development, as the competent authority under the notification, recommended the grant of lower rate of duty prescribed in the notification in respect of the imported parts. The benefit of the notification has, however, been denied to the appellants on the ground that no new furnace emerges in the assembly operation undertaken by them. The Tribunal in the order under challenge affirming the order of Collector of Customs of Appeals states:

"The furnace from which the unserviceable parts were discarded, serviceable parts were re-used along with some of the imported parts and some of the indigenous parts purchased locally, were not entirely different from the old furnace and the incorporation of the improvements into them did not make them substantially new. The expression used in the exemption notifications are 'initial setting up', 'assembly' and 'manufacture' of the specified articles. A harmonous reading of these expressions will clearly establish with what is required is the setting up, assembly or manufacture of a new article which if imported could have been liable to customs duty and that even if the parts are imported and not the complete article the same rate of customs duty, as applicable to complete article will be applicable to such parts. The parts in this case were not for the initial setting up, assembly or manufacture of a furnace: the modernisation of the already existing furnace will not amount to the assembly of a furnace for the purposes of the treatment of such parts as at par with the complete furnace, had the complete furnace been imported (in place of the parts). The Collector of Customs (Appeals) had

observed that modernisation and assembly for the purposes of Notification No.155/86-CUS were two different things and that in case of assembly an entire new product emerges whereas in case of modernisation certain alterations and modifications are made increasing production efficiency and reducing costs."

The material part of notification reads as under:

"In exercise of the powers conferred by sub- section (1) of section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the notifications of the Government of India in the Ministry of Finance (Department of Revenue) Nos.94/86-Customs and 95/86-Customs both dated 17th February, 1986, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts parts required for the purpose of initial setting up, or for the assembly or manufacture, of any article specified in column (2) of the Table hereto annexed, when imported into India and proved to the satisfaction of the Assistant Collector of Customs to be so required for such setting up, assembly or manufacture, from so much of that portion of the duty of customs leviable thereon which is specified in the corresponding entry in column (3) of the said Table..."

The main ground on which the benefit of the aforesaid notification has been denied to the appellants is that serviceable parts out of the dismantled furnace were used besides some indigenous parts along with the imported parts and, therefore, new furnace has not come into existence. The contention of learned counsel for the appellant is that the notification does not require that a new article must come into existence. We agree. The three expressions 'initial setting up', 'assembly' and 'manufacture' cannot be construed to mean same thing. It is evident from the notification that the expression 'assembly' has been separated from the expression 'initial setting up'. These expressions are intended to cover different situations. We are unable to accept the contention of learned Attorney General that the expression 'assembly' is to take colour from the expression 'initial setting up' and, therefore, without new article coming into existence, the question of claiming benefit under the notification would not arise. The language of the notification is clear and plain. The notification is to be construed reasonably and rationally and not in a manner which deprives the benefit thereof. The expression 'assembly' in the context and setting in which it has been used cannot be construed to mean bringing into of a new article. This expression cannot be equated with the expression 'manufacture'. If the construction as placed by the Tribunal is accepted, it would render the expression 'assembly' in the notification redundant. The expression 'assembly' has been used as opposed to dismantle. The notification does not contemplate denial of its benefit on the ground of reuse of certain parts and/or use of some indigenous parts with the imported parts. Thus, the appellants are clearly entitled to the benefit of the notification.

As a result of aforesaid discussion, the impugned order is set aside and the appeal is allowed. The parties are, however, left to bear their own costs.