

CASE NO.:
Appeal (civil) 200-201 of 2002

PETITIONER:
COMMISSIONER OF CENTRAL EXCISE. SHILLONG

RESPONDENT:
NORTH-EASTERN TOBACCO CO. LTD.

DATE OF JUDGMENT: 28/11/2002

BENCH:
M.B. SHAH & D.M. DHARMADHIKARI

JUDGMENT:
JUDGMENT

2002 Supp(4) SCR 373

The Judgment of the Court was delivered by: DHARMADHIKARI, J. These appeals have been preferred by the Commissioner of Central Excise. Shillong representing the Department of Central Excise to assail separate orders passed in appeals by the Customs Excise and Gold (Control) Appellate Tribunal. Kolkata [hereinafter referred to as 'CEGAT']. The CEGAT by the impugned orders has rejected the appeals of the Department of Central Excise and held in favour of the respondent-The North-Eastern Tobacco Company Ltd. [for short the company] that it is eligible for claiming exemption from payment of duty under the Central Excise Notification No.32/99-CE dated 08.7.1999, issued under Sub-section (1) of Section 5A of Central Excise Act of 1944 [hereinafter referred to as the Act].

The principal question raised by the learned counsel on behalf of the Department of Central Excise is whether the unit or factory established by the company in Export Promotion industrial Park [hereinafter referred to as EPIP] at Amingaon in North-Eastern State of Assam can claim the status of a 'new industrial unit' within the meaning of sub-clause (a) of clause 3 of the Exemption Notification dated 08.7.1999. It is not in dispute that all other conditions of the notification for claiming exemption from payment of duty are fulfilled and the company would be entitled to avail the benefit of the Exemption Notification, if the unit set up by it at Amingaon, answers the description of 'new industrial unit'. The CEGAT by dismissing the appeals of the Department of Central Excise held that the respondent/company is entitled to claim exemption from payment of duty under the Exemption Notification and on that basis entitled to adjustment of duty already paid on the cigarettes manufactured in its factory and is also entitled to refund of duty for the period covered by the notification.

The facts not in disputes are as under-

The respondent company was granted industrial licence No C1L: 128 (75) dated 01.5.1975 for setting up cigarette manufacturing unit at Silpukhuri, Guwahati in the State of Assam. M/s Assam industrial Development Corporation [hereinafter referred to as AIDC] was the promoter and the major shareholder in the company holding more than 51% of the share capital. As per the industrial licence, the factory was to be set up at Silpukhuri, Guwahati. The unit was, however, set up on the industrial plot allotted by AIDC at G.S. Road, Bangagarh, Dispur, Guwahati. On 04.3.1991. AIDC entered into a Disinvestment Agreement which was duly approved by the Government of India. Ministry of industry. Department of Industrial Development vide its letter No. 10(7)'89-CI dated 26.10.1990. According to the terms of the Disinvestment Agreement, the existing industrial shed at Bangagarh was to be handed over to AIDC and the factory was to be relocated at a new location anywhere in the State of Assam.

In accordance with the aforesaid Disinvestment Agreement duly approved by

the Government of India, the existing unit at Bangagarh was closed with effect from 15.6.1994. Encouraged by the declared policy of the State in the Exemption Notification dated 08.7.1999, the company set up a cigarette manufacturing unit in Export Promotion Industrial Park at Amingaon, Guwahati in the year 1999 in which commercial production was commenced from 15.12.1999.

After locating its manufacturing unit in the Export Promotion Industrial Park, Amingaon, the company made an application for grant of a licence under the provision of the industries (Development and Regulation) Act, 1951. In its application for grant of industrial licence, the company made a request that the industrial licence which it possessed for the unit in operation in Bangagarh in joint collaboration with AIDC be endorsed for the new location of the unit in the Export Promotion Industrial Park at Amingaon. In response to the letter dated 25.10.2000 of the company seeking endorsement of the same industrial licence for the new location, the Joint Director of Government of India in the Ministry of Commerce & Industry wrote a letter dated 30.10.2000 to the company stating that the existing industrial licence was for location at Silpukhuri, Guwahati and the location of the unit at Bangagarh was not valid. The letter, however, states that the request of the company for change of location of the unit from Bangagarh to the Export Promotion Industrial Park Aminagon will be decided on merits as per the prescribed procedure.

It is on these undisputed facts that the learned counsel appearing for the Department of Central Excise very strenuously urged that the industrial unit set up by the company at the Export Promotion industrial Park, Amingaon, cannot claim the status of a 'new industrial unit' within the meaning and intent of the Exemption Notification dated 08.7.1999. It is submitted that the contents of the application for grant of industrial licence made by the company itself show that the company sought change of location of its industrial unit at Bangagarh to Amingaon and therefore, the unit at Amingaon is not a new unit. Learned counsel appearing for the Department argued that the Exemption Notification does not define the expression 'new industrial unit' and therefore, it has to be understood on the basis of provisions of the industrial law and particularly the Industries (Development & Regulation) Act, the provision contained in Section 11 of which requires for obtaining of a licence or permission in the prescribed manner and form for setting up a new industrial undertaking. For the aforesaid reasons, on behalf of the Department, it is submitted that the CEGAT was in error in holding that the unit or the company at Amingaon is entitled to the benefit of the Exemption Notification.

The learned counsel appearing for the company in his reply submitted that the unit at Bangagarh was a joint venture with AIDC and as a result of Disinvestment Agreement, the unit was closed on 15.6.1994. After the Exemption Notification dated 08.7.1999 was issued, the decision was taken by the company to start a new unit in the year 1999 at the Export Promotion Industrial Park, Amingaon, Guwahati for availing the exemption from payment of duty. It is submitted that there is no material on record produced by the Department to show that either the machinery or the work force was shifted from its unit at Bangagarh to the new unit located at Aminagon. It is argued that merely because a request was made to the concerned authorities under the Industries (Development & Regulation) Act that the same industrial licence be endorsed for new location, it cannot be contended by the Department that the unit at Amingaon was a transferred or shifted unit and not a 'new unit'. Learned counsel appearing for the company argued that the Exemption Notification does not define new unit and it has to be given a meaning as understood in common industrial parlance. It is submitted that when unit at place 'A' had been closed and without use of the machinery or transferring the other properties of that unit of the labour force, another unit at place 'B' has been started, the unit at location 'B' cannot be called the same old unit. The unit started at Amingaon, Guwahati has to be treated as a new unit which has been established with fresh investment, installation of new machinery and

employing labour force at the new location. Reliance is placed for the company on the decision in the case of Hansraj Gordhandas v. H.H Dave, Assistant Collector of Central Excise & Customs, Surat and Ors.. [1969] 2 SCR 253.

We have heard the learned counsel for the parties. We have examined the contents of the Exemption Notification and the correspondence exchanged between the company and the concerned Department under the Industries (Development & Regulation) Act. We do not find any ground to interfere with the decision of the CEGAT and its conclusion that the unit of the company at Amingaon is entitled to the benefit of the Exemption Notification. The relevant part of the Exemption Notification, contained in Clause 3 reads as under:-

"In exercise of the power conferred by sub-section (1) of Section 5A of the Central Excise Act, 1944 (1 of 1944), read with sub-section (3) of the Additional Duties of Excise (Goods of special importance) Act, 1957 (58 of 1957) and sub-section (3) of Section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the good specified in the first schedule and the second schedule to the Central Excise Tariff Act, 1985 (1 of 1986) and cleared from unit located in the Growth Centre or integrated infrastructure Development Central or Export Promotion Industrial Park or Industrial Estate or Industrial Area or Commercial Estate, as the case may be specified in Annexure appended to this notification, from so much of the duty of excise or additional duty of excise, as the case may be, leviable thereon under any of the said Acts as is equivalent to the amount of duty paid by the manufacturer of goods from the account current maintained under rule 9 read with rule 173 G of the Central Excise Rules 1944.

The exemption contained in this notification shall apply only to the following kind of units namely:-

(i) New Industrial units which have commenced their commercial production on or after the 24th day of December, 1997.

(ii) Industrial units existing before the 24th Day of December, 1997 but which have undertaken substantial expansion by way of increase capacity by not less than twenty five per cent on or after the 24th day of December, 1997.

The exemption contained in this notification shall apply to any of the said units, for a period not exceeding ten years from the date of publication of this notification in the Official Gazette on from the date of commencement of Commercial production whichever is later".

[Underlying for inviting pointed attention] The Exemption Notification nowhere defines the words "new industrial units". The object of Exemption Notification is obvious. It intends to encourage capital investment and establishment of industrial units in specified North-Eastern States for the purpose of increasing production of goods, promoting development of industry and employment in the said regions. In the case of Hindustan Aluminium Corp. Ltd. v. State of U. and Anrs. [1981] 3 SCC 578, this Court emphasised that the Notification issued under the Act, "should not only be confined to its grammatical meaning or ordinary parlance but it should also be construed in the light of the context". It was reiterated that the "expression should be construed in a manner in which similar expressions have been employed by those who framed relevant notification." Therefore, there is a "need to derive the intent from a contextual schema".

The another 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. See State Level Committee v. Morgardshammar India Ltd., [1996] 1 SCC 108.

In the case of Morgardshammar India Ltd., (Supra), Section 4(A) of the U.P. Sales Tax Act contained definition of 'new unit' for availing exemption from payment of sales tax. Explanation below Section 4(A) of the U.P. Sales Tax Act defined 'new unit' to mean a 'factory or workshop whether set up by a dealer already having an industrial unit manufacturing the same goods at any other place in the State or adjacent site' but excluded "any factory or workshop using machinery, accessories or components already used or acquired for use in any other factory or workshop in India". In the present case, no such definition or explanation is to be found in the notification and there is no material to establish that the same machinery, accessories or components used by the company in its unit at Bangagarh have been shifted for its unit at Amingaon, Guwahati.

In the case of Shri Bakul Oil Industries v. State of Gujarat. [1987] 1 SCC 31, the notification for exemption from sales tax under consideration was issued under the provisions of Gujarat Sales Tax Act and in the notification 'new industry' was defined to mean and include an industry commissioned during the period 1st April, 1970 to 31st March, 1975 But the exclusion clause clearly read as : "but shall not include such industrial undertaking established by transferring or shifting or dismantling an existing industrial unit."

In the case before us. the Exemption Notification does not define 'new industrial unit' to exclude from its ambit units which are shifted or transferred from one location to another.

In the present case as we have found above, there was no material before the Department that pursuant to the Disinvestment Agreement with AIDC, the unit of the company at Bangagarh which was closed in 1994 was shifted to the new location at Amingaon, Guwahati.

The unit at Amingaon, therefore, has to be considered as a 'new unit' for the purposes of the Notification to avail exemption. The other argument advanced by the counsel on behalf of the Department does not impress us at all that the words "new industry" in Exemption Notification has to be construed in the light of the provisions of Industries (Development & Regulation) Act and since the company itself asked for use of same industrial licence by endorsement for the changed location, the unit at Amingaon was not a 'new unit'. In our considered opinion, merely because the company has made an attempt to continue its industrial activities at the new location on the basis of same industrial licence granted for its earlier location, it cannot be denied the benefit of Exemption Notification. The claim of the company of the status of its factory at Amingaon as 'new unit' within the intent and meaning of the exemption Notification has rightly been accepted. The attempt of the company to obtain endorsement on the same industrial licence for its industrial activity at the new location or requirement of grant of a fresh industrial licence to them at the new location under the Industries (Development & Regulation) Act. is a subject matter not directly connected with grant of benefit of the exemption notification under the Act.

For the aforesaid reasons, we find no error in the impugned order of the CEGAT. Consequently, the appeals fail and are hereby dismissed but in the circumstances without any order to costs.