

PETITIONER:
BALBIR SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT 08/02/1994

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
RAY, G.N. (J)

CITATION:
1994 AIR 969 1994 SCC Supl. (2) 26
JT 1994 (1) 427 1994 SCALE (1) 419

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by HANSARIA, J.- The appellant is a manufacturer, inter alia, of parts of internal combustion piston engines. A question was raised at one point of time whether the appellant was entitled to the benefit of notification No. 281-Cus/76 granting some exemption from payment of customs duty in respect of rod bushes and camshaft bushes. On exemption not having been given on the product of the appellant, the matter came to be examined ultimately by this Court in Civil Appeal No. 335 of 1987 and by the judgment rendered on September 18, 1987, it was held that the appellant was entitled to the exemption.

2. The aforesaid notification held the field till February 28, 1986, whereafter notification No. 153-Cus/86 came to be issued on the selfsame subject. The notification which is dated March 1, 1986 came to be amended by notification No. 203-Cus, dated March 13, 1986. The benefit of the exemption under these notifications was initially denied to the appellants but came to be granted ultimately.

3. The Customs Tariff Act was amended subsequently and a new notification, this time bearing No. 69-Cus/87, came to be issued on March 1, 1987. The appellant claimed exemption under this notification also which has not been granted yet. On this not being done, an approach was made to the Custom, Excise and Gold (Control) Appellate Tribunal (CEGAT) which too did not grant this prayer of the appellant. Feeling aggrieved, this appeal has been filed under the provisions of Section 130-E(b) of the Customs Act, 1962.

4. A perusal of the order of the Tribunal shows that it required the appellant to follow the hierarchy inasmuch as even the Collector had not taken a final decision in the matter and no assessment order refusing the exemption had been passed. It is because of this that the Tribunal held that it cannot pass any order relating to the claim of exemption inasmuch as the party which may get affected had

not been given opportunity to put forth its ground.

5. Shri Dholakia, learned counsel for the appellant, contends that though there is no assessment order as such after refusing the exemption prayed for, the order of the Collector noted by the Tribunal would show that he had virtually refused the exemption; and so, it is a fit case where in this proceeding itself this Court should decide the question raised by the appellant, instead of leaving it to agitate the matter before the Collector which, according to learned counsel, would serve no purpose in view of the stand taken by the Collector.

6. Let it be seen as to what is the stand of the Collector. This appears from the following observations made by him as noted at paragraph 11 of the Tribunal's order :

"With reference to the claims made by M/s Jain Engineering Co. Delhi, for extending the benefit in terms of notification No. 69/87, dated March 1, 1987, I observe that this benefit flows to parts falling under heading 98.06. The statute i.e. the Customs Tariff Act, was amended w.e.f. March 1, 1987 and that in the statute both 84.09 and 98.06 are coexisting and in the matter gone into by the Hon'ble Supreme Court there was no occasion to consider the changes effected in the statute, even though their order was dated September 1987. I do not accept the contention of the importer for benefit under Notification 69/87-CLIS in respect of parts which are not classifiable under heading No. 98.06 of CTA. If the importer has

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any grievance with reference to classification of any parts or application or otherwise of notification No. 69/87-Cus or any other notification, he is advised to agitate the matter before the competent assessing officer for his consideration. I hold that the request for extension of the benefit under notification No. 69/87-Cus, dated March 1, 1987 does not flow directly from the decision and directions contained in the original order dated September 18, 1987 of the Hon'ble Supreme Court which is the main judgment which has to be applied in deciding all the pending cases."

7. The aforesaid shows that the view of the Collector was that the claim for exemption under notification No. 67/87 did not flow directly from the decision of this Court. Shri Dholakia contends that the Collector was only technically right in taking this view because a close reading of this Court's aforesaid judgment would go to show that exemption under notification No. 69-Cus/87 could not have been denied merely because under the Customs Tariff Act as amended headings 84.09 and 98.06 coexist inasmuch as Chapter 98 of the Act, if read in its entirety along with Notes 1 and 7 and heading 98.06 would show that the fact that in the present classification the machinery parts are covered by 98.06 would not make any difference and the goods in question shall have to be taken to fall under 84.07 and 84.08, which headings under notification No. 281-CS/76 (which was the subject-matter of this Court's examination in the aforesaid case) was 84.06. Shri Dholakia strenuously urges that the observation made by this Court in its earlier

judgment that parts covered by heading 84.06 'will get benefit of exemption' leaves no manner of doubt that benefit under notification No. 69-Cus/87 has also to be given.

8. We have not felt inclined to express our view on the contention advanced by Shri Dholakia because there is no order of even the first assessing authority denying the exemption, dehors what was held by this Court in its aforesaid judgment. It is apparent that by the force of the aforesaid judgment alone, benefit of the exemption under notification No. 69-Cus/87 cannot be claimed, though it may be that the view taken by this Court in the earlier appeal lends support to the contention of the assessee, if what has been provided in amended Chapter 98 is read as Shri Dholakia would like.

9. The learned counsel presses for our decision on the point involved by referring to order dated August 1, 1989 (passed in the aforesaid appeal of this Court) by which the Collector was required to dispose of the claim of the appellant for exemption under the subsequent notification. This not having been done, it is urged that the appellants' prayer in question may be considered by us in this proceeding itself, instead of requiring it to knock the door of the Collector again. It may be that the Collector should have finally disposed of this order. But he has not. In view of this, it may as well be that the Court has no jurisdiction to entertain the present appeal because of what has been held in *Navin Chemicals Manufacturing and Trading Co. Ltd. v. Collector of Customs*¹ as there is yet no assessment for the period in question. So, we refrain.

10. The appeal, therefore, stands dismissed. To protect the interest of the appellant we would, however, observe that if there has been any provisional assessment by which exemption under notification No. 69-Cus/87 has been denied, it would be open to it to prefer appeal(s) within a period of one month

¹ (1993) 4 SCC 320: JT (1993) 5 SC 362

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from today, which it might not have done earlier because of the pendency of this appeal. On this being done, the department shall not raise the question of limitation. On the facts and circumstances of the case, we make no order as to costs.