

CASE NO.:
Appeal (civil) 8030 of 2004

PETITIONER:
M/s Compack Pvt. Ltd.

RESPONDENT:
Commissioner of Central Excise, Vadodara

DATE OF JUDGMENT: 07/10/2005

BENCH:
S.B. Sinha & R.V. Raveendran

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

Interpretation of an exemption notification dated 28.02.1982, as amended by several notifications, is in question in this appeal which arises out of a judgment and order dated 05.03.2003 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, West Zonal Bench at Mumbai (for short, 'the Tribunal') in Appeal No.E/1801/02, whereby and whereunder the appeal preferred by the Appellant herein from a judgment and order dated 01.02.2002 passed by the Commissioner of Central Excise & Customs (Appeals) Vadodara, was dismissed.

The Appellant, a Company incorporated under the Companies Act, 1956, is engaged in the manufacture and production of excisable goods, i.e. cardboard containers. It is a Small Scale Industry. It opted for the benefit contained in Section AA of Chapter V of the Central Excise Rules, 1944 so as to avail the MODVAT credit of the specified duties on plastic coated paper known as 'LDPE coated paper'. It, however, did not avail of any MODVAT credit in respect of base paper or base paperboard. According to the Appellant, the cardboard container is manufactured out of base paper having three layers and the outer layer consists of LDPE coated paper which is said to have been manufactured from the base paper apart from other inputs.

The Appellant filed a MODVAT Declaration on or about 2.11.1992 purported to be in terms of Rule 57-G of the Central Excise Rules, 1944 declaring LDPE Coated Paper falling under sub-heading 4811.30 of the Schedule appended to the Tariff Act as input which was intended to be used in or in relation to the final excisable goods, namely, Composite Paper Containers (Containers) meriting classification under sub-heading 4819.12. The Appellant admittedly after filing the said MODVAT Declaration availed of the MODVAT Credit of specified duties paid on the inputs amounting to Rs. 35,185.13. The tariff rate for the said containers of sub-heading 4819.12 of the Schedule was stipulated at 35% ad valorem of basic excise duty and the corresponding special excise duty was at the rate of 15% on basic excise duty.

It is stated that during the period November, 1992 to February, 1993 the said composite containers worth Rs. 17,00,954.00 were cleared by the Appellant on payment of basic excise duty at a rate of 5% ad valorem, normal rate being 15% ad valorem, in terms of the Tariff Notification dated 28.2.1982 read with the provisions of the Small Scale General Exemption Notification as thence existed.

The Assistant Commissioner of Central Excise and Customs issued notice dated 26.04.1993 as to why the duty amounting to Rs.3,91,228/- should not be recovered from it, alleging that the Appellant was not eligible for the concessional rate of duty prescribed with Notification No. 67/82 \026CE

dated 28.2.1982 (as amended).

By an order dated 23.12.1997, it was held that the Appellant was not entitled to avail the concessional rate of duty and, therefore, differential duty, as envisaged therein was recoverable.

Aggrieved thereby, the Appellant preferred an appeal, which was dismissed by an order dated 01.02.2002 passed by the Commissioner (Appeals). An appeal from the said order before the Tribunal was dismissed by an order dated 05.03.2003.

Mr. Ramesh Singh, the learned counsel appearing on behalf of the Appellant, would submit that the learned Tribunal committed a manifest error in passing the impugned judgment insofar as it failed to take into consideration that for manufacture of cardboard containers, apart from one layer of LDPE coated paper, three layers of base paper are used in respect whereof, no MODVAT credit was taken and, thus, the Appellant was entitled to obtain the benefit of the exemption notification. The inference of the Tribunal that the Appellant had indirectly taken the MODVAT credit, it was submitted, is not sustainable in law. Only because MODVAT credit has been taken for one of the inputs, it was submitted, cannot be held to be a ground for depriving the Appellant from the benefit of an exemption notification to which it was otherwise entitled to.

Mr. Gopal Subramaniam, the learned Additional Solicitor General, on the other hand, would submit that the plastic coated paper is different from a base paper and on a true construction of the notification, it would be evident that exemption from payment of excise duty is to be granted only to those manufacturers who used base paper only for manufacturing containers. Exemption notification, the learned Additional Solicitor General would contend, must be construed strictly.

The aforementioned notification No. 67/82CE dated 28.2.1982 (as amended by Notification dated 28.2.1993) read thus :

"Effective rate of duty for printed cartons, boxes, containers and cases. In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts printed cartons, boxes, containers and cases (including flattened or folded cartons) whether in assembled or unassembled condition, falling within Chapter 48 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), from so much of the duty of excise leviable thereon as is in excess of twenty percent ad valorem subject to the condition that the appropriate duty of excise or additional duty leviable under section 3 of the Customs Tariff Act, 1975 (51 of 1975), as the case may be, has already been paid in respect of the base paper or base paperboard used in their manufacture :

Provided that nothing contained in this notification shall apply to a manufacturer who avails of the special procedure prescribed under rule 56A or 57A of the Central Excise Rules, 1994, in respect of the duty paid on the base paper or base paperboard.

Explanation.-For the purpose of this notification, the base paper or base paperboard used in the manufacture of the said articles shall be deemed to have paid the appropriate duty of excise or the additional duty leviable under section 3 of the Customs Tariff Act, 1975, if it is purchased from the market."

It is not in dispute that the matter relating to rate of excise duty payable on paper and paperboard is contained in Chapter 48 of the Central Excise Rules. Whereas Item 48.02 refers to uncoated paper, Item 48.07 refers to plastic coated paper.

The Appellant has taken a stand before us that three layers of the carton consist of base paper and only one layer of carton consists of plastic coated paper. The principles as regard construction of an exemption notification are no longer res integra; whereas the eligibility clause in relation to an exemption notification is given strict meaning wherefor the notification has to be interpreted in terms of its language, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed literally. An eligibility criteria, therefore, deserves a strict construction, although construction of a condition thereof may be given a liberal meaning. [See Tata Iron & Steel Co. Ltd. vs. State of Jharkhand and Others \026 (2005 (4) SCC 272.).

In Commissioner of Central Excise, Chandigarh vs. Bhalla Enterprises [2004 (173) ELT 225 (SC)], it was held :

"The basic rule in interpretation of any statutory provision is that the plain words of the statute must be given effect to\005"

In Commissioner of Central Excise, Trichy vs. Rukmani Pakkwell Traders [(2004) 11 SCC 801], it was held :

"\005It is settled law that exemption notifications have to be strictly construed. They must be interpreted on their own wording. Wordings of some other notification are of no benefit in construing a particular notification\005"

The said decision was followed in Commissioner of Central Excise, Chandigarh-I vs. Mahaan Dairies (2004) 11 SCC 798].

Keeping in view the principles laid down in the aforementioned decisions, we have to construe the exemption notification in question.

The said notification was issued in terms of sub-rule (1) of Rule 8 of the Central Excise Rules, 1944. By reason thereof, printed carton, boxes, containers and cases whether in assembled or unassembled condition falling under Chapter 48 of the schedule appended to the Central Excise Tariff Act, would receive the benefit of exemption subject to the condition that the appropriate duty of excise or additional duty leviable under Section 3 of the Customs Tariff Act has already been paid in respect of the base paper used in their manufacturing.

Item No.48.02 refers to uncoated paper and paperboard of a kind mentioned therein. Item No.4802.20 is as under :

"4802.20 - Paper or paperboard, in the manufacture of which, -

(a) the principal process of lifting the pulp is done by hand; and

(b) if power driven sheet forming equipment is used, the Cylinder Mould Vat does not exceed 40 inches."

'Composite paper' and paperboard (made by sticking flat layers of paper or paper board together with an adhesive), not surface-coated or impregnated, whether or not internally reinforced, in rolls or sheets has been shown in Item No.48.07.

The proviso appended to the notification contains an exception thereto stating that if MODVAT credit is availed of, no such exemption shall be available to the manufacturer. The 'Explanation', however, raises a legal fiction that if a base paper or a paperboard, if purchased from the market, would be deemed to be duty paid. The eligibility clause contained in the notification, thus, is confined to use of base paper or paperboard used in the manufacture of printed cartons, boxes, containers and cases. A container may consist of inputs other than base paper or paperboard. It has not been shown before us that to avail the exemption, the containers are required to be manufactured 'only' or 'purely' from the base paper or base paperboard. Had the same been the intention of the legislation making authority, they could have said so explicitly. Once the eligibility criteria is satisfied by the assessee, as noticed hereinbefore, the conditions are required to be construed liberally. [See Commissioner of Central Excise vs. M.P.V. & Engg. Industries (2003) 5 SCC 333].

Bhalla Enterprises (supra) laid down a proposition that notification has to be construed on the basis of the language used. Rukmani Pakkwell Traders (supra) is an authority for the same proposition as also that the wordings of some other notification are of no benefit in construing a particular notification. The notification does not state that exemption cannot be granted in a case where all the inputs for manufacture of containers would be base paper or paperboard. In manufacture of the containers some other inputs are likely to be used for which MODVAT credit facility has been availed of. Such a construction, as has been suggested by the learned counsel for the Respondents, would amount of addition of the words "only out of" or "purely out of" the base paper cannot be countenanced. The notification has to be construed in terms of the language used therein. It is well-settled that unless literal meaning given to a document leads to anomaly or absurdity, the golden rule of literal interpretation shall be adhered to.

In Coromondal Fertilizers Ltd. vs. Collector of Customs, Madras (1986) 3 SCC 531], the notification in question was as under :

"GSR 547 (E). \027In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby, exempts Ammonium Phosphate falling within Chapter 31 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India for use as manure, from the whole of the duty of customs leviable thereon which is specified in the said First Schedule : Provided that in respect of any consignment of ammonium phosphate imported under cover of a claim for exemption from duty in pursuance of the provisions hereof, the importer shall execute a bond in such form as may be prescribed by the Assistant Collector of Customs, binding himself, in sum equal to the amount of duty ordinarily leviable on such articles, to pay on demand the duty leviable on such quantity thereof as is not proved to the satisfaction of the Assistant Collector of Customs to have been used as manure."

The issue raised was as to whether Mono-Ammonium Phosphate which was used as manure in the manufacture of complex fertilizers was entitled to the benefit of the said exemption notification. A further

contention was raised that Mono-Ammonium Phosphate was not the only input used in the manufacture of complex fertilizers and it was also not used directly for use as manure in the manufacture of complex fertilizers. Repelling the said contentions, it was opined :.

"We are afraid, we are not to ascertain the intention of the Government by a comparison of the expressions used in the two different notifications. Notification No. 178/76-Cus has been couched in clear and unambiguous language. The question is not whether for getting the benefit of exemption under the notification the appellant has used it for the production of complex fertilisers or not, but the question is whether the appellant has imported Mono-Ammonium Phosphate for use as manure. It is the case of the appellant that it has used the chemical as manure, though not directly, yet along with the mixture of Urea and muriate of Potash. It is submitted on behalf of the appellant that the mixture, is undoubtedly a fertiliser and Mono-Ammonium Phosphate being one of the components of the mixture it must be held that the same was imported into India and also used as a manure or fertiliser. In our opinion, if Mono-Ammonium Phosphate retains its physical and chemical properties in the mixture, it will be difficult to say that it was not used by the appellant as a manure within the meaning of the Notification No. 178/76-Cus."

The only requirement for availing the benefit of the said notification was payment of excise duty on base paper or base paperboard, wherefor also a legal fiction has been raised in the explanation appended thereto.

The Tribunal denied the benefit of the said notification to the Appellant herein without considering the import thereof that it refers to the MODVAT credit directly that too only on base paper. Similarly, the finding of the Tribunal that the container must be manufactured only from base paper may render the exemption notification inapplicable in a large number of cases.

The Appellant, however, is not correct in contending that it would be entitled to the exemption notification in respect of the entire container. It would be entitled to exemption only to that extent for which excise duty has been paid i.e. on paperboard. As the question as to whether three layers of base paper have been used for manufacture of the container or not has not been raised before any authority, the matter is remitted back to the Assistant Commissioner, Central Excise and Customs for determination of the said question.

The appeal is allowed to the aforementioned extent. No costs.