

PETITIONER:  
UNION OF INDIA AND ORS.

Vs.

RESPONDENT:  
M/S. WOOD PAPERS LTD. AND ANR.

DATE OF JUDGMENT 24/04/1990

BENCH:  
SAHAI, R.M. (J)  
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SAHAI, R.M. (J)  
SHETTY, K.J. (J)

CITATION:  
1991 AIR 2049                      1990 SCR (2) 659  
1990 SCC (4) 256                JT 1991 (1) 151  
1990 SCALE (1) 61  
CITATOR INFO :  
F                      1992 SC 152 (12)

ACT:

Central Excise and Salt Act, 1944/Central Excise Rules:  
Section 4, Schedule I item 17/Rule 8 and Notification No.  
163 of 1965--Exemption to all sorts of paper by 'any factory  
commencing production'---Claim for exemption on capacity as  
it existed in 1967--Whether permissible?

HEADNOTE:

The Respondent Company which was established in 1942 went into production in 1944 manufacturing Straw Boards and Mill boards only upto the year 1964. In 1965 it expanded its activities by manufacturing duplex board. In the following year it started manufacturing packing and wrapping paper on experimental basis and on commercial basis after 1967. Sometime in 1971 the Company wrote to the Assistant Collector of Central Excise enquiring as to whether it would be entitled to exemption from duty under Notification No. 163/1965 both in respect of production attributable to its installed capacity as in 1967 as well as in respect of production attributable to its expanded capacity. The Assistant Collector passed an Order holding the company was entitled to concession under column 5 of the Table of the Notification No. 163 of 1965 in respect of production attributable to its enlarged capacity namely, the third machine and rejected its claim for exemption on production attributable to its capacity as it existed in 1967. Dissatisfied the company preferred appeal to the Appellate Collector who maintained the order of the Assistant Collector.

The Respondent-Company thereupon moved the High Court by a writ petition under Article 226 of the Constitution of India. In allowing the writ Petition the High Court held that on a plain literal construction it is obvious that the commencement of production must refer not to the production of excisable goods--paper in general falling under item 17. but to production of those specified exempted categories of paper in column 2 of the aforesaid notification. Hence this appeal by the Union of India.

Allowing the appeal and dismissing the Writ Petition of the Company. this Court.

HELD: When the question is whether a subject falls in the Notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is removed and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. [663D-E]

A close reading of both parts of the Notification together leaves no

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room for doubt that it was intended to be exhaustive granting exemption to all factories producing packing and wrapping paper whether existing or commencing production from 1st March, 1964 to the former to the extent of enlarged capacity and to latter to the full extent. [663G-H]

As the Respondent Company did not fall in the first clause of the notification there was no question of giving the clause a liberal construction and hold that production of goods by the Respondent mentioned in the Notification were entitled to the benefit.

Production of packing and wrapping paper by Respondent was entitled to exemption only to the extent it was attributable to enlarged capacity and not to the existing capacity. [665F; 664F]

Hansraj Goverdhan v. H.H. Dave, Asstt. Collector, Central Excise & Customs, Surat and Others, [1969] 2 S.C.R. 2.52; Commissioner of Income-tax v. Madho Prasad, [1989] 4 S.C.C. 541; Tara Oil Mills Co. Ltd. v. Collector of Central Excise, A.I.R. 1989 SC 644 referred to.

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 539 of 1976.

From the Judgment and Order dated 26.8.1975 of the Gujarat High Court in Spl. Civil Application No. 1627 of 1972.

Soli J. Sorabjee, Attorney General, A. Subba Rao, C.V.S. Rao, P. Parmeswaran and Ms. Nisha Bache for the Appellants. S.K. Dhingra for the Respondents.

The Judgment of the Court was delivered by

R.M. SAHAI, J. By this appeal Union Government has challenged correctness of construction by High Court of Gujarat of notification No. 163 of 1965 issued under Rule 8 framed under Central Excise and Salt Act allowing exemption to all sorts of papers by "any factory commencing production" to refer "not to the production of excisable goods--paper in general falling under Item 17, but to production of these specified exempted categories of paper in Column 2 of this notification" and canvasses for acceptance of the construction put on it by the Collector, Central Excise "that the factory must have commenced production on or after that date and not that the production of these items must have been commenced after the date".

M/s. Arvind Boards & Paper Products Limited, Antalia, Bilimora, Gujarat State, was established in 1942. From 1944 when it went into production till 1964 it manufactured only straw boards and mill boards. It expanded its activities in 1965 and commenced manufacture of duplex board. The packing and wrapping paper was manufactured

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on experimental basis in 1966 and on commercial basis after 1967. In December, 1971 the company wrote a letter to the Assistant Collector of Central Excise inquiring as to wheth-

er the company would be entitled to exemption under notification No. 163/65 both in respect of the production attributable to its installed capacity as in 1967 as well as in respect of the production attributable to its expanded capacity. In 1972 it was informed that it would be entitled to concession under Column 5 of the Table of the notification in respect of the production attributable to the enlarged capacity, namely, the third machine only. Consequently the claim of the petitioners for exemption on capacity as it existed in 1967 was not accepted. The order was maintained in appeal as well. The Appellate Collector held:

"I do not agree with the appellant's contention that the Assistant Collector erred in holding that "any factory which commenced production" related to any factory manufacturing paper falling under Item 17 of the said schedule irrespective of the varieties manufactured thereof. The exemption contained in the aforesaid Notification No. 163/65 as amended is in respect of the goods. Said exemption is conditional i.e. it is applicable to paper produced in a factory which commenced production on or after a specific date. Therefore, the condition is that the factory must have commenced production on or after that date and not that the production of these items must have been commenced after that date."

The High Court did not agree with the construction of the Notification made by the Collector (Appeal) and held:

"That is why the whole controversy has arisen as regards these key words "commencement of production". On a plain literal construction, bearing in mind the context of the exemption, where only certain specified categories of paper which is excisable item as specified in Column 2 had been exempted, it is obvious that the commencement of production must refer not to the production of excisable goods--paper in general falling under item 17, but to production of these specified exempted categories of paper in Col. 2 of this notification. Any other interpretation would make the specification of various kinds of paper in Column 2 which alone attracted exemption redundant and would make even this condition in Cols. 3, 4 and 5 unworkable."

Excise duty was leviable under the Act on manufacture and clearance of paper under Item 17 of Schedule 1 to the Act. It reads as

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"MANUFACTURED GOODS CLASSIFIED CHIEFLY BY MATERIAL

17. PAPER, all sorts (including pasteboard, millboard, straw-board and cardboard), in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power'.

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(3) Printing and writing paper, packing and wrapping paper, straw board and pulp board, including grey board, corrugated board, duplex and triplex boards, other sorts ..... 35 paise per kg."

In 1965 the Central Government issued notification exempting papers of all sorts, from so much of the excise duty leviable thereon under the said item read within notification for the time being in force issued by the Central Government in relation to the duty so leviable, as is specified in the corresponding entry in Columns 3, 4, 5(a), 5(b) & 5(c) of the Table as the case may be:

TABLE

| S. Description | Any factory which commenced production before the | Any factory which commenced production on or after the | Any factory commenced production for the time on or after the 1st March, 1964, or any factory existing |
|----------------|---------------------------------------------------|--------------------------------------------------------|--------------------------------------------------------------------------------------------------------|
|----------------|---------------------------------------------------|--------------------------------------------------------|--------------------------------------------------------------------------------------------------------|

1st April,  
1961.

1st April,  
1961 but  
before the  
1st March  
1964.

immediately, before  
the 1st March 1964  
whose production  
capacity has been  
enlarged and brought  
into operation on or  
after the extent  
such production is  
attributable to the  
enlarge capacity.

During the  
first 12  
months of  
the com-  
mencement  
of produc-  
tion.

During the period  
the second subsequent  
12 mon- to the first  
mence- 24 months  
ment of of the com-  
produc- mencement  
tion. of produc-  
tion.

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| 1 | 2 | 3 | 4 | 5(a) | 5(b) | 5(c) |
|---|---|---|---|------|------|------|
|---|---|---|---|------|------|------|

Entitlement of exemption depends on construction of the expression "any factory commencing production" used in the Table extracted above. Literally exemption is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially in a growing economy. For instance tax holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective etc. That is why its construction, unlike charging provision, has to be tested on different touchstone. Infact an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment state revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly, speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. Therefore, the first exercise that has to be undertaken is if the production of packing and wrapping material in the factory as it existed prior to 1964 is covered in the notification.

From the table extracted above it is clear that it is in two parts and exemption is allowable in the first part to the factory commencing production on or after 31st March, 1964, and in the second part to the existing factory to extent of enlarged capacity. If the first part is read in isolation it is susceptible of construction as was adopted by the High Court. But the notification has to be read in its entirety and construed as a whole. Once that is done cloud of uncertainty disappears. A close reading of both the parts together leaves no room for doubt that it was intended to be exhaustive granting exemption to all factories producing packing and wrapping paper whether existing or commencing production from 1st March, 1964. To the former to the

extent of enlarged capacity and to latter to full extent. The ambiguity arose because of absence of words new before 'factory' or goods after the word 'production' in the first clause. To harmonise it the High Court added the words 'goods'. But what was lost sight of that the words 'commencing' in the first part and 'existing' in the second part had to be read in juxtaposition. That is all those factories which were existing from before

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were entitled to exemption on production of goods to the extent of enlarged capacity. This enlargement could be as a result of installation of additional machinery. The word 'capacity must necessarily relate to capacity of factory and not to goods. For instance a factory with capacity of say 1 lakh kg. of paper but producing only 75 thousand kg. achieving maximum after 1964 could not be covered in the clause as the production cannot be held to be due to enlarged capacity. That could be only if the capacity to produce goods increased due to installation of additional machinery. If this be true and correct, as it appears to be, then the first part presents no difficulty. The expression 'commencing production' has to be read as commencing production of goods by a factory which was not existing and has started production on or after 1st March, 1964. Any other construction shall result in discrimination. A factory like respondent existing from 1942 producing straw board and mill board shall be entitled to exemption on production of wrapping and packing paper on construction of the expression 'commencing production' by the High Court even though it switched over from straw board and mill board to packing and wrapping paper after the relevant date whereas another unit existing and producing wrapping and packing paper itself from before 1st March, 1964 could not be entitled to exemption except to the extent of enlarged capacity. That is if an existing unit would have installed a new machinery it would have been entitled to exemption of production only to that extent whereas any unit producing goods other than the exempted goods would become entitled to exemption in respect of entire production. That could not have been the intention. A construction which results in inequitable results and is incongruous, has to be avoided. Therefore, production of packing and wrapping paper by respondent was entitled to exemption only to the extent it was attributable to enlarged capacity and not to the existing capacity.

Hansraj Goverdhan v. H.H. Dave, Asstt. Collector, Central Excise & Customs, Surat and Others, [1969] 2 SCR 252 relied on behalf of respondent demonstrates mis-conception about interpreting an exemption provision. It was a case where goods of third persons were manufactured by cooperative society. But once initial hurdle was crossed and it was held that goods had been produced by cooperative society it was found squarely covered in the notification and the Court extended it to goods manufactured by third persons and repelled the submission that object of granting exemption was to encourage formation of cooperative societies and it should be confined to goods manufactured by its members and not others. Similarly in Commissioner of Income Tax v. Madho Prasad, [1989] 4 SCC 541 the provision

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allowing exemption to 'such part of the income in respect of which the said tax is payable. under the head 'property' as is equal to the amount of rent payable for a year', was construed liberally and it was held that the expression 'equal to the amount of rent payable for a year' did not warrant the inference that the benefit of exemption' could

'be claimed only once' because the amount of rent which was sought to be deducted in more than one years was found squarely to fall in Item 36 of notification. It was again a case of interpreting an exemption notification at later stage. Recently in Tata Oil Mills Co. Ltd. v. Collector of Central Excise, [1989] 4 SCC 541, exemption was to soap made from indigenous rice bran oil as against edible oil. The assessee was engaged in manufacture of soap from rice bran fatty acid which was extracted from rice bran oil, in assessee's factory. It was found rice bran oil as such could not be used unless it was converted into fatty acid. Therefore the assessee was covered in the notification. Once the ambiguity or about manufacture of soap from rice bran fatty acid was removed the Bench proceeded to construe the word "indigenous" in the notification liberally. In Collector of Central Excise v. Parle Exports (P) Ltd., AIR 1989 644 this Court while accepting that exemption clause should be construed liberally applied rigorous test for determining if expensive items like Gold Spot base or Limca base or Thums Up base were covered in the expression food products and food preparations used in item No. 68 of First Schedule of Central Excise and Salt Act and held 'that it should not be in consonance with spirit and the reason of law to give exemption for non-alcoholic beverage basis under the notification in question.' Rationale or Ratio is same. Do not extend or widen the ambit at stage of applicability. But once that hurdle is crossed construe it liberally. Since the respondent did not fall in the first clause of the notification there was no question of giving the clause a liberal construction and hold that production of goods by respondent mentioned in the notification were entitled to benefit.

In the result this appeal succeeds and is allowed. The order of the High Court is set aside and the Writ Petition is dismissed with costs.

R.N.J.

Appeal

allowed.

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