REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7076-7080 of 2008

CC (Preventive) Amritsar …Appellant

Versus

M/s. Malwa Industries Ltd. …Respondent

J U D G M E N T

S.B. SINHA, J :

1. Interpretation of an exemption notification bearing No. 4/2006-CE dated 1.03.2006 is in question in these appeals which arise out of a judgment and order dated 30.04.2008 passed by the Customs, Excise and Service Tax Appellate Tribunal (for short "the Tribunal"), Principal Bench, New Delhi in Custom Appeal Nos. 43-47 of 2008.

2. Respondent is engaged in the business of textile and manufacturing of textile goods, viz., Dystar Indigo VAT 40 per cent SOL/Indigo Powder 90

per cent Wettable. The said imported goods fell under Tariff Heading 32041559. Additional Duty (CVD) was charged on the assessable value of the goods purported to be in terms of Section 3 of the Customs Tariff Act, 1975 (for short "the Act").

Urging that no excise duty was payable on the said goods in view of the notification dated 1.03.2006, the respondent preferred appeals aggrieved thereby. The said contention was upheld. Appellant approached the Tribunal thereagainst. The said appeal, by reason of the impugned judgment, has been dismissed.

3. Mr. Harish Chandra, learned senior counsel appearing on behalf of the appellant, submitted that :-

(i) The appellate authority as also the Tribunal committed a serious error in passing the impugned judgment insofar as they failed to take into consideration that an exemption notification should be construed strictly.

(ii) An assessee would be entitled to the benefit of an exemption notification only in the event the conditions precedent therefor are satisfied.

(iii) As the raw material was required to be a product of the same factory, the impugned notification, the learned counsel argued, was not attracted.

(iv) In any event, the Tribunal having based its decision on a judgment of a Three-Judge Bench of this Court in Thermax Private Ltd. v. Collector of Customs [1992 (61) E.L.T. 352 (SC) : (1992) 4 SCC 440], the correctness whereof having been doubted and referred to the Constitution Bench in Hyderabad Industries Ltd. v. Union of India [1999 (108) ELT 321 (SC) : (1999) 5 SCC 15], the impugned judgment is wholly unsustainable.

4. The learned counsel appearing for the respondent, however, supported the impugned judgment.

5. We may, however, notice that part of the judgment in Thermax Private Ltd. (supra), in terms whereof the manner in which Chapter X of the Act is to be applied has merely been referred to the Constitution Bench and not the question which is involved herein.

6. Parliament enacted the Act; Section 3(1) whereof provides for levy of additional duty equal to excise duty.

7. Indisputably, if it is found that the notification dated 1.03.2006 is applicable in relation to the import of the goods in question by the respondent herein, the excise duty thereon being 'nil', no additional duty would be payable. The said provision reads, thus:

> **"3. Levy of additional duty equal to excise duty.-** (1) Any article which is imported in India shall, in addition, be liable to a duty (hereinafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article.
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> …. ….
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> Explanation - In this section, the expression 'the excise duty for the time being leviable on a like article if produced or manufactured in India' means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India, or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and

where such duty is leviable at different rates, the highest duty."

8. The notification dated 1.03.2006, interpretation whereof falls for our decision, reads, thus:

"In exercise of the powers conferred by Sub-section (1) of Section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts excisable goods of the description specified in column (3) of the Table below..... as are given in the corresponding entry in column (2) of the said Table, from so much of the duty of excise specified thereon under the First Schedule to the Central Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table and subject to the relevant conditions specified in the Annexure to this notification, and the Condition number of which is referred to in the corresponding entry in column (5) of the Table aforesaid.

…..

Table

S. No.	Chapter or heading or sub-heading or tariff item of the first schedule	Description of excisable goods	Rate	Condition No.
(1)	(2)	(3)	(4)	(5)
...	...	...	...	...
67.	3204 or 3809	Finishing agents, dye carriers to accelerate the dyeing or fixing of dye-stuffs, printing paste, and other products and preparations of any kind used in the same factory for the manufacture of textiles and textile articles	Nil	-
...	...	...	...	...

"

9. The short question which arises for consideration is: Does the 'nil' rate of duty, as provided for in the said notification dated 1.03.2006, subject to the condition that the same are used in the same factory would mean that the goods which were to be used must be manufactured in the same factory?

10. An exemption notification should be read literally. A person claiming benefit of an exemption notification must show that he satisfies the eligibility criteria. Once, however, it is found that the exemption

notification is applicable to the case of the assessee, the same should be construed liberally.

11. Section 3 of the Act, on its plain reading, provides that the goods imported into India would be liable to additional duty. The object of levy of the said duty is that an importer should not be placed at some more advantageous position vis-à-vis the purchasers/ manufacturers of similar goods in India.

12. A notification like any other provision of a statute must be construed having regard to the purpose and object it seeks to achieve. For the aforementioned purpose, the statutory scheme in terms whereof such a notification has been issued should also be taken into consideration.

13. It is a well-settled principle of law that where literal meaning leads to an anomaly and absurdity, it should be avoided. When the goods are imported evidently, the same would not be manufactured in the same factory. It would, therefore, be impossible to apply the provisions of Section 3(1) of the Act vis-à-vis the notification issued in the case of imported goods.

14. The expression "same factory", therefore, in our opinion, would mean the factory where the goods are actually manufactured. It only means that the imported goods are required to be used in the factory belonging to the importer where the manufacturing activity takes place. There is nothing in Section 3 of the Act and in particular the explanation appended to Sub-section (1) thereof mandating actual production or manufacture in the said factory itself. There cannot be any doubt whatsoever that if excise duty is not leviable on manufacture of goods, the question of the importer paying any additional duty for import of like goods would not arise.

That is principally the question which fell for determination in Thermax Private Ltd. (supra) and answered in the following terms:

> "6. It is common ground that customs duty is payable and has been paid on the imported goods under customs tariff Item No. 84.17(1) at 40 per cent of the value of the imported goods plus a surcharge of 25 per cent thereon. The rate of CVD, however has to be determined on the basis of Item No. 29-A of the central excise tariff. It is common ground that "chillers" fall under sub-item (3) of Item No. 29-A and that the basic excise duty payable thereon was at 80 per cent of the value of the goods under the above item read with Notification No. 42 of 1984/C.E. dated March 1, 1984.
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> *** *** ***

> 9. The assessee's claim for concession has, however, been rejected not on the ground that the second of the above conditions has not been fulfilled but on the broader ground that the procedure of Chapter X is designed to facilitate clearances only for the purposes of central excise and that the said procedure cannot be fulfilled at all in the case of an importer. In other words, the view was that the second condition was such that it was attracted only for purposes of central excise and could not at all be invoked to claim a concession in CVD. It is the correctness or otherwise of this conclusion that has to be determined in these appeals."

15. The aforementioned dicta was noticed and approved by the Constitution Bench of this Court in Hyderabad Industries Ltd. (supra) wherein this Court noticed the following contention:

> "6. An argument had been raised on behalf of the Union of India to the effect that the asbestos fibre imported by the appellant was exigible to additional duty regardless of the fact that it was not produced as a result of manufacture and, therefore, not exigible to excise duty. In support of this contention reliance was placed on this Court's judgment in Khandelwal Metal & Engineering Works v. Union of India. After discussing the said judgment the Bench was of the view that the decision in the case of Khandelwal Metal & Engineering Works required consideration by a larger Bench. It is pursuant to this direction that this Bench has been constituted."

Answering the said contention, the Constitution Bench expressly overruled the decision of this Court in Khandelwal Metal & Engineering Works v. Union of India [1985 (20) ELT 222] wherein it had been observed:

> "The levy specified in Section 3(1) of the Tariff Act is a supplementary levy, in enhancement of the levy charged by Section 12 of the Customs Act and with a different base constituting the measure of the impost. In other words, the scheme embodied in Section 12 is amplified by what is provided in Section 3(1). The customs duty charged under Section 12 is extended by an additional duty confined to imported articles in the measure set forth in Section 3(1). Thus, the additional duty which is mentioned in Section 3(1) of the Tariff Act is not in the nature of countervailing duty."

It was furthermore held:

> "We are unable to accept the argument of the appellants that Section 3(1) of the Tariff Act is an independent, charging section or that, the 'additional duty' which it speaks of is not a duty of customs but is a countervailing duty."

16. A Bench of the Delhi High Court in Plastic Processors v. Union of India [2002 (143) ELT 521] opined :-

> "8. As observed in the aforesaid quoted portions by the Apex Court, for the purpose of attracting additional duty under Section 3 of the Tariff Act, on the import of a manufactured or produced article, the actual manufacture or production of a like article in India is not necessary. Said provision specifically mandates that CVD will be equal to the excise duty for the time being livable on a like article if produced or manufactured in India. This position was also elaborated in Thermax Private Limited case (supra)."

The special leave petition thereagainst was dismissed by this Court stating:

> "These Appeals can be disposed of by this common order.
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> Civil Appeal Nos.2578-2583 of 2001 are against the order passed by the High Court of Delhi dated 12th September, 2000 whereas Civil Appeal No.91 of 2002 is against the order dated 12th June, 2001 passed by the Customs, Excise & Gold (Control) Appellate Tribunal, (in short "CEGAT") New Delhi.
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> The short question involved in these Appeals is regarding the validity of Circular No.38/2000-Cus dated 10th May, 2000. By the two impugned orders the circulars have been quashed. We are informed that apart from these two matters the circular had also been challenged in the Gujarat High Court. The High Court of Gujarat by its

> decision in the case of Lucky Star International v. Union of India reported in 2001 (134) E.L.T. 26 (Guj.) had also quashed the circulars. Against that decision Special Leave Petitions Nos..... CC Nos.3434-3456 of 2001 had been filed. That Special Leave Petitions got dismissed on 30th July, 2001.
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> The circular had also been challenged in the Calcutta High Court. The Calcutta High Court by its Judgment dated 16th October, 2001 had also quashed the circular. Against the decision of the Calcutta High Court Special Leave Petition Nos..... CC Nos. 9727-9731 of 2003 had been filed. Those Special Leave Petitions were withdrawn by learned Attorney General on 19th January, 2004.
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> In view of the fact that one Special Leave Petition has been dismissed and another has been withdrawn, we see no reason to interfere.
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> The Civil Appeals stand dismissed. There will be no order as to costs."

17. Yet again in Lohia Sheet Products v. Commr. Of Customs, New Delhi [2008 (224) ELT 349 (SC)], this Court categorically held:

> "16. This Court in the case of Thermax Pvt. Ltd. v. Commissioner of Customs has held that since the concession under Rule 192 turns only on the nature and use to which the goods are put by the user or purchaser thereof and whether he has gone through the procedure outlined in Chapter X, it would not be correct to deny it to a supplier of such goods on the ground that he was an importer and not a manufacturer. In other words, this Court stated in specific terms that one has to forget that the goods are imported, imagine that the importer

had manufactured the goods in India, determine the amount of excise duty that he would have been called upon to pay in that event. The decision of the Tribunal that the assessee could not get a refund because the procedure of Chapter X of the Rules is inapplicable to importers as such was held to be wrong. It was further held that the benefit of the exemption or concession should be granted wherever Page 1127 the intended use of the material can be established by the importer or by other evidence. In the present case, it is a matter of fact that duty was paid by the appellant at the time of import of waste or scrap. Mere fact that the goods were imported would not make any difference. The intention behind the grant of exemption under the notification was to prevent the duty being paid at two stages."

We may notice the relevant extract of the notification dated 23.07.1996 in Lohia Sheet Products (supra), which reads as under:

"Reference No.	Chapter Heading No. or Sub-heading No.	Description of goods	Rate
(1)	(2)	(3)	(4)

	74.04	Copper waste and scrap used within the factory of production for the manufacture of unrefined or unwrought copper, copper sheets or circles and handicrafts.	Nil”

18. A large number of decisions have been cited by Mr. Harish Chandra to show that the exemption notification must be strictly construed. We may, however, notice only a few of them.

19. In Commissioner of Central Excise, Trichy v. Rukmani Pakkwell Traders [2004 (165) ELT 481 : (2004) 11 SCC 801], it was held:

> “6. The Tribunal had also held that under the notification the use must be of “such brand name”. The Tribunal has held that the words “such brand name” show that the very same brand name or trade name must be used. The Tribunal has held that if there are any differences then the exemption would not be lost. We are afraid that in coming to this conclusion the Tribunal has ignored Explanation IX. Explanation IX makes it clear that the brand name or trade name shall mean a brand name or trade name (whether registered or not), that is to say, a name or a mark, code number, design number, drawing number, symbol, monogram, label, signature or invented word or

> writing. This makes it very clear that even a use of part of a brand name or trade name, so long as it indicates a connection in the course of trade would be sufficient to disentitle the person from getting exemption under the notification."

However, we may notice that this Court in Sarabhai M. Chemicals v. Commissioner of Central Excise, Vadodara [(2005) 2 SCC 168 : (2005) 179 ELT 3], this Court held :

> "22**.** Our interpretation is supported by the language of the notification. Under the proviso read with the Explanation to the said notification, there were three conditions required to be satisfied by way of certification by the Drugs Controller. Firstly, that the bulk drugs should have the same meaning as mentioned in the Explanation to the notification. Secondly, that such bulk drugs should be normally used for the specified purposes; and, thirdly, that the "bulk drugs" are used as such or as an ingredient in any formulation. Plainly read, the third condition has to mean that the goods, for which exemption was sought, were actually used as such or as an ingredient in any formulation. If the arguments advanced on behalf of the appellant are accepted then the second and third conditions would have the same meaning and there would be no point in specifying them as separate conditions. In the Explanation to the notification, we have two expressions, namely, "*normally used*" and "*used as such*". We have to read both these expressions in *juxtaposition*. If so read, it becomes clear that the expression "used as such" in the proviso qualifies the actual use and not the capability of use. These words are by way of emphasis. They

> are a condition to be actually satisfied before the exemption can be availed and granted. Consequently, every manufacturer of a bulk drug cannot seek the benefit of exemption under the said notification merely by reason of "normal use" of the drug. The words "normal use" indicate the possible use whereas the expression "used as such" indicates the actual use."
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> (Emphasis added)

Thus, these decisions militate against the submission that the goods must be manufactured in the factory.

20. We, as noticed hereinbefore, have no quarrel with the proposition that exemption notification should be construed strictly which means that benefit thereof should not be granted to one, who is not entitled therefor. But it is also true that those who are entitled to the benefit cannot be deprived therefrom by taking recourse to the doctrine of narrow interpretation simplicitor, although the purpose and object thereof would be defeated thereby.

In Kartar Rolling Mills v. Commissioner of Central Excise, New Delhi [(2006) 4 SCC 772 : 2006 (197) ELT 151], this Court held:

> "…It is trite to say that exemption notification has to be construed strictly. Since the notification came into effect from 11-4-1994, the benefit of the notification cannot be extended to the appellants retrospectively w.e.f. 1-3-1994."

In Eagle Flask Industries Ltd. v. Commissioner of Central Excise, Pune [(2004) 7 SCC 377: 2004 (171) ELT 296], this Court held:

> "6. We find that Notification No. 11/88 deals with exemption from operation of Rule 174 to exempted goods. The notification has been issued in exercise of powers conferred by Rule 174-A of the Rules. Inter alia, it is stated therein that, where the goods are chargeable to nil rate of duty or exempted from the whole of duty of excise leviable thereon, the goods are exempted from the operation of Rule 174 of the Rules. The goods are specified in the Schedule to the Central Excise Tariff Act, 1985 (in short "the Tariff Act"). The proviso makes it clear that where goods are chargeable to nil rate of duty or where the exemption from the whole of the duty of excise leviable is granted on any of the six categories enumerated, the manufacturer is required to make a declaration and give an undertaking, as specified in the form annexed while claiming exemption for the first time under this notification and thereafter before the 15th day of April of each financial year. As found by the forums below, including CEGAT, factually, the declaration and the undertaking were not submitted by the appellants. This is not an empty formality. It is the foundation for availing the benefits under the notification. It cannot be said that they are mere procedural requirements, with no consequences attached for non-

> observance. The consequences are denial of benefits under the notification. For availing benefits under an exemption notification, the conditions have to be strictly complied with. Therefore, CEGAT endorsed the view that the exemption from operation of Rule 174, was not available to the appellants. On the facts found, the view is on terra firma…"

In Tata Oil Mills Co. Ltd. v. Collector of Central Excise [(1989) 4 SCC 541], Ranganathan, J., despite accepting the proposition that the exemption notification should be construed strictly, opined:

> "These words may be construed literally but should be given their fullest amplitude and interpreted in the context of the process of soap manufacture. There are no words in the notification to restrict it only to cases where rice bran oil is directly used in the factory claiming exemption and to exclude cases where soap is made by using rice bran fatty acid derived from rice bran oil. The whole purpose and object of the notification is to encourage the utilisation of rice bran oil in the process of manufacture of soap in preference to various other kinds of oil (mainly edible oils) used in such manufacture and this should not be defeated by an unduly narrow interpretation of the language of the notification even when it is clear that rice bran oil can be used for manufacture of soap only after its conversion into fatty acid or hydrogenated oil."

21. Contention of Mr. Harish Chandra that the decision of Thermax Private Ltd. (supra) on the point urged before us has been doubted is not correct. In Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal [2005 (188) ELT 353], upon taking into consideration various rules and in particular Rule 192 of the Central Excise Rules, 1944, this Court pointed out that conceptually there is a difference between short payment that arises from non-levy or any mistake on the levy, on the one hand, and the short payment arising out of the failure of the buyer/ user of the goods to account for them, on the other. The court opined that the responsibility for the payment of duty on the goods cleared under concession/ exemption having been transferred, it was obligatory on the person wishing to obtain the remission of duty to apply through the proper officer in the form prescribed therein. The court noticed that there is a divergence of view in regard to the mode and manner of filing such an application. It was noticed that Chapter X of the Act incorporates the procedure required to be followed for the said purpose. It was opined that that aspect of the matter had not been considered in Thermax Private Ltd. (supra) or Collector of Central Excise, Jaipur v. J.K. Synthetics [2000 (120) ELT 54]. This Court noticed that there was a divergence of view in the judgments of the Tribunal

in that behalf also, as for example, in National Aluminium Co. Ltd. v. Commissioner of Central Excise, Bhubaneswar [2000 (125) ELT 519 (Tribunal)], it was held that "even if Chapter X procedure is not followed, calcined alumina manufactured in assesses' unit and transferred to another unit for manufacture of aluminium was entitled to exemption under Notification No. 217/86-C.E. as the assessee had established intended use of material by other evidence".

It was pointed out that a diametrically opposite view has been taken in Kirloskar Brothers Ltd. v. Collector of Central Excise, Pune [1997 (94) ELT 176 (Tribunal)] wherein it was held that the procedure required under Chapter X of the Act was required to be strictly followed in cases of additional exemption as the procedural requirements were essentially pre-requisite and no exemption can be sanctioned in absence of the required compliance of the exemption notification.

It was furthermore noticed that the input relief was claimed in that case on the basis of the captive consumption whereas Thermax Private Ltd. (supra) and J.K. Synthetics (supra) were cases of the supplier being an importer and, thus, this Court therein had no occasion to deal with cases of the nature involved therein.

21. We, therefore, are satisfied that this case is covered by Thermax Private Ltd. (supra) and the point on which the matter has been referred to a larger Bench does not arise for consideration herein.

22. For the reasons aforementioned, there is no merit in these appeals which are dismissed accordingly with costs. Counsel's fee assessed at Rs. 50,000/-

…….J.
[S.B. Sinha]

..……J.
[Dr. Mukundakam Sharma]

New Delhi;
February 12, 2009