

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 6404 OF 2003

The Commissioner of Customs, New Delhi

... Appellant

Versus

M/s. Caryaire Equipment India Pvt. Ltd.

.... Respondent

ORDER

1. The core issue that falls for our consideration and decision in this appeal is: whether “aluminium grills” can be termed as “Extruded aluminium products”? If the answer is in positive, the assessee would be covered by Item Serial No.7 of the Product Code 61 of the Duty Entitlement Passbook Scheme (for short “the DEPB Scheme”). The assessee has succeeded before the Customs, Excise and Gold (Control) Appellate Tribunal (for short 'the Tribunal'). The Revenue in this appeal calls in question the correctness or otherwise of the judgment and order of the Tribunal. By the

impugned judgment and order, the Tribunal has set aside the order of confiscation of goods and the penalty imposed by the Commissioner of Customs.

2. The facts in nutshell are: the assessee is the manufacturer of aluminium grills made out of extruded aluminium sections. In its regular business activity, the assessee had filed a shipping bill dated 18.06.2002, *inter alia*, claiming the benefit of the DEPB Scheme for export of the said products as falling under Item Serial No. 7 of Product Group: Engineering-Product Code: 61 at 7% *ad valorem*. The Customs Officer, on verification of the shipping bill, has found that the goods in question are fabricated aluminium products and therefore, denied the export of goods as being *prima facie* liable for confiscation under the Customs Act, 1962 (for short “the Act”)
3. Thereafter, the assessee, by his letter dated 24.6.2002 had made a request to the Commissioner of Customs for a personal hearing in lieu of the show cause notice.

At the time of the personal hearing, the assessee had contended that the aluminium grills were fabricated items, but the end-product is made out of the extruded aluminium. The Commissioner, while rejecting the contention of the assessee, has passed an order dated 28.6.2002 for confiscation of goods and imposition of penalty in exercise of his powers under Section 113 and 114 of the Act read with Rules 11 and 14 of the Foreign Trade (Regulation) Rules, 1993. However, he had permitted the assessee to redeem the goods on payment of certain amount of fine.

4. Aggrieved by the aforesaid order of the Commissioner of Customs, the assessee had carried the matter in appeal before the Tribunal. The Tribunal, after appreciating the contention of the assessee, had set aside the order of the Commissioner vide its order dated 16.10.2002. In its order, the Tribunal holds that aluminium grills are nothing but the extruded aluminium products. Therefore, the Tribunal is of the opinion that the Commissioner of Customs was not

justified in passing the order in exercise of his powers under Section 113 and 114 of the Act.

5. The Revenue, being aggrieved by the judgment and order passed by the Tribunal, has filed this appeal under Section 130-E of the Act.

6. Shri Harish Chandra, learned senior counsel appearing for the Revenue, contends that aluminium grill is altogether a separate product and the same cannot be equated with extruded aluminium product which is mentioned under Entry 7 of the Product Group Engineering (Code 61). He submits that the benefit of the DEPB Scheme encompasses within its ambit only to the extruded aluminium products which are obtained from the process of aluminium extrusion. Shri Abhinav Mukerji, learned counsel for the Revenue, who is assisting Shri Harish Chandra, would elaborate the process of aluminium extrusion and contends that it is a product, which is strictly obtained from the process

of extrusion, without any alterations or modifications, is eligible for the benefit provided under the DEPB Scheme. He, therefore, submits that the product obtained by fabricating the extruded aluminium is not eligible for the benefit of the Scheme. In support of their contention, they have produced a xerox copy of the book titled as “The Complete Technology Book on Aluminium and Aluminium Products”. A reference is also made to certain observations made by this Court while explaining the meaning of the expression “the product”.

7. *Per contra*, Shri Aditya Kumar, learned counsel appearing for the assessee submits that the expression “extruded aluminium products” used in Entry 7 of Code 61 is sufficiently wide to include products which are made out of the extruded aluminium by fabricating it. He contends that even the finished end-product which is in the fabricated form of the extruded aluminium, the same would fall under Entry 7, as extruded aluminium product.

8. In order to resolve the controversy posed in this appeal by the parties to the *lis*, a reference to Duty Exemption/Remission Scheme requires to be noticed. Chapter 4 of Exim Policy and Handbook of Procedures provides for Duty Exemption/Remission Scheme. Paragraph 4.37 of the said chapter provides for the DEPB Scheme. The said paragraph reads as under:

“The Policy relating to Duty Entitlement Passbook Scheme (DEPB) Scheme is given in Chapter 4 of the Policy. The duty credit under the scheme shall be calculated by taking into account the deemed import content of the said export product as per SION and the basic custom duty payable on such deemed imports. The value addition achieved by export of such product shall also be taken into account while determining the rate of duty credit under the scheme.”

Entry 7 of the Product Code 61 in the DEPB schedule reads as under:

“Extruded Aluminium products including pipes and tubes”.

9. The facts are not in dispute. The assessee is a manufacturer of aluminium grills made out of the extruded aluminium. Admittedly, the export of the aforesaid item was made and shipping bill dated 18.6.2002 was presented before the Customs Officer, *inter alia*, claiming the benefit under the aforesaid

entry. While denying the said benefit, the Commissioner of Customs has passed an order of confiscation of the goods and has also levied a penalty, in exercise of his powers under Section 113 and 114 of the Act read with Rules 11 and 14 of the Foreign Trade (Regulation) Rules, 1993. However, he had permitted the assessee to exercise its right of redemption, if it so desires. We do not know whether the assessee had exercised that right. We are not concerned much on that.

10. Admittedly, the assessee had carried the matter in appeal before the Tribunal. The Tribunal has given relief to the assessee by holding that the aluminium grills are nothing but extruded aluminium products and, therefore, the assessee is entitled to take benefit of Item Serial No. 7 of the Product Group: Engineering-Product Code: 61.

11. As we have already noticed, the only issue which requires to be considered and decided in this Civil

Appeal is, whether the aluminium grills can be termed as Extruded aluminium products, and if it is so, whether the assessee can take the benefit of the Item 7 of Code 61?

12. To appreciate what is extruded aluminium, a reference can be made to the literature that is produced by learned counsel appearing for the parties.

13. The process of “extrusion”, as explained in the Textbook McGraw-Hill Encyclopedia of Science & Technology, reads as under :

“Extrusion: The forcing of solid metal through a suitably shaped orifice under compressive forces. Extrusion is somewhat analogous to squeezing toothpaste through a tube, although some cold extrusion processes more nearly resemble forging, which also deforms metals by application of compressive forces. Most metals can be extruded, although the process may not be economically feasible for high-strength alloys.”

The process of the cold extrusion of aluminium can also be noticed from the aforesaid book. The same is as under:

“Cold extrusion: The extrusion of cold metal is variously termed cold pressing, cold forging, cold extrusion forging, extrusion pressing, and impact extrusion. The term cold extrusion has become popular in the steel fabrication industry, while impact extrusion is more widely used in the nonferrous field.

The original process (identified as impact extrusion) consists of a punch (generally moving at high velocity) striking a blank (or slug) of

the metal to be extruded, which has been placed in the cavity of a die. Clearance is left between the punch and die walls; as the punch comes in contact with the blank, the metal has nowhere to go except through the annular opening between punch and die. The punch moves a distance that is controlled by a press setting. This distance determines the base thickness of the finished part. The process is particularly adaptable to the production of thin-walled, tubular-shaped parts having thick bottoms, such as toothpaste tubes.

A process requiring less pressure than backward extrusion is the forward-extrusion process, originally called the Hooker process. A formed blank (usually a thick-walled cup) is placed in a die cavity and struck by a punch having a shoulder or enlarged section a short distance from the end. Upon contact with the blank, the nose or end of the punch starts to push the center of the blank through the die cavity, in a manner similar to the action occurring in deep drawing of sheet metal. After the punch has advanced a short distance, the shoulder comes in contact with the top of the thick wall of the blank. The punch shoulder then extrudes the metal through the annular space between the die and the end of the punch. Thus, in forward extrusion, the metal moves in the same direction as the punch, whereas in backward extrusion the metal moves in the opposite direction.”

14. In the book “The Complete Technology on Aluminium and Aluminium Products”, a reference is made to the manufactured forms of the aluminium. A useful reference can be made to the literature on aluminium and its manufactured form, from the aforesaid book. It shows aluminium and its alloys may be cast or formed by virtually all known processes. Manufactured forms of aluminium and aluminium alloys can be broken down into two groups. Standardized products and Engineered Products. The Standardized products

include sheet, plate, foil, rod, bar, wire, tube, pipe, and structural forms. In the same book, it is said that Engineered products are those designed for specific applications and include extruded shapes, forgings, impacts, castings, stampings, power metallurgy (P/M) parts, machined parts, and metal-matrix composites (MMCs). The standardized products are again described to include only the extruded aluminium product simplicitor. If anything that is done to those extruded aluminium products, that would become the engineered products.

15. In the instant case, it is the assessee's stand before the Commissioner of Customs and also before the Tribunal, that it fabricates extruded aluminium into aluminium grills. It is not the case of the assessee either before the Commissioner of Customs or before the Tribunal, that aluminium grills are the same as extruded aluminium products. It is an admitted position that assessee carries out the fabrication to derive a product known as aluminium grills made out

of extruded aluminium products. If that fact situation is accepted, then the Tribunal was wholly incorrect in holding that the aluminium grills are nothing but extruded aluminium products and therefore, they would fall under Entry 7 of Code 61. The issue before us can be looked into from another angle also. The Legislature, while enumerating the goods that would fall under Item 7 of the Product Code 61 of the DEPB Schedule, immediately after the expression “extruded aluminium products” has specifically used the expression “included” to include pipes and tubes. The legislature recognizes pipes and tubes which are engineered out of the extruded aluminium products, as included under the Item 7. The expression “including pipes and tubes” following the words “extruded aluminium products” in Item 7 is restrictive in nature and will give ‘extruded aluminium products’ a restrictive meaning in order to include the standardized products such as pipes and tubes within the meaning of the term extruded aluminium products.

16. In South Gujarat Roofing Tiles Manufacturers Assn. & Anr. v. State of Gujarat & Anr., (1976) 4 SCC 601, this Court has held thus:

“Though “include” is generally used in interpretation clauses as a word of enlargement, in some cases the context might suggest a different intention. Pottery is an expression of very wide import, embracing all objects made of clay and hardened by heat. If it had been the legislature's intention to bring within the entry all possible articles of pottery, it was quite unnecessary to add an explanation. We have found that the explanation could not possibly have been introduced to extend the meaning of potteries industry or the articles listed therein added *ex abundanti cautela*. It seems to us therefore that the legislature did not intend everything that the potteries industry turns out to be covered by the entry. What then could be the purpose of the explanation. The explanation says that, for the purpose of Entry 22, potteries industry “includes” manufacture of the nine articles of pottery named therein. It seems to us that the word “includes” has been used here in the sense of ‘means’; this is the only construction that the word can bear in the context. In that sense it is not a word of extension, but limitation; it is exhaustive of the meaning which must be given to potteries industry for the purpose of Entry 22. The use of the word “includes” in the restrictive sense is not unknown. The observation of Lord Watson in *Dilworth v. Commissioner of Stamps* which is usually referred to on the use of “include” as a word of extension, is followed by these lines:

“But the word ‘include’ is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to ‘mean and include’, and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions.”

It must therefore be held that the manufacture of Mangalore pattern roofing tiles is outside the purview of Entry 22.”

17. In Reserve Bank of India & Ors. v. Peerless General

Finance & Investment Co. Ltd. & Ors., (1987) 1 SCC 424, this Court while analysing the different connotations of the ‘inclusive definitions’ has held:

“32. We do not think it necessary to launch into a discussion of either *Dilworth case*² or any of the other cases cited. All that is necessary for us to say is this: Legislatures resort to inclusive definitions (1) to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words and also the sense which the statute wishes to attribute to it, (2) to include meanings about which there might be some dispute, or, (3) to bring under one nomenclature all transactions possessing certain similar features but going under different names. Depending on the context, in the process of enlarging, the definition may even become exhaustive.”

18. In *Godfrey Phillips India Ltd. & Anr. v. State of U.P. & Ors.*, (2005) 2 SCC 515, this Court has observed thus:

“73. Having rejected the second premise contended for by Mr Salve, the next question is whether the language of Entry 62 List II would resolve the issue. The juxtaposition of the different taxes within Entry 62 itself is in our view of particular significance. The entry speaks of “taxes on luxuries *including* taxes on entertainments, amusements, betting and gambling”. The word “including” must be given some meaning. In ordinary parlance it indicates that what follows the word “including” comprises or is contained in or is a part of the whole of the word preceding. The nature of the included items would not only partake of the character of the whole, but may be construed as clarificatory of the whole.

74. It has also been held that the word “includes” may in certain contexts be a word of limitation (*South Gujarat Roofing Tiles Manufacturers Assn. v. State of Gujarat*²⁸). ...”

19. In *Karnataka Power Transmission Corporation & Anr.*

v. Ashok Iron Works Private Limited, (2009) 3 SCC 240, this Court while considering the meaning and connotations of the word ‘inclusive’ has held thus:

“14. The learned counsel also submitted that the word “includes” must be read as “means”. In this regard, the learned counsel placed reliance upon two decisions of this Court, namely; (1) *South Gujarat Roofing Tiles Manufacturers Assn. v. State of Gujarat*¹ and (2) *RBI v. Peerless General Finance and Investment Co. Ltd.*²

15. Lord Watson in *Dilworth v. Stamps Commr.*³ made the following classic statement: (AC pp. 105-06)

“... The word ‘include’ is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. But the word ‘include’ is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to ‘mean and include’, and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions.”

16. *Dilworth*³ and few other decisions came up for consideration in *Peerless General Finance and Investment Co. Ltd.*² and this Court summarised the legal position that (*Peerless case*², SCC pp. 449-50, para 32) inclusive definition by the legislature is used:

“32. ... (1) to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words and also the sense which the statute wishes to attribute to it; (2) to include meanings about which there might be some dispute; or (3) to bring under one nomenclature all transactions possessing certain similar features but going under different names.”

17. It goes without saying that interpretation of a word or expression must depend on the text and the context. The resort to the word “includes” by the legislature often shows the intention of the legislature that it wanted to give extensive and enlarged meaning to such expression. Sometimes, however, the context may suggest that word “includes” may have been designed to mean “means”. The setting, context and object of an enactment may provide sufficient guidance for interpretation of the word “includes” for the purposes of such enactment.”

20. Principles of Statutory Interpretation (12th Edition, 2010) by Justice G.P. Singh, at pg. 181, has discussed in detail the different connotations of the word ‘include’ while laying stress on the restrictive as well as exhaustive explanation of the word ‘inclusive’ thus:

“The word ‘include’ is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used those words or phrases must be construed as comprehending, not only such things, as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. But the word ‘include’ is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions used. It may be equivalent to ‘mean and include’ and in the case it may afford an exhaustive explanation of the meaning which for the purposes of the Act must invariably attached to those words or expressions. Thus the word include may in certain contexts be a word of limitation.”

21. In view of the aforesaid reasons, in our opinion, the goods in question namely, the aluminium grills cannot

fit into Item 7 of the Product Code 61 of the DEPB Schedule in order to claim benefit of the DEPB Scheme and therefore, we cannot sustain the order passed by the Tribunal.

22. In the result, while allowing the appeal filed by the Revenue, we set aside the impugned judgment and order passed by the Tribunal and restore the order passed by the Commissioner of Customs. No costs.

Ordered accordingly.



.....J.
(H.L. DATTU)

JUDGMENT.....J.
(ANIL R. DAVE)

**NEW DELHI,
FEBRUARY 14, 2012**