

CASE NO.:
Appeal (civil) 5867-69 of 1994

PETITIONER:
TAMIL NADU NEWSPRINT AND PAPERS LTD.

RESPONDENT:
APPRAISER APPRAISING, DEPARTMENT, CUSTOMS HOUSE AND ORS.

DATE OF JUDGMENT: 20/01/2000

BENCH:
DR. A.S. ANAND, CJ & S. RAJENDRA BABU & R.C.LAHOTI

JUDGMENT:
JUDGMENT

2000 (1) SCR 327

The following Order of the Court was delivered :

These appeals, by special leave have put in issue the judgment of the Division Bench of the High Court of Madras, dated 28th January, 1988 setting aside the judgment of a learned Single Judge dated 7th September, 1987 in a batch of Writ Petitions.

The short question which requires our consideration is : Whether in the facts and circumstances of this case the appellant is entitled to the benefit of the Exemption Notification No. 62/83, dated 13.83 issued by the Government of India in exercise of the powers under Section 25(1) of the Customs Act, 1962? The question arises in the following circumstances :

The appellant imported certain items of machinery pursuant to a specific contract registered with the Customs Authorities for import of machinery falling under Item 84.66 of the Customs Tariff Act, 1975. The appellant has admittedly enjoyed the concession pursuant to that registered contract in the matter of payment of basic custom duty as well as additional duty. The appellant after having enjoyed that benefit also claimed benefit of total exemption from payment of Auxiliary Duty under Notification 62/83, Customs, dated 13.1983. According to the appellant, since Notification 62/83 was issued to grant total exemption from Auxiliary Duty on 19 items in view of GATT agreement, the appellant was also entitled to its benefit since the machinery imported by him fell under one of the 19 items. According to the Revenue, however, the appellant was not entitled to claim benefit of Exemption Notification 62/83, dated 1.3.1983 having imported the machinery pursuant to the specific contract registered under heading 84,66 and that the appellant had to bear the auxiliary duty to the extent given in Notification 61/83, Customs, dated 1.3.1983 vide which the auxiliary duty on Item 84.66, besides some other items, had been reduced to 20%. the learned Single Judge, hearing the Writ Petition took note of both the above noticed Notifications and came to the conclusion that the appellant was entitled to receive benefit of Exemption Notification 62/83 and not of Notification 61/83. The Division Bench, however, accepted the appeal filed by the Revenue and reversed the judgment of the learned Single Judge. Hence, these appeals.

We have heard learned counsel for the parties. Tariff Item 84.31 reads as follows :

Heading No.	Sub-Heading No. and description of Article	Standard Rate of Excise Duty	Central Tariff Item
(1)	(2)	(3)	(4)
84.31	Machinery for making	40%	

or finishing cellulosic pulp, paper or paperboard.

Item 84.66 reads thus.:

Heading No.	Sub-Heading No. and descri- ption of Article	Duty	Standard Rate of	Tariff Item	Central Excise
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84.66 (1)	All items of:		40%		
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(a) Machinery including prime-movers.

(b) Instruments, apparatus and appliances.

(c) Control gear and transmission equipment.

(d) Auxiliary equipment as well as all components (whether finished or not) or raw materials for the manufacture of the aforesaid items and their components, required for the initial setting up of a unit, or the substantial expansion of an existing unit, of a specified :

(1) industrial plant,

(2) irrigation project,

(3) power project,

(4) mining project,

(5) project for the exploration for oil or other minerals, and

(6) such other projects as Central Government may, having regard to the economic development of the country, notify in the Official Gazette in this behalf :

"Provided these are imported (whether in one or in more than one consignment) against one or more specific contracts which have been registered with the appropriate Custom House in the manner prescribed by Regulations which the Central Board of Excise and Customs may make under Section 157 of the Customs Act, 1962 and such contract or contracts has or have been so registered before any order is made by the proper Officer of Customs permitting the clearance for home consumption or deposit in a warehouse of items, components or raw materials."

Notification 61/83, gave benefit of reduction in the rates of Auxiliary Duty @ 20% on certain specified goods. Items 11 and 12 of that Notification read thus :

'11. Goods falling under Heading No. 84.31 but excluding paper making machinery and component parts thereof.

12. Goods falling under Heading No. 84.66."

The relevant portion of Notification No. 62/83, Customs, dated 1.3.1983 providing total exemption from Auxiliary Duty on 19 Item provides in Item-15 :

"75. 84.31 Paper making machinery and component parts thereof."

A perusal of the Notification 61/83 (Supra) shows that against Item No. 12, all goods falling under tariff No. 84.66 have been subjected to the reduced Auxiliary Duty at 20% whereas in the Notification No. 62/83, no exemption has been granted in respect of goods falling under Tariff Item 84.66.

It is not disputed before us that benefit in payment of basic duty and

additional duty, in terms of Notification No. 268/76, dated 2.8.1976, has already been obtained by the appellant for importing the machinery as per a contract registered with the Customs Authorities under Tariff Item 84.66. Having so obtained that benefit by claiming the imported machinery to be covered by tariff Item 84.66, it was not open to the appellant later on to canvass much less claim that the machinery in question is covered by tariff Item 84.31, for receiving the benefit of total exemption under Notification 62/83 and that it is not liable to pay auxiliary duty at the reduced rate of 20% on goods falling under tariff item 84.66 under Notification No. 61/83. Whether or not the specific machinery imported by the appellant is also covered by item No. 84.31, under the circumstances, was irrelevant and apparently a device to claim 'unavailable' benefit under Notification 62/83.

In the established facts and circumstances of the case, the appellant was not entitled to the benefit of total exemption from payment of auxiliary duty under Notification 62/83 as rightly held by the Division Bench. These appeals, therefore, fail and are hereby dismissed though for somewhat different reasons, but without any order as to costs.