

(2012) 02 SC CK 0057

In the Supreme Court Of India

Case No : Civil Appeal No. 6433 of 2003

Bonanzo Engineering and Chemical Private Limited

APPELLANT

Vs

Commissioner of Central Excise

RESPONDENT

Date of Decision : 14-02-2012

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)

Central Excises and Salt Act, 1944 — Section 5A(1)

Citation : (2012) 191 ECR 1 : (2012) 277 ELT 145 : (2012) 6 JT 30 : (2013) 75 KarLJ 369 : (2012) 3 SCALE 43 : (2012) 4 SCC 771

Hon'ble Judges : H.L. Dattu, J;Anil R. Dave, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal is directed against the judgment and order passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (for short 'the Tribunal') in Appeal No. E/1352/2002-B dated 25.10.2002. By the impugned judgment and order, the Tribunal has sustained the original order passed by the Adjudicating Authority.

2. The undisputed facts are: the Appellant is a manufacturer of goods falling under Chapter Headings 32 and 84 of the first schedule to the Central Excise Tariff Act, 1985 ('the Act' for short). The description of the goods under those chapters for the purpose of disposal of this appeal may not be necessary, since we are called upon in this appeal to give a purposive construction to the language employed in the Notification No. 175/86-CE dated 1.3.1986 and Notification No. 111/88-CE dated 1.3.1988.

3. The Notification No. 175/86-CE dated 1.3.1986 exempts the excisable goods of the description specified in the annexure appended to the Notification as enumerated under various Chapters of the Schedule to the Act. The Assessee availing the benefit of the exemption notification has to satisfy two specific conditions for claiming exemption from payment of duty under the Act. We need

to notice Sub-clauses (a), (a)(ii) and proviso to Clause 1, and the Explanation II to the Notification. They read as under:

(a) in the case of the first clearance of the specified goods upto an aggregate value not exceeding rupees thirty lakhs,-

xxx

(ii) in any other case from the whole of the duty of excise leviable thereon:

Provided that the aggregate value of clearances of the specified goods under Sub-clause (ii) of this clause in respect of any one Chapter of the said Schedule, shall not exceed rupees twenty lakhs (w.e.f. 1.4.1990)....

Explanation II For the purposes of Computing the aggregate value of clearances under this Notification, the clearances of any excisable goods, which are chargeable to nil rate of duty or which are exempted from the whole of the duty of excise leviable thereon by any other Notification (not being a notification where exemption from the whole of the duty of excise leviable thereon is granted based upon the value or quantity of clearances made in a financial year) issued under Sub-rule(1) of Rule 8 of the said rules, or under Sub-section (1) of Section 5A of the Central Excises and Salt Act, 1944 (1 of 1944), shall not be taken into account.

4. A bare perusal of Sub-clause (a) of Clause 1 of the said Notification demonstrates that the goods enumerated in the Schedule to the Notification are exempted from payment of the central excise duty for the first clearances of the specified goods upto the aggregate value not exceeding rupees thirty lacs. Clause (a)(ii) provides that such clearances should not exceed rupees twenty lacs in any one of the chapter. The Notification also say that for the purpose of computing the aggregate value of the clearances under the said Notification, the value of clearances of any excisable goods which are exempted from the whole of duty by any other Notification shall not be taken into account.

5. Having seen the first Notification, namely, the Notification dated 1.3.1986, let us also refer to the Notification No. 111/88-CE dated 1.3.1988. This Notification is issued by the Central Government in exercise of its powers under Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944. By the said Notification, the Central Government exempts the goods of the description specified in column 3 of the table appended to the Notification, from the whole of the excise duty leviable on the said goods. It is an admitted fact that the Assessee is the manufacturer of specific goods falling under Serial No. 12 of the table appended to the Notification.

6. We once again make it clear that the Assessee in the instant case is a manufacturer of goods falling under both chapters 32 and 84 of the Act.

7. The Assessee has filed its declaration before the adjudicating authority, inter alia, informing him that the Assessee would be claiming exemption from

payment of excise duty for a sum of Rs. 20 lacs under Chapter heading 32 of the Act and upto Rs. 10 lacs under Chapter heading 84 of the Act.

8. The adjudicating authority has issued two show cause notices dated 26.11.1992 and 20.01.1993, respectively. The first show cause notice is for the period 20.08.1992 to 31.10.1992 and the second show cause pertains to the period 01.11.1992 to 31.12.1992. The duty effect of both the notifications does not exceed beyond Rs. 2.3 lacs.

9. In the aforesaid show cause notices, the assessing authority had stated that the Assessee has exceeded the aggregate value of Rs. 30 lacs as specified in the Notification dated 1.3.1986 and, therefore, other clearances made by him would attract the levy of duty. It was also mentioned in the notice that since the Assessee had paid the duty on the excess clearances of more than the value of Rs. 30 lacs, the Assessee is liable to pay duty with penalty.

10. In reply to the said show cause notice, the Assessee had brought to the notice of the adjudicating authority that it is a manufacturer of items which would fall under chapter heading 84 of the Act and, therefore, the Notification dated 1.3.1988 requires to be applied and if it is applied the goods enumerated in the table appended to the Notification are exempted from the levy of duty and, therefore, the excise duty paid by the Assessee under the aforesaid notification cannot be added for the purpose of computing the aggregate value, while granting benefit of the Notification No. 175/86-CE dated 1.3.1986.

11. The stand of the Assessee was, initially, accepted by the adjudicating authority (Assistant Commissioner) vide his Order dated 12.3.1993. However, the Collector of Central Excise (Judicial) in his Review Order dated 17.2.1994 found that the Order-in-Original dated 12.3.1993 is legally incorrect and is passed by the authority which is incompetent on account of monetary limits. He further directed the Assistant Collector to file an appeal before the Collector, Central Excise (Appeals) for appropriate remedy. On Review Appeal, the Collector, Central Excise (Appeals) vide its order dated 2.6.1994 had set aside the Order-in-Original and remanded the matter to the Competent adjudicating authority (Deputy Commissioner) for de novo proceedings. Thereafter, the adjudicating authority vide Order dated 7.1.2000 while rejecting the Assessee's claim had confirmed the duty demanded and also imposed the penalty.

12. Aggrieved by the said order, the Assessee had carried the matter in appeal before the Tribunal. The Tribunal rejects the claim only on the ground that the Assessee has not claimed the refund of the duty paid for the clearances of the goods falling under Chapter heading 84 of the Tariff Act, and therefore, the Assessee is not entitled to avail the benefit of the exemption Notification dated 1.3.1986. In the words of the Tribunal:

It is admitted fact that the Appellants have not availed of the exemption provided under Notification No. 111/88 while clearing the goods classifiable under Heading 84.37. It has not been brought on record that the Appellants have claimed any

refund of the said duty. Accordingly, it cannot be claimed by them that the goods were exempted from payment of duty. The value of the clearance of goods falling under Heading 84.37 being cleared on payment of duty has to be taken into account by computing the value of clearances for the purpose of Notification No. 175/86.

13. The sum and substance of the reasoning of the Tribunal appears to be that merely because the Assessee has paid the excess duty on those items which he was not supposed to pay in view of the exemption notification dated 1.3.1988 and merely because the Assessee has not claimed the refund of the excess duty paid, that amount paid by him under the Notification dated 1.3.1988 requires to be taken for the purpose of computing the aggregate value of the clearances under the notification No. 175/86-CE. In our view, merely because the Assessee, maybe, by mistake pays duty on the goods which are exempted from such payment, does not mean that the goods would become goods liable for duty under the Act. Secondly, merely because the Assessee has not claimed any refund on the duty paid by him would not come in the way of claiming benefit of the Notification No. 175/86-CE dated 1.3.86.

14. In Union of India and others Vs. M/s. Wood Papers Ltd. and another, , this Court has observed:

4. 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. In fact 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.

5. ...A construction which results in inequitable results and is incongruous, has to be avoided.

15. In Associated Cement Companies Ltd. Vs. State of Bihar and Others, this Court while explaining the nature of the exemption notification and also the manner in which it should be interpreted has held:

12. Literally "exemption" is freedom from liability, tax or duty. Fiscally it may

assume varying shapes, specially, in a growing economy. In fact, 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 of 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 is 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 the 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. (See *Union of India v. Wood Papers Ltd. and Mangalore Chemicals and Fertilisers Ltd. v. Dy. Commr. of Commercial Taxes* to which reference has been made earlier.)

16. In view of the above, we cannot sustain the judgment and order passed by the Tribunal in Appeal No. E/1352/2002-B, dated 25.10.2002.

17. Accordingly, we allow this appeal, set aside the judgments and orders passed by the Tribunal and the adjudicating authority. We direct the adjudicating authority to apply the Notification dated 1.3.86 in the Assessee's case without taking into consideration the excess duty paid by the Assessee under the Notification dated 1.3.1988. No costs.

Ordered accordingly.