(2015) 05 UK CK 0003

In the Uttarakhand High Court

Case No : Central Excise Appeal No. 4 of 2010

Commissioner of Customs and Central Excise	APPELLANT
Vs	
Janardan Plywood Industries Ltd.	RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Citation : (2015) 323 ELT 46 : (2015) 52 GST 418

Hon'ble Judges : K.M. Joseph, C.J;Sudhanshu Dhulia, J

Bench : Division Bench

Judgement

Sudhanshu Dhulia, J—Heard Mr. Shobhit Saharia, Advocate for the appellant and Mr. P.R. Mullick, Advocate, for the respondent. This is an appeal by the Commissioner, Customs and Central Excise, Meerut-I (hereinafter referred to as the Revenue), challenging the order passed by Customs, Excise and Service Tax Appellate Tribunal, New Delhi (from hereinafter referred to as the "CESTAT") [2010 (261) E.L.T. 1019 (Tri.-Del.)] which had rejected the appeal of the Revenue thereby upholding the decision of the Commissioner (Appeals), Meerut dated 6-8-2004.

2. Prior to the above, a demand of excise duty to the tune of Rs. 6,25,000/- [under Rule 9(2) of Central Excise Rule, 1944] was held to be a just demand by the adjudicating authority, namely, Additional Commissioner, Meerut vide its order dated 28-3-2004. It is this order which was set aside by the Commissioner (Appeals) and later upheld by the CESTAT.

3. Pursuant to the order passed by the High Court of Judicature at Allahabad M/s. Dinex Plywood (P) Ltd., Sitapur was amalgamated/merged with the respondent company i.e. M/s. Janardhan Plywood Industries Ltd. 13 Gandhi Road, Dehradun. The merger took place prior to 1-4-1996 on a Company Petition No. 27/95. It is undisputed that for the period the excise duty was payable the two companies had already merged into one. For our purpose here, the factory at Sitapur i.e. M/s. Dinex Plywood (P) Ltd. will be referred to as the Unit No. 1 and the factory at Dehradun i.e. M/s. Janardhan Plywood Industries Ltd. 13,

Gandhi Road, Dehradun will be referred to as Unit No. 2.

4. The respondent primarily manufactures articles of wood which fall under Chapter 44 of the Schedule to the Central Excise Tariff Act, 1985.

5. A declaration was filed by the respondent on 1-4-1996 opting to pay full rate of excise duty in the relation to Unit No. I, while at the same time opting to avail exemption benefit under Notification No. 1 /93-C.E., dated 28-2-1993 as stood amended by Notification No. 59/94-C.E., dated 1st March, 1994 in relation to its Unit No. 2.

6. The Revenue, however, gave a show cause notice dated 13-10-1996 to the respondent for recovery of excise duty for the reason that since it had opted to pay full rate of excise duty in relation to its Unit No. I, it cannot avail benefits under Notification No. 1/93-C.E., dated 28-2-1993 as the same is not permissible, and demanded an excise duty to the tune of Rs. 6,25,000/- (Rs. Six Lakhs and twenty five thousands only), a demand which was confirmed by the adjudicating authority. Being aggrieved, the respondent carried the matter in appeal before the Commissioner (Appeals) where the order of the adjudicating authority has been set aside and later in appeal before the CESTAT the appeal has been dismissed, as already referred above. Hence, the present appeal.

7. A Division Bench of this Court has admitted the appeal on following substantial question of law:--

"Whether a manufacture after opting to pay full rate of duty in a financial year in terms of Para 2(i) of the Notification No. 1/93-C.E., dated 28-2-1993 as amended, could avail the benefit of exemption under Para 1 of the said notification?"

8. Primarily, this Court has to see as to what extent the benefits of Notification No. 1/93-C.E., dated 23-2-1993 as it stood amended on 1-3-1994 vide Notification No. 59/94-C.E. can be availed by the respondent and whether the manner in which it has availed the benefits is permissible under the law.

9. In order to encourage small scale industries, a notification was published being Notification No. 1/93-C.E. which was for "exemption to first clearance of specified goods upto the value of Rs. 30 lakhs and concessional duty thereafter in case of S.S.I. (Small Scale Industries) units having a total clearances not exceeding Rs. 2 crores in preceding year."

10. The said notification granted exemption on excisable goods which had an aggregate value up to a certain limit with other riders attached to it as well. This notification was amended on 1-3-1994 by Notification No. 59/94-C.E. the amendment reads as under:--

"Notwithstanding the exemption contained in paragraph 1 of this notification, a manufacturer shall have an option for not availing of the benefit of the exemption contained in said paragraph and to pay duty of excise at the rate applicable to the specified goods but for the exemption contained in the said paragraph 1, subject to the condition that such manufacturer shall pay duty at the rate applicable but for aforesaid exemption on all subsequent clearances of specified goods made after availing such option, in a financial year in which such date of option falls."

11. The respondent did not exercise the exemption benefit for its Unit No. 1 but exercised its option for exemption as regards Unit No. 2 at Dehradun, ostensibly in terms of the provision in the amended notification.

12. A bare reading of the above amendment, which was inserted in the early Notification 1/93-CE, appears to suggest that this was done as manufacturers were coming in and out of this exemption. They first used to opt for exemption in a financial year and thereafter for other clearances they opted out of the exemption. The extended meaning of the amendment which says "subject to the condition that such manufacturer shall pay duty at the rate applicable but aforesaid exemption on all subsequent clearances of specified goods made after availing such option, in a financial year in which such date of option falls," shows the real intention behind the amendment.

13. The Revenue asserts that it is the manufacturer who has chosen to keep out of the exemption, therefore, both the Units i.e. Unit No. 1 as well as Unit No. 2 will be kept out of the exemption. It is not permissible that a manufacturer exercises his exemption for one Unit and chooses to keep out of it as regards another Unit. This is the appellant''s argument given the plain language of the amendment which talks about a "manufacturer" exercising an option and not a unit or a factory exercising this option. Therefore the appellant would argue that while forgoing exemption in respect to the Unit No. 1, the manufacturer was under a statutory obligation to pay duty at normal rate, for unit No. 2 as well, as it cannot claim exemption for Unit No. 2, as its other unit has kept itself out of the exemption. The appellant has further argued that reliance by the Tribunal on its earlier decisions are clearly misplaced as the facts particularly in the case of Larger Bench of Tribunal in the case of Intertec v. CCE, Ghaziabad, reported in 2001 (127) E.L.T. 609 (Tri.-LB) , were entirely different.

14. Learned counsel for the respondent Shri Pullack Raj Mullick on the other hand while defending the decision of the Tribunal as well as the Commissioner (Appeals) submits that fiscal laws though to be strictly interpreted, yet where two meanings are possible, the meaning which is beneficial for the assessee has to be adopted. There is nothing in the Notification No. 1/93-C.E. as well in the amended Notification No. 59/94-C.E. (the amendments), which debars one unit of a company to exercise option and another to keep out of it, the learned counsel would submit. These exemptions are for the benefit of small scale industries and, therefore, an interpretation should not come which should be detrimental to the small scale industries. He has taken us to almost every part of the notification including the amendment and has read out such provisions of the notification and thereafter has concluded that there is no bar in the notification

which prohibits the respondent from exercising an option as it has chosen to do and the demand of the Revenue is totally unjustified and as it has been upheld by the Commissioner (Appeals) as well as CESTAT.

15. If we go through the Notification No. 1/93-C.E. and the amended Notification No. 59/94-C.E., the purpose of these Notifications are obviously to benefit the small scale industries. The limits to these exemptions, the checks and balances in the notifications are for the purposes that only the deserving small scale industries get the benefit out of the notification.

16. It is for this reason that if an aggregate value of the total clearance of a manufacturer exceeds rupees two crore in the preceding financial year, it cannot claim exemption under the notification. There are other similar provisions with the same goal in mind. The most important and in fact the decisive words in para 2 of the Notification No. 1 /93-C.E. is that only such clearances can get exemption where the "aggregate value of the clearances of the specific goods for home consumption" is of a certain value.

17. Para 2 of the Notification (No. 1/93-C.E.) speaks of "the aggregate value of clearances of the specified goods for home consumption in a financial year", which are "by a manufacturer from one or more factories", and should not exceed a particular amount (Rupees thirty lakh, twenty five lakh and ten lakh respectively under different stages of exemption), there is an emphasis on "manufacturer" and "aggregate value". In the notification the two crucial words are "manufacturer" and "aggregate value". In the case at hand, the manufacturer of both the units is one legal entity and secondly what has to be taken into account for the purposes of "exemption" is the ''aggregate value'' which would be the combined aggregate value of unit 1 and 2. That being the only interpretation possible.

18. It is a possibility that in a given case the "aggregate value" of two or more units may exceeds two crores and, therefore, the manufacturer in order to get exemption may split its claim! One unit claiming exemption and the other refraining from claiming this exemption, so that, it can get benefit under the other excise schemes, such as Modvat Credit, etc. The provision in the main Notification No. 1/93-C.E. as well as the amended Notification No. 59/94 have been placed in order to check this abuse. It is for this reason that we find that once the respondent had exercised to keep out of the exemption for its Sitapur unit, it cannot claim benefit of the notification for its Dehradun unit consequently the demand of the excise authorities is justified. We have no difficulty in accepting the legal proposition that fiscal laws have to be strictly interpreted. That is the settled manner of interpretation of fiscal statutes. Here in particular where the respondent claims is an "exemption". Now exemption clause being in nature of an exception created by law has to be strictly interpreted. It is quite another aspect that once the Court finds that the exemption is proper that a wider or a liberal interpretation can be made. We are, however, afraid that the exemption as claimed by the respondent cannot be granted to it in the first

place. The learned counsel for the respondent Sri P.R. Mullick relying upon the decision of the Hon''ble Apex Court in the case of Union of India and others Vs. M/s. Wood Papers Ltd. and another, AIR 1991 SC 2049 : (1991) 33 ECR 235 : (1990) 47 ELT 500 : (1991) 1 JT 151 : (1990) 4 SCC 256 : (1990) 2 SCR 659 : (1991) 83 STC 251 : (1990) 1 UJ 717 , would submit that an exemption clause should be liberally constructed and full play should be given to it by giving it a wider and liberal meaning. We have gone through the above cited judgment. The law laid down in the above judgment is in fact contrary to what is being canvassed before us. The question of strict as well as liberal interpretation is called for while determining cases under exemption. A different approach is needed, at different stages. Here it would be relevant to reproduce what has been said in the above judgment:--

"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 provision 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."

19. The appeal therefore succeeds. The Order No. 52/10-SM(BR), dated 15-12-2009 [2010 (261) E.L.T. 1019 (Tribunal)], passed by the Customs, Excise & Service Tax Appellate Tribunal, Principal Bench, West Block No. 2, R.K. Puram, New Delhi in the case of M/s. Janardhan Plywood Industries Ltd. 13, Gandhi Road, Dehradun is hereby set aside. The question of law framed by this Court while admitting the appeal is answered in negative, meaning thereby, that the manufacturer could not have availed the benefit of exemption under Para (1) of the Notification No. 1/93-C.E., dated 28-2-1993, since it had opted to full rate of duty in a financial year in relation to its other unit.

