
(1994) 07 SC CK 0090

In the Supreme Court Of India

Case No : Review Petition (Civil) No. 318 of 1994 in Civil Appeal No. 2024 of 1991

Jain Engineering Company

APPELLANT

Vs

Collector of Customs, Bombay

RESPONDENT

Date of Decision : 20-07-1994

Acts Referred:

Citation : (1994) 72 ELT 785 : (1994) 5 JT 79 : (1994) 3 SCALE 355 : (1994) 3 SCC 130 Supp

Hon'ble Judges : B.P. Jeevan Reddy, J;B. L. Hansaria, J

Bench : Division Bench

Final Decision : allowed

Judgement

B.L. Hansaria, J.—The appeal out of which this review petition arises was disposed of on February 2, 1994. The judgment of that date noted in its paragraph 2 that the appellant had been given the benefit of exemption under Notification No. 153-CUS/86 dated 1.3.86 which came to be amended by Notification No. 208-CUS dated 13.3.86, though the same as available under these notifications was initially denied. A statement has been made in the review petition that the benefit accruing pursuant to these notification had really not been granted to the appellant. Shri Dholakia appearing for the appellant contends that he had made no such submission as well. As to this submission, it may be observed that the notings in the minute book of both of us show that such statement had been made by Shri Dholakia. Be that as it may, as the appellant had claimed exemption under these notifications and it has been now submitted that the exemption has not not been granted, it has to be decided whether the appellant was entitled to the exemption under these notifications.

2. The exemption relates to payment of custom duty in respect of manufacturing of rod bushes and camshaft bushes which are part of combustion engines. For our purpose we may start with certain benefits given by Notification No. 281-CUS/76. As the appellant had not been granted benefit of exemption given by

this notification, he approached this Court in CA No. 335/87 and this Court by its judgment dated September 18, 1987 took the view that the appellant was entitled to exemption on the manufacturing of the aforesaid goods. Notification No. 281-CUS/76 came to be amended vide Notification No. 103-CUS/86 and the same held the field till 28.2.86. The appellant was given the benefit of the amended notification as well. Thereafter was issued Notification No. 153-CUS/86 on 1.3.86 which came to be amended by Notification No. 208-CUS dated 13.3.86. Finally came Notification No. 69-CUS/87 dated 1.3.87 which was issued after the Customs Tariff Act had been amended. In the appeal which was disposed of on February 2, 1994 we had dealt with the question as to whether the appellant is entitled to the exemption as visualised by the notification dated 1.3.87. Nothing further is required to be stated qua that notification. What is left for our determination is regarding the case of the appellant that he was entitled to the benefit of the exemption visualised by the aforesaid notification dated 1.3.86 as amended on 13.3.86.

3. Shri Dholakia contends that the benefit under the aforesaid notifications is almost automatic in view of this Court's judgment in CA No. 335/86 inasmuch as in the two notifications under consideration there is only a formal change in the purport of the Notification No. 281-CUS/76 - the same being that what was stated in the 1976 Notification in descriptive form is contained in the two notification in tabular form. The denial of the exemption visualised by two notifications under consideration by Collector of Custom is, according to Shri Dholakia, misconceived; indeed, arbitrary.

4. Let us see whether the aforesaid contention of Shri Dholakia merits acceptance. For this purpose we have to know what had been stated in the 1976 notification. For our purpose the following excerpts of that notification which at the relevant time was connected with heading No. 84.06 of the Customs Tariff Act 76 would be enough:

The Table

Sl. No.	Description	Rate of duty	1. ...	2. ...	3. ...	4. ...	5.
No. 2.	Internal combustion piston engines for locomotives and parts thereof excluding those which are interchangeable for use with motor vehicles other than these specified against Sl. No. 2.						

(Emphasis supplied)

5. This notification was amended vide Notification No. 103-CUS dated 28.2.86 by which time the headings number became 84.07, 84.08 and 84.09 about which mention has been made in the preamble of that notification, the relevant part of which read as below:

The Table

1. ...	2. ...	4. ...	5.
Internal combustion piston engines for locomotives and parts thereof excluding those which are interchangeable for use with motor vehicles			

other than those specified aga Sl. No. 2.

(Emphasis owes)

6. Then came Notification No. 153-CUS dated 1.3.86 which was amended by Notification 208-CUS dated 13.3.86, the relevant extract of which is as below:

The Table

Sl. No.	Heading No. or sub-heading	Description of goods	Rate No. of the First Schedule to the Customs Tariff Act, 1975.	1.	2.	3.	4.	...	...	...	28.	29.	84.07		
(a)	...	84.08	(b)	...	84.09	(c)	...	(d)	...	(e)	...	(f)	...	(g)	Internal combustion piston engines for locomotives excluding these which are interchangeable for use with motor vehicles other than those specified in (c) above. Parts of goods converted by (g) above

(Emphasis supplied)

7. The aforesaid clearly shows that what had earlier been in descriptive form assumed (sic)bular form. The language of the relevant part of the notifications under consideration being a pari materia with the 1976 notification and the two notifications having also included parts of the goods covered by (g), which had been included in the main body in notification No. 28I- CUS/76 and which was the basis of this Court's judgment in CA No. 335/86 in giving benefit of the exemption of the 1976 notification, the benefit of Notification 153-CUS dated 1.3.86 as amended by Notification 208-CUS dated 13.3.86 has also to be made available to the appellant and for the period these notifications held the field; and we order accordingly.

8. The review petition is, therefore, allowed with no order as to costs.