

(2018) 06 GAU CK 0001
In the Gauhati High Court
Case No : C.Ex.App. 1, 2, 3, 4 of 2017

M/S Tribeni Metalloys Pvt Ltd

APPELLANT

Vs

Commissioner Central Excise And Service Tax

RESPONDENT

Date of Decision : 01-06-2018

Acts Referred:

Central Excise Act, 1994 — Section 5A(1), 35G

Additional duties of Excise (Goods of special Importance) Act, 1957 — Section 3(3)

Citation : (2018) 06 GAU CK 0001

Hon'ble Judges : AJIT SINGH, CJ;ACHINTYA MALLA BUJOR BARUA, J

Bench : Division Bench

Advocate : S.C. Keyal, D. Saikia

Final Decision : Allowed

Judgement

AM Bujur Barua, J

1. Heard Mr. D. Saikia, learned Senior counsel for the appellant and Mr. S.C. Keyal, learned Assistant Solicitor General appearing on behalf of the respondent.

2. By an Office Memorandum No.EA/1/2/96-IPO of the Ministry of Industry of the Govt. of India an Industrial Policy for the North Eastern Region

was notified. The said policy amongst others also provided that the industrial activities would be free from income tax and excise duty for a period of

ten years from the commencement of production.

3. In furtherance thereof a notification No.32/99-CE dated 08.07.1999 was issued by the Central Government in exercise of the powers under Section

5A(1) of the Central Excise Act, 1994 read with Section 3(3) of the Additional duties of Excise (Goods of special Importance) Act, 1957 and Section

3(3) of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978.

4. Clause 4 of the notification of 08.07.1999 inter alia provided that the exemption contained in the notification shall apply to the units located in various locations specified in the list which is annexed to the said notification. It further provided that the exemption shall be for a period not exceeding ten years from the date of publication of the notification or from the date of commencement of commercial production, whichever is later.

Clause-4 of the notification dated 08.07.1999 is as under:-

4. The exemption contained in this notification shall apply of the sold units for a period of not exceeding ten years from the date of publication of this notification in the official gazette or from the date of commencement of commercial production whichever is later.

5. The notification of 08.07.1999 also contained a list of locations and the industrial units located within the said list of locations are entitled for the exemption from excise duty. Further the exemptions are for a period not exceeding ten years from the date on which the notification was published i.e. 08.07.1999 or in the event, the commercial production of a given industrial unit commenced subsequent to the date of the Office Memorandum, the period of ten years would be counted from the date of commercial production.

6. An amendment was brought in to the notification of 08.07.1999 by the notification No.5/2002-CE dated 12.02.2002 by which, it was provided that amendments were made to the notification dated 08.07.1999 to the extent that some more locations were added over and above the locations already specified therein. Apart from the addition of more locations, no amendment in any other form was brought in to the notification dated 08.07.1999.

7. In the resultant consequence, even after the amendment of 12.02.2002, the notification of 08.07.1999 continues to provide for the same provisions as it was provided earlier, with the only exception that such provisions would now be made applicable to some further locations. In other

words, the provision of Clause-4 of the notification of 08.07.1999 providing that the exemption of excise duty would be applicable from the date of the said notification i.e., 08.07.1999 would continue to remain as it is and such provisions would now be also applicable to the industrial units that may be located in the additional locations brought in by the amendment of 12.02.2002.

8. The appellant industrial unit admittedly started its commercial production from

18.12.1998. But the location of the industrial unit was not within any of the location specified in the notification dated 08.07.1999 and therefore, it did not have a claim for exemption from excise duty. But after the amendment by the notification of 12.02.2002, the location where the appellant industrial unit is located was also included and hence, it became entitled for such exemption.

9. Accordingly, an eligibility order dated 31.01.2003 was issued in favour of the appellant by which it was provided that the appellant is entitled to an exemption of excise duty by way of refund for a period not exceeding ten years with effect from 12.02.2002.

10. The appellant continued to receive the benefit of exemption upto 18.07.2009 but thereafter, the authorities by appropriate orders had refused the benefit. The stand of the authorities justifying the refusal to the exemption was that under the notification of 18.07.2009, the benefit is for a period of ten years from the date of the notification and hence, further exemption cannot be given after expiry of the period of ten years from the said notification. The Deputy Commissioner of Central Excise Guwahati by his orders rejected the claim of the appellant for exemption of excise duties for the periods subsequent to 08.07.2009.

11. The appellant assailed the said decision of the respondent authorities before the Commissioner of Appeals. The Commissioner of Appeals by the order dated 27.08.2013 had held that the claim of the appellant that they were granted an exemption for a period of 10(ten) years w.e.f., 12.02.2002 as per the eligibility order dated 31.01.2003 is without any legal basis and every monthly order of exemption is an independent order and there is no provision for an one-time exemption of 10(ten) years.

12. Being aggrieved, the appellant assailed the said decision of the Commissioner of Appeals before the Customs, Excise & Service Tax Appellate Tribunal, Eastern Zonal Bench at Kolkata (in short CESTAT). In the appeal, the eligibility order dated 31.01.2003, wherein, it is provided that they are entitled to the exemption for a period of ten years with effect from 12.02.2002 was referred and accordingly contended that in terms thereof, they are entitled to the exemption upto 12.02.2012.

13. By the judgment and order dated 31.08.2016 the CESTAT, Kolkata arrived at a conclusion that under clause-4 of the notification of 08.07.1999, the

period of ten years has to be calculated from the date of publication of the said notification or from the date of commencement of commercial

production, whichever is later and that there is no provision in the subsequent notification of 12.02.2002 that the period of ten years has to be counted

from the date of the said notification. The CESTAT, Kolkata accordingly, arrived at a conclusion that the rule of strict interpretation would apply in

interpreting the benefits granted by the exemption notification and in the absence of any such provision in the notification, the contention of the

appellant that the period of exemption should be counted from 12.02.2002 cannot be accepted.

14. With reference to the provision of the eligibility order dated 31.01.2003 that the exemption would be for a period of ten years with effect from

12.02.2002, the CESTAT, Kolkata referred to a decision of the Supreme Court in *Grasim Industries Ltd. Vs CCE Bhopal* [2011 (271) ELT 164 (SC)]

wherein, it was held that it is permissible for the competent authority to issue notice for recovery of any excise duty which was erroneously refunded

and accordingly concludes that the said ratio would squarely be applicable to the refunds sanction under the notification dated 08.07.1999. Upon such

conclusion the CESTAT, Kolkata upheld the order dated 27.08.2013 of the Commissioner Appeals, wherein, it was held that the eligibility order dated

31.01.2003 providing for exemption for a period of ten years from 12.02.2002 is without any basis.

15. The order of the CESTAT Kolkata dated 31.08.2016 has been assailed by the appellant in the present appeal under section 35G of the Central

Excise Act, 1994.

16. Mr. D. Saikia, learned senior counsel for the appellant has urged upon the ground that the notification of 08.07.1999 having provided for an

exemption from excise duty for a period of ten years, the appellants are accordingly entitled for the same and by the various orders of the authorities,

including the order of Commissioner Appeal and the CESTAT, Kolkata such entitlement of exemption for ten years cannot be reduced.

17. It is taken note of that the CESTAT, Kolkata in its order dated 31.08.2016 had arrived at a categorical conclusion that as per clause 4 of the

notification dated 08.07.1999, the period of ten years has to be calculated from the date of the said notification and that there is no provision that the

period of ten years has to commence from the date of any other subsequent notification.

18. When the provisions of clause-4 of the notification 08.07.1999 is examined, it is seen that the said clause specifically provides that the period of ten

years would commence from the date of publication of the said notification i.e. 08.07.1999. Further, by the notification of 12.02.2002 an amendment

was brought in to the notification of 08.07.1999 whereby the provisions of the said notification were made applicable to some more locations. Apart

from bringing in some more locations no further amendment was made to the notification of 08.07.1999. As a consequence the provision of clause 4

of the notification of 08.07.1999, even after the amendment of 12.02.2002, remains as it is. In other words, even after the amendment was brought in

by the notification of 12.02.2002, the provision of clause-4 of the notification of 08.07.1999 also remains as it is, and accordingly the benefit of

exemption shall be applicable to the industrial units located in the newly added locations also from 08.07.1999. It is to be noted that the amendment

notification of 12.02.2002, in contradistinction, does not provide that the provisions of the notification dated 08.07.1999 are also applicable to the

additional locations.

19. We are also in agreement with the conclusion of the CESTAT, Kolkata that the eligibility order dated 31.01.2003 providing that the exemption for

ten years w.e.f 12.02.2002 is erroneous.

20. In the resultant conclusion, we are of the view that under the notification of 08.07.1999, as made applicable to the appellant by the notification of

12.02.2002 upon their location being included, the appellant would be entitled to exemption for a period of ten years from 08.07.1999.

21. In this respect reference is made to the decision of the Supreme Court rendered in Union of India -vs- Wood Papers Ltd. {Manu/SC/0454/1991:

(1990) 4 SCC 256, wherein, it has been held as under:-

“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 objection 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.â??

22. In Principles of Statutory Interpretation by Justice G.P. Singh 14th edition in Page 104 it has been provided as follows:-

â??â??â??â??â??â??There can, however, be no doubt that exemptions made with a beneficent object e.g., to encourage increased production or to

give incentive to co-operative movement or for the purpose of developing urban or rural areas for public good, or for encouraging investment in new

machinery or plant or a new industrial unit or setting up an industry in the backward area in terms of the industrial policy, have to be liberally

construed. Similarly, beneficial notifications having their purpose as encouragement or promotion of certain activities should be liberally interpreted.

Therefore, when a provision is made permitting concessional rates of tax for the purpose of encouraging an industrial activity, the provision has to be

liberally construed. So if the object of an exemption notification is to encourage the use of indigenous rice bran oil and to discourage the use of edible

oils in soap manufacture, a narrow construction of the notification which defeats this object cannot be accepted and preference has to be given to a

wider construction which promotes the object. Similarly in an exemption notification issued with the object to encourage exports by granting exemption

from customs duty on materials that are needed for the manufacture of the resultant product, the words â??material required to be imported for the

purpose of manufacture of productsâ?? were construed to include not only materials which are actually used in the manufacture but also materials

which though not used in the manufacture are yet required in order to manufacture the resultant product. And an exemption notification granting

rebate in excise duty to induce the manufacturers of sugar to produce more in the then current sugar year was construed consistent with this object

and the words, "the quantity of sugar produced during the corresponding period" as used in the notification were construed to cover the case of

a factory which has not produced at all during the relevant corresponding period. An exemption provision cannot be denied full effect by a circuitous

process of interpretation, and liberal language used in a notification must be given due weight. So if the tax payer is within the plain terms of the

exemption notification, he cannot be denied the benefit calling in aid, any supposed intention, and the language of the notification has to be given effect

to.

23. In *Swadeshi Polytex Ltd. Vs. Collector of Central Excise* reported in (1990) 2 SCC 358 in paragraph 21, it has been held as under:

"But the strictness of the construction of exemption notification does not mean that the full effect to the exemption

notification should not be given by any circuitous process of interpretation. After all, exemption notifications are meant to be implemented and trade

notices in these matters clarify the stand of the Government for the trade."

24. In *Indian Farmers Fertiliser Co-operative Ltd., Vs. Collector of Central Excise*, reported in (1996) 5 SCC 488, it has been held as under:

"The Exemption Notification must be so construed as to give due weight to the liberal language it uses."

25. From the aforesaid provisions of law, the following propositions, amongst others, can be culled out:

(i). If there is a question as to whether a beneficiary comes within the purview of an exemption notification, then it being in the

nature of an exception has to be strictly construed, but once, it is established that the beneficiary is entitled to the benefit of exemption, then the

provisions of the exemption notification has to be given a wider and liberal construction.

(ii). When the exemptions are granted with the object to encourage industrial growth, or to encourage exports, the exemptions

provided in the exemption notification be given its full effect and such entitlements should not be constricted by attempting a narrower construction.

26. In view of the aforesaid propositions of law, the notifications dated

08.07.1999 and 12.02.2002 have to be interpreted in a manner that once a particular industrial unit is brought within the purview of the notification of 08.07.1999 by including through an amendment made by the notification of 12.02.2002, the exemption benefit provided by the notification of 08.07.1999 would be squarely applicable in respect of such industrial unit. The notification of 08.07.1999 having specifically provided that the exemptions would be available for a period of 10 years w.e.f., the date of the said notification, i.e., 08.07.1999, any industrial unit subsequently brought within the purview of the notification by virtue of any later amendment, would also be entitled to the benefit of exemption from 08.07.1999.

27. In the aforesaid context the contention sought to be raised by the respondent authorities that the appellant would be entitled to the benefit of exemption from the date of the notification of 12.02.2002, inasmuch as, only after the said notification the appellant is entitled for an exemption and that such exemption would come to an end on the expiry of 10(ten) years from the notification of 08.07.1999, would be unacceptable. The said contention would not only be contrary to the provisions of the notifications dated 08.07.1999 and 12.02.2002, but also would amount to giving a constricted interpretation to the provisions of the notifications, which would be impermissible in view of the aforesaid provisions of law.Â

28. In view of the above, the appellant would be entitled to the benefit of exemption from excise duties for a period of 10(ten) years w.e.f., 08.07.1999 and the orders of the Deputy Commissioner, Central Excise at Guwahati dated 24.01.2011, the Commissioner (Appeals) dated 27.08.2013 and the CESTAT dated 31.08.2016 in Appeal No.75248/2014 are, accordingly, set aside.

29. The respondent authorities would be required to do the needful to ensure that the appellant is given the benefit of exemption from the excise duty as indicated above, if necessary by adopting the procedure of refund, in the event, the duties have already been paid by the appellant.

30. The appeal stands allowed to the extent indicated above.

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