(2015) 06 CESTAT CK 0001

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Appeal No. 625 Of 2009

ONGC Ltd. Through ED-COED APPELLANT

Vs

CC, New Delhi RESPONDENT

Date of Decision : 03-06-2015

Acts Referred:
Customs Act, 1962 — Section 25(1)

Citation : (2015) 06 CESTAT CK 0001

Hon'ble Judges : Ashok Jindal, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : T.R. Rustogi, B.B. Sharma

Final Decision : Allowed

Judgement

S.

No.","Chapter

or

Heading",Description of goods,"Standard

rate","Additional

duty rate","Condition

No.

(1),(2),(3),(4),(5),(6)

necessary so to do in public interest. Such exemption can be granted either absolutely or subject to such conditions, as may be specified",,,,,

therein. Such conditions are required to be fulfilled before or after clearance as may be specified. Such exemption would be in relation to,,,,,

the goods of specified description from the whole or any part of duty or customs leviable thereon,,,,,

27. ONGC is a licensee for exploration of petroleum products. ONGC has specifically been mentioned at Serial No. 182 of the said,,,,,

notification. It is not in dispute that importation, if any, has been made in connection with petroleum operations to be undertaken under",,,,,

petroleum exploration licenses granted by the Government of India on nomination basis. The benefit of exemption notification would inter,,,,,

alia be available to the licensee if it is shown in terms of a certificate granted by the Directorate General of Hydrocarbons and the Ministry,,,,,

of Petroleum and Natural Gas that the imported goods are required for petroleum operation referred to in clause (a) of condition No. 34,,,,,

and under the licence referred to herein.,,,,,

28. The Directorate General of Hydrocarbons is under the Ministry of Petroleum and Natural Gas of the Government of India. The,,,,,

functions performed by it are public functions. The notification never contemplated that a public functionary, having regard to the",,,,,

importance of the subject matter and in particular when such importations are being made in public interest, would not dispose of the",,,,,

application for grant of essentiality certificate within a reasonable time so as to enable the importer to avail the benefit thereof. Applicants,,,,,

for grant of such certificates, having regard to their importance, should have been processed by the Directorate General of Hydrocarbons",,,,,

as expeditiously as possible but they did not choose to do so probably having regard to the fact that no time schedule therefor was,,,,,

prescribed. It is trite that when a public functionary is required to discharge its public functions within a time specified therefor, the same",,,,,

would be construed to be directory in nature. [See P. T. Rajan v. T.P.M. Sahir and Others - (2003) 8 sec 498 and Punjab State Electricity,,,,,

Board Ltd. v. Zora Singh and Others - (2005) 6 sec 776],,,,,

35. The essentiality certificate, thus, must be treated to be a proof of the fact that the importers have fulfilled the conditions enabling them to",,,,,

obtain the benefit under the exemption notification.,,,,,

36. The principles as regard construction of an exemption notification are no longer res integra; whereas the eligibility clause in relation to,,,,,

an exemption notification is given strict meaning wherefor the notification has to be interpreted in terms of its language, once an assessee",,,,,

satisfies the eligibility clause, the exemption clause therein may be construed liberally. An eligibility criteria, therefore, deserves a strict",,,,,

construction, although construction of a condition thereof may be given a liberal meaning.",,,,,

38. It is true that ordinarily, the golden rule of literal interpretation must be given effect to. But it is also well-settled that where literal",,,,,

interpretation gives rise to an anomaly of absurdity; the same should be avoided. [See Ashok Lanka and Another v. Rishi Dixit and Others -,,,,,

(2005) 5 sec 598]; Colgate Palmolive (India) Ltd. v. MRTP Commission and Others - (2003) 1 sec 129]"".",,,,,

9. We further find that a similar issue came up before the Hon'ble Apex Court in appellant's own case (supra) wherein the Hon'ble Apex Court,,,,,

observed as under :,,,,,

7. The matter came up before this Court at the instance of the Appellant. It filed an application for urging additional grounds inter alia",,,,,

relying on or on the basis of the said Essentiality Certificate granted in its favour on 26-3-2004. This Court, opining that grant of",,,,,

essentiality certificate should be treated to be a proof of the fact that the Appellants had fulfilled the conditions enabling them to obtain the,,,,,

benefits under the aforementioned exemption notification, remitted the matter to the Commissioner for consideration thereof afresh having",,,,,

regard to the similar directions issued by the Tribunal in the case of Tullow.,,,,,

14. It may be true that grant of the essentiality certificate was itself dependent upon the question as to whether the Appellant was possessed,,,,,

of a valid oil exploration licence or not. It is, however, equally true that right to renewal of a licence is a valuable right. [See D. Nataraja",,,,,

Mudaliar v. The State Transport Authority, Madras, AIR 1979 SC 114]The Appellant applied for grant of renewal of the said licence",,,,,

before its expiry. The said renewal has been granted with a retrospective effect. In law, thus, the Appellant had been holding a valid licence",,,,,

continuously. The factual events as noticed hereinbefore clearly show that the Appellant's application for grant of essentiality certificate by,,,,,

the Directorate General of Hydrocarbons was not entertained in absence of renewal of the licence. The application was returned only for,,,,, that purpose. The Appellant filed its application for grant of essentiality certificate within two days from the date of grant of the licence with,,,,,

retrospective effect and then thereafter sent several reminders. The conduct of the Appellant must, therefore, be judged from the factual",,,,,

matrix obtaining therein. We, therefore, are unable to agree with the opinion of the learned Commissioner that the Appellant made any",,,,,

misrepresentation before this Court or that the Directorate General of Hydrocarbons had shown any favour to it. Once it is held that the,,,,,

Ministry of Petroleum had renewed the licence and the Directorate General of Hydrocarbons had issued the essentiality certificate, the",,,,,

conditions precedent for obtaining exemption in terms of the exemption notification stood fully satisfied.,,,,,

15. This Court, times without number, has construed such exemption notifications in liberal manner. [See Commissioner of Customs",,,,,

(Imports), Mumbai v. Tullow India Operations ltd., (2005) 13 sec 789, [See Tata Iron & Steel Co. ltd. v. State of Jharkhand and Others,",,,,,

(2005) 4 SCC 272; Government of India and Ors. v. Indian Tobacco Association, (2005) 7 SCC 396 ;Commnr. of Central Excise, Raipur v.",,,,,

Hira Cement, JT 2006 (2) SC 369 and P.R. Prabhakar v. Commissioner of Income Tax, Coimbatore, 2006 (7) SCALE 191] If, thus, the",,,,,

Appellant was entitled to the same, it should not be denied the benefits thereof. It is directed accordingly.""",,,,,

and thereafter the Hon'ble Apex Court in both the cases allowed the benefit of notification.,,,,,

10. We find that the item imported by the appellant in this case is similar to the item imported in the case of Tullow India Operations Ltd. (supra) i.e.,,,,,

IT software and also observed that in this case the item imported by the appellant is squarely covered by item No. (1) of Schedule 12 attached as per,,,,,

Sr. No. 214 to the Notification No. 21/2002-Cus dated 1.3.2002. Further, the appellant has produced a certificate from duly authorised person of",,,,,

Directorate General of Hydro Carbons, in the Ministry of Petroleum and Natural Gas, Govt. of India to the effect that imported goods are required for",,,,,

petroleum operations. In these circumstances, we hold that the appellant has complied with the condition of Notification No. 21/2002-Cus. dated",,,,,

1.3.2002. Therefore, the appellant is entitled to avail the benefit of the said notification.",,,,,

11. Therefore, we do not find merit in the impugned order, the same is set aside. Appeal is allowed with consequential relief.",,,,,

(Pronounced in Court),,,,,