
(2014) 11 MAD CK 0468

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 2827 of 2006

Saravana Insulators Ltd.

APPELLANT

Vs

The Customs, Excise and Service Tax

RESPONDENT

Date of Decision : 20-11-2014

Acts Referred:

Citation : (2015) 321 ELT 111 : (2015) 35 GSTR 590

Hon'ble Judges : R. Sudhakar, J; R. Karupiah, J

Bench : Division Bench

Judgement

R. Sudhakar, J.

1. The assessee is the appellant and this civil miscellaneous appeal was admitted on the following substantial questions of law:-

""(1) In the facts and circumstances of the case, where it is a finding of fact and it has been admitted that the Ball Clay imported are used in the manufacture of Ceramic core that are captively consumed for the manufacture of Porcelain insulators by the appellants, whether the first respondent was correct in holding that the appellants are not entitled for the benefit of Notification 25/99 dated 28.2.1999 for the Ball Clay imported by the appellants on the ground that the appellant have not claimed that any ceramic core or substrate manufactured out of the imported Ball Clay was to be captively consumed in the manufacture of resistor?

(2) In the facts and circumstances of the case, whether the first respondent is correct in upholding the order of the adjudication authority who rejected the appellant's claim to register under the Customs (Import) of goods at concessional rate of duty for the manufacture of excisable goods) Rules, 1996, when the goods imported were indeed used in the manufacture of Ceramic cores?

(3) In the facts and circumstances of the case, whether the first respondent was correct in accepting the ground 1 & 4 on the grounds of appeal of the

department before the first respondent, as the submission made in the said grounds is beyond the scope of the Notification involved in the present case and introduced a new theory while interpreting the exemption notification?

(4) In the facts and circumstance, whether the first respondent was correct in not giving a liberal interpretation to the exemption notification, once it is found that the substantive condition of the notification has been satisfied?

(5) In the facts and circumstance, whether the first respondent was correct in setting aside the order of the first appellate authority, when the first appellate authority has relied upon the certificate issued by the Chartered Engineer and considered the admitted position of use of Ball Clay in the manufacture of ceramic core used in the insulators?

(6) In the facts and circumstance, where the adjudicating authority has allowed the claim of the appellants with regard to the use of Ball Clay if used in ceramic core and cleared as such, whether it is correct to reject the claim for registration for the same Ball Clay if used in ceramic core which are captively consumed in the manufacture of Porcelain insulator as there is no logic behind such finding of the adjudicating authority?"

2. The appellant-assessee vide their application dated 21.8.2003 requested for Central Excise Registration Certificate indicating that they want to manufacture "electric insulator". Accordingly, a certificate was issued. On 30.10.2003, again indicating to the department that they intend to import "ball clay" under concessional rate of duty under Serial No. 158 of Notification No. 25/99-Customs dated 28.2.99 as amended by Notification No. 26/02-Customs dated 1.3.2002 for the manufacture of various types of High Tension Porcelain Insulators, they requested for registration under the Customs (Import of goods at concessional rate of duty for manufacture of excisable goods) Rules, 1996. Since the import had already taken place, there was also a request to the Deputy Commissioner of Central Excise on 4.11.2003 stating that the application dated 21.8.2003 should be suitably modified to state that the appellant wanted to manufacture "ceramic cores, insulators and its allied products", contrary to the earlier claim that they wanted to manufacture "electric insulator of any material". The said letter reads as under:-

""Please refer to our application dated 21.8.2003 for registration to manufacture "Electric Insulator of any material"". Now we intend to manufacture ""Ceramic Cores, Insulators and its allied products"" all falling under Chapter Sub-heading No. 8546.00. Accordingly we request that the details of goods to be manufactured by us may be changed from ""Electric Insulator of any material"" to ""Ceramic Cores, Insulators and its allied products.""

3. For the purpose of registration, the original authority viz., the Deputy Commissioner of Central Excise, after considering the above letter dated 4.11.2003, came to the conclusion that the goods that were sought to be manufactured by the importer viz., porcelain insulator be otherwise called as

ceramic insulator, but the Notification provided for concessional rate of duty for import of ball clay to be used in the manufacture of ceramic cores. The specific finding of the original authority is that no material was available to show that ceramic core can be also called as ceramic or porcelain insulator. It was also held that ceramic / porcelain indicator is not known in the market / trade parlance as ceramic core. Since the porcelain insulator to be manufactured by the appellant is not known in the market as ceramic core, concessional rate of customs duty cannot be extended to ball clay imported vide Serial No. 158 of Notification No. 25/99-Customs dated 26.2.99 as amended. Accordingly, he passed the following order:-

""(i) I do hereby reject the application dated 30.10.2003 of the assessee seeking registration under the Customs (Import of goods at concessional rate of duty for the manufacture of excisable goods) Rules, 1996 for the purpose of import of ball clay for the manufacture of porcelain insulator.

(ii) The assessee is entitled for registration under the Customs (Import of goods at concessional rate of duty for the manufacture of excisable goods), Rules, 1996 for the purpose of import of ball clay for the manufacture of ceramic cores as requested by them in their letter dated 5.11.2003.""

In effect, while declining the registration application dated 30.10.2003 for import of ball clay for the manufacture of porcelain insulator, however, allowed the registration for import of ball clay for the manufacture of ceramic cores.

4. Aggrieved by that, an appeal was filed to the Commissioner of Central Excise (Appeals) and he allowed the appeal holding that the lower authority did not dispute the position that imported ball clay is used in the manufacture of ceramic cores, which ultimately becomes ceramic insulators by addition of metallic fitments. The reasoning of the appellate authority is that having allowed the registration for the purpose of import of ball clay for manufacture of ceramic cores, the other application should have been rejected as unnecessary. Nevertheless, the appellate authority went on to allow the appeal by holding that ceramic core is further captively consumed in the manufacture of ceramic insulators and therefore the appellant was entitled for registration for the manufacture of porcelain insulator. The Tribunal, on an appeal by the department, reversed the order of the appellate Commissioner by interpreting the Notification and came to the conclusion that the exemption Notification should be strictly construed, as held by the Supreme Court and High Courts in any number of cases. The said order is under challenge in this appeal.

5. Heard Mr.T.Ramesh, learned counsel for the appellant and Mr.T.S.Rajamohan, learned standing counsel for the second respondent and perused the materials available on record. Though the learned counsel for the appellant was at pains to enlighten this Court that "porcelain insulator" is nothing but "ceramic insulator" in which "ceramic core" is used to get the finished product, as it is purely a question of fact, we are not inclined to go into the said issue at this point of time.

6. Since the issue raised in this appeal primarily concerns with the Serial No. 158 of the Notification No. 25/99-Customs dated 28.2.99 as amended by Notification No. 26/02-Customs dated 1.3.2002, the said entry reads as under:-

7. While advertent to the first substantial question of law, we find that the order of the Tribunal is not on a misreading of the above Notification, as the Tribunal has rightly held that the registration obtained by the appellant was for the manufacture of "electric insulators" and not for the manufacture of "resistors" nor they claimed that "resistors" are the same as "insulators". It also held that to avail the benefit of concession under the Notification, the appellant should have claimed that the imported ball clay is to be used in the manufacture of "ceramic cores/substrates for resistors". Since the appellant had not claimed so, they are not entitled to the benefit of the above entry. In our view, the said findings of the Tribunal are perfectly in order, as the entries in the exemption Notification should be strictly construed. Moreover, the issue as to whether the entries in an exemption Notification are to be strictly construed or interpreted from the plain language thereof, has been time and again upheld by various decisions of the Apex Court. Referring to one of such decisions, the Apex Court in *Orient Traders Vs. Commercial Tax Officer, Tirupati*, has held as follows:-

""18. It is well established principle that the exemption notifications are to be construed strictly, reference may be made to *State of Jharkhand and Others Vs. Tata Cummins Ltd. and Another*, and *Kartar Rolling Mills Vs. Commissioner of Central Excise, New Delhi*. If the intention of the legislature is clear and unambiguous, then it is not open to the courts to add words in the exemption notification to extend the benefit to other items which do not find mention in the notification. In the present case, there is no ambiguity in the expression used in the G.O. The intention of the State Government is clear that only gold bullion and specie is entitled to the concessional rate of tax. Under the circumstances, the same cannot be extended to the silver as claimed by the assessee.""

In this case, when the Notification clearly provides the benefit of concessional duty only for manufacture of ceramic cores/substrates for resistors, which is not the claim of the appellant, we are not inclined to accept the case of the appellant that ceramic cores are nothing but porcelain insulators. As has been rightly held by the Apex Court, we are not inclined to read something more into the Notification, which are not found therein. Accordingly, we answer the first substantial question of law in favour of the department and against the assessee.

8. Coming to the second substantial question of law, we find that the Tribunal has rightly upheld the order of the original authority for rejecting the application of the appellant for manufacture of porcelain insulator, inasmuch as the porcelain insulator to be manufactured by the appellant is not known in the market / trade parlance as "ceramic core" and therefore the concessional rate of customs duty cannot be extended to the imported ball clay for the manufacture of porcelain insulator. Accordingly, the second substantial question of law is answered in favour of the department and against the assessee.

9. Moving to the third substantial question of law, the Tribunal has taken into consideration grounds 1 & 4 of the grounds of appeal raised by the department, while interpreting the exemption Notification, for setting aside the order of the appellate authority. For better clarity, we extract the above grounds relied upon by the Tribunal as follows:-

""(1) The appellant herein respectfully submit that the concessions provided for Ball Clay under Notification No. 25/99-Cus dt 28.2.99 is only for Ball Clay used in the manufacture of Ceramic Cores/Substrate for Resistors. The words "for resistors" in column 4 against Sl.No. 158 of the said Notification qualifies the "slashed" words "ceramic cores/substate" thereby making it clear that both ceramic core and the substrate should be used ultimately for resistors. Similarly in Sl No 3 of the said Notification the Description of the finished goods under Col 4 is given as ""Glass Shells/parts for colour picture tubes" implying that both glass shells / parts should be used for manufacture of colour picture tubes as both are used in the manufacture of colour picture tubes. This being the fact, the Ld. Commissioner (Appeals) has erred in holding that ceramic core used for the ultimate manufacture of porcelain/ceramic insulators is also eligible for the benefit of the said concessional Notification. The entire Notification No. 25/99 dt 28.2.99 is only intended for the electronic industry as could be seen from the ""Description of finished goods"" under column 4 thereunder including printed circuit board, Television Picture Tubes, Solar Cells, Semiconductor devices, etc. Therefore the imported Ball Clay to be eligible for the said concession has necessarily to be used in the manufacture of ceramic cores or substrate meant for Resistors and as such the appellant could not be extended the benefit of the notification in as much as they are manufacturing ceramic cores for insulators which is totally different from Resistors.

(4). The reliance placed on the decision of the Hon"ble Supreme Court in the case of M/s. Gujarat State Fertilizers Co. Vs. Collector of Central Excise, by the Commissioner (Appeals) in favour of his conclusion is counter- productive in as much as the decision of the Hon"ble Supreme Court holds that the express language of the exemption Notification has to be given due effect and in this case the impugned Notification clearly states that concession is available for imported Ball Clay only if it is used in the manufacture of ceramic core/substrate for resistors. Therefore the Commissioner (Appeals) should have relied on the decision to dismiss the appeal as well as to set aside the Order-in-Original.""

The department resisted the claim of the appellant-assessee by contending before the Tribunal that the benefit of the Notification can be extended to the appellant only if ball clay is used in the manufacture of ceramic cores or substrates for resistors and not for insulators which is totally a different commodity. In the same way, the decision in Gujarat State Fertilisers case (supra) , which was relied upon by the appellate Commissioner in favour of the appellant importer, was sought to be distinguished by contending that the exemption Notification should be strictly interpreted. We find that the Tribunal

has rightly interpreted the entries of the Notification to the facts of this case and sustained the case of the department. Accordingly, we answer the third substantial question of law in favour of the department and against the assessee.

10. As regards the fourth substantial question of law, we find that there is no scope for the Tribunal to give a liberal interpretation to the exemption Notification in the light of the various decisions of the Supreme Court on this issue. Therefore, we answer the same in favour of the department and against the assessee.

11. Coming to the fifth substantial question of law, on the facts of this case, we could see that the finding of the appellate Commissioner has no relevance to the issue, because the original authority has not granted the benefit of registration for import of ball clay for the manufacture of ceramic cores used in the insulators. If the appellant manufactures ceramic cores, there can be no difficulty in granting the exemption. But what the appellant, in their letter dated 30.10.2003, requested was for import of ball clay for the manufacture of various types of high tension porcelain insulators, which cannot be allowed under the Notification. Therefore the relief was rightly denied by the original authority. However, the first appellate authority, on a misreading of the Notification, relying upon the certificate issued by the Chartered Engineer, wrongly set aside the order of the original authority. In our view, the said error has been rightly corrected by the Tribunal on the facts of this case. Hence, the fifth substantial question of law is also answered in favour of the department and against the assessee.

12. Coming to the last substantial question of law, it appears to us that the said question is totally illogical, because if the import of ball clay is used in ceramic core/substrate for resistors, the appellant would be entitled to get the benefit of the Notification and in that case, there is no need to manufacture porcelain insulator. But the appellant is trying to confuse the issue by stating that ceramic core is being captively consumed in the manufacture of porcelain insulator and therefore the import of ball clay should be allowed. The said claim of the appellant cannot be accepted for the reasoning given by the Tribunal. Accordingly, the last substantial question of law is also answered in favour of the department and against the assessee.

13. For all the aforesaid reasons, we find no error or infirmity in the order of the Tribunal. Accordingly, the civil miscellaneous appeal is dismissed. Consequently, M.P.No. 1 of 2006 is also dismissed. No costs.