

(2014) 08 RAJ CK 0028

In the Rajasthan High Court

Case No : DB Civil MiscWrit Petition No. 16942/2012

Vanasthali Textiles Industries Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-08-2014

Acts Referred:

Additional Duties of Excise (Goods of Special Importance) Act, 1957 — Section 3 —
Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 - Section 3 —
Central Excises and Salt Act, 1944 - Section 3, 35EE, 5A, 5A(1), 5A(i) — Income Tax
Act, 1922 - Section 24(2) — Income Tax Act, 1961 - Section 10

Citation : (2015) 321 ELT 89

Hon'ble Judges : Ajay Rastogi, J;J.K. Ranka, J.

Bench : Division Bench

Advocate : Gulab Chand Meena, OIC/Superintendent-Central Excise, for the Respondent

Judgement

J.K. Ranka, J.?This writ petition is directed against the order passed by the Joint Secretary to the Government of India, who, as a revisional authority, reversed the finding of the Commissioner (Appeals) in the case of the petitioner herein.

2. The brief facts, emerging on the face of record and gathered on the basis of arguments advanced by the Officer Incharge, appearing on behalf of respondents, are that the petitioner is a 100% export oriented unit (for short "EOU") and had been exporting 100% Cotton Teri Towel and had filed rebate claims against the said export which was initially sanctioned by the original authority. Against the sanction order of the original authority an appeal was preferred by the respondent-department before the Commissioner (Appeals) on the ground, amongst others, that the petitioner, being a 100% EOU, was not required to export the goods on payment of duty in terms of absolute exemption provided under the notification No. 24/2003-CE dt. 31/03/2003 and hence, the petitioner is not liable for rebate claims. However, the Commissioner (Appeals) also upheld the order passed by the original adjudicating authority and rejected the appeal of the respondent-department. Subsequently, a revision petition was

filed before the Central Government u/s. 35EE of the Central Excise Act, 1944 (for short, the "Act of 1944"), inter-alia, objecting to the findings of the Commissioner (Appeals) and it was stated before the revisional authority that the exemption has not been granted absolutely and therefore, it was not mandatory for the assessee to avail the benefit of notification No. 24/2003-CE dated. 31/03/2003 . It was further submitted that from the plain reading of the aforesaid notification it is clear that no duty is chargeable on the goods manufactured and cleared from the EOU for export. The duty is chargeable only if the goods cleared to DTA. It was further submitted before the said authority that sub-sec. (1A) has been inserted in Sec. 5A of the Act of 1944 on 13/05/2005 which stipulates that for the removal of doubts, it is hereby declared that where an exemption under sub-sec. (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods and since the appellant was not debonded till 14/02/2008, therefore, any any export made by them prior to this date would be deemed to have been made under the 100% EOU status and not that as DTA limit.

3. Before the revisional authority, the petitioner herein supported the order in appeal so also the order passed by the adjudicating authority and it was contended that the order, being legal and proper, deserves to be upheld. The Joint Commissioner, as a revisional authority, after elaborate discussion, came to the conclusion that since the petitioner being 100% EOU till 14/02/2008, was not required to pay any duty in terms of the absolute exemption provided under notification No. 24/2003-CE and hence the rebate on such duty is not admissible and accordingly accepted the appeal of the respondent herein which is now assailed by the petitioner before us.

4. None appeared on behalf of the petitioner.

5. After hearing the submission of the Officer Incharge, appearing on behalf of the respondent-department, no error or infirmity has been noticed by us in the order impugned which was passed by the revisional authority. It would be fruitful to reproduce the notification No. 24/2003-CE as under:--

"In exercise of the power conferred by Sub-section (1) of section 5A of Central Excise Act, 1944, (1 of 1944), read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and sub-section (3) of section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby;

(a) Exempts all excisable goods produced or manufactured in an export oriented undertaking from whole of duty of excise leviable thereon under section 3 of Central Excise Act, 1944 (1 of 1944) and additional duty of excise leviable thereon under section 3 of additional Duty of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and additional duty of excise leviable

thereon under section 3 of additional Duty of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);

Provided that the exemption contained in this Notification in respect of duty of excise leviable under section 3 of said Central Excise Act shall not apply to such goods if brought to any other place in India."

6. It would be also fruitful to quote sub-section (1A) of Section 5A of the Act of 1944, which reads ad-infra:--

"(1A) For the removal of doubts, it is hereby declared that where an exemption under Sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely the manufacturer of such excisable goods shall not pay the duty of excise on such goods."

7. In view of the aforesaid notification No. 24/2003-CE dt. 31/03/2003 and Sec. 5A(i) of the Act of 1944, the exempted goods manufactured by 100% EOU and cleared from export from whole of duty unconditionally. Therefore, in view of the provisions of sub-sec. (1A) of Sec. 5A, the petitioner/manufacturer was not liable to pay any duty. In our view, there is no condition for availing exemption from payment of duty of goods cleared for exports. The 100% EOU has to clear all the goods manufactured by them for exports as per the EOU scheme. Such units can clear the goods in DTA with prior permission of the Development Commissioner and since no prior permission of Commissioner was sought, therefore, the revisional authority has correctly come to this conclusion. Since there is no condition in the notification for availing exemption of goods manufactured by 100% EOU and cleared for export, the provision of sub-sec. (1A) of Sec. 5A(1), are applicable and no duty was required to be paid on such exported goods.

8. Accordingly, in our view, the rebate claimed is not admissible in terms of Rule 18 of the Central Excise Rules, 2002 read with notification No. 19/2004 -CE(NT) dated 06/09/2004.

9. The Hon"ble Apex Court in the case of I.T.C. Ltd. Vs. Commissioner of Central Excise, New Delhi and Another, , defining the plain and simple meaning of the statute in this regard, observed in Para No. 23, 24 & 27 as under:--

"23. Presumably the phrase "badly drafted" was used to mean that the language of the Entry was ambiguous. In case of such ambiguity "close reasoning" will be employed - but without stretching the language to arrive at the only reasonable construction. These decisions exemplify the general rule of statutory construction that words have to be construed strictly according to their ordinary and natural meaning, particularly when the statute is a fiscal one irrespective of the object with which the provision was introduced. Of course if there is ambiguity in the statutory language, reference may be made to the legislative intent to resolve the ambiguity. But if the statutory language is unambiguous then that must be given effect to. The legislature is deemed to intend and mean what it says. The need for interpretation arises only when the words used in the statute are, on

their own terms ambivalent and do not manifest the intention of the legislature Keshavji Ravji and Co. etc., etc. Vs. Commissioner of Income Tax, .

24. It was in this manner that Section 10 of the Income Tax Act, 1961 was construed in M/s. Oxford University Press etc. Vs. Commissioner of Income Tax, . Section 10 of the Income Tax Act 1961 provides for the exclusion of income of a University or other educational institution constituted solely for educational purposes and not for purposes of profit. The view of the majority was that the section plainly provided that the exemption was available only to institutions established solely for educational purposes and not for commercial activities. The plain meaning was accepted not only on the basis that a provision for exemption from tax is a fiscal statute and a fiscal statute has to be strictly construed, but also in view of the legislative object as manifest from the provision.

27. The second exception is: If two constructions are possible and a strict construction would lead to an absurd result then the construction which is in keeping with the object of the statutory provision or in keeping with equity could be accepted. This was the view expressed in Commissioner of Income Tax, Bangalore Vs. J.H. Gotla, Yadagiri, while interpreting section 24(2) of the Income Tax Act, 1922: (SCC p.360, para 47).

"[If strict literal construction leads to an absurd result i.e. result not intended to be subserved by the object of the legislation found in the manner indicated before, and if another construction is possible apart from strict literal construction then that construction should be preferred to the strict literal construction. Though equity and taxation are often strangers, attempts should be made that these do not mean always so and if a construction results in equity rather than in injustice; then such construction should be preferred to the literal construction."

10. The aforesaid view was also supported by the judgments of the Hon"ble Apex Court in the case of Commissioner of Central Excise Vs. M.P.V. and Engg. Industries, ; Paper Products Ltd. Vs. Commissioner of Central Excise, .

11. We may also observe that a circular/letter F. No. 209/26/09-Cx-6 dt. 23/04/2010 came to be issued by the CBEC, para 2 of which is quoted ad-infra:--

"The matter has been examined, Notification No. 24/2003-CE dated 13.3.2003 provides absolute exemption to the goods manufactured by EOU. Therefore, in terms of Section 5A(1) of the Central Excise Act, 1944, EOUs do not have an option to pay duty and thereafter claim rebate of duty paid."

12. From perusal of the above, it clarifies the situation that the EOU did not have an option to pay duty and thereafter claim rebate of duty paid. The circular has in our view been correctly interpreted by the revisional authority. In view of what we have observed herein above, we do not find force in the instant writ petition and in our view the order of the Revisional Authority is correct and we do not find any adversity, infirmity or perversity in the order impugned so as call for

interference by this Court.

13. Consequently, the writ petition, being devoid of merit, stands dismissed.