

Tisco Limited Vs. Commissioner of Central Excise

Tisco Limited Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/18022

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-06-2000

Reported in : (2000)(118)ELT104TriDel

Appellant : Tisco Limited

Respondent : Commissioner of Central Excise

Judgement :

1. Notification No. 281/86-C.E., dated 24-4-1986 granted exemption from central excise duty in respect of goods manufactured in a workshop within a factory. The scope and ambit of this notification is the subject-matter in these appeals. These appeals have come before this Larger Bench on reference from Division Benches on account of differences of opinion. We read the said notification for convenience of discussion :- "Exemption to all excisable goods produced and used within the same factory or other factory of same manufacturer for repairs or maintenance of machinery. - In exercise of the powers conferred by Sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts all excisable goods manufactured in a workshop within a factory and intended for use in the said factory or in any other factory of the same manufacturer, for repairs or maintenance of machinery installed therein, from the whole of the duty of excise leviable thereon which is specified in the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986): Provided that where such use is in a factory of a manufacturer, different from his factory where the goods have been manufactured, the exemption contained in this notification shall be allowable subject to the observance of the

procedure set out in Chapter X of the Central Excise Rules, 1944." 2. It is clear from the notification that the exemption is in respect of goods manufactured "in a workshop within a factory" and intended for use in the said factory or in any other factory of the same manufacturer for repairs or maintenance of machinery installed therein.

Brief facts in the case of the appellants may be stated in order to appreciate whether the appellants meet these requirements.

2.1 Appellant, M/s. The Tata Iron & Steel Company Limited (TISCO) in Appeal No. E/2968/88-B is a registered company with its headquarters at Mumbai. It has a factory at Jamshedpur in Bihar which manufactures iron and steel products. It has another factory at Kharagpur in West Bengal which manufactures bearings. Iron and steel and bearings are two divisions of TISCO. Some of the bearings manufactured at Kharagpur get used in the repairs or maintenance of machinery installed in other factories of TISCO. The claim is that the bearings so used are exempt under Notification No. 281/86.

2.2 The appellant, M/s. ICL Foundries Ltd. in E/R-749 & 750/95-Mad is a manufacturer of rough machine cast articles of iron and steel from their factory at Nandambakkam in Tamil Nadu. They send part of such rough castings manufactured by them to the cement factories of M/s.

India Cements Ltd. who are stated to be a sister company of theirs. The rough castings received in M/s. India Cements Ltd. are stated to be used in the repairs and maintenance of the machinery installed in their cement factory. The appellants claim exemption for the rough castings under Notification No. 281/86.

2.3 Thus, the appellants have no case that the goods on which exemption is claimed by them are separately produced in a workshop within a factory. They have also no case that any portion of the goods manufactured by them in the factories where manufacturing process is undertaken go to the repair of any machinery installed there. The produces are used only in the repair of the machinery installed in other factories belonging to them.

3. The claim of both the appellants is on the ground that in the absence of any definition of 'workshop' in the notification, the ordinary meaning of workshop should be applied. Reliance has been placed on the definition of 'factory' in Section 2(e) of the Central Excise Act and the meaning given to the word 'workshop' in various dictionaries. It has been submitted that since there could be no restriction placed on the meaning of 'workshop' based on size etc., it has to be taken to mean co-extensive with factory. It was pointed out by the learned counsel representing TISCO that this position has been accepted by - the CEGAT in its decision in the case of Indian Iron & Steel Co.Ltd. v. C. C. E. reported in 1990 (46) E.L.T. 409 (T). It has also been submitted that the notification has exempted "all goods manufactured in a workshop". Further, the exemption is only subject to one requirement that the goods manufactured are intended for use in the said factory or in any other factory of the same manufacturer for repairs or maintenance of machinery installed therein. Therefore, such of the production in the factory as is intended for maintenance/repair remains exempt and the remaining production in the factory only is subject to duty. It has also been submitted that the proviso to the notification removes any doubt about the eligibility of the goods as it mentions that "where such use is in a factory of a manufacturer, different from his factory where the goods have been manufactured, the exemption is subject to the observance of Chapter X procedure". It was emphasised during hearing by the learned counsel representing TISCO that it is significant that the proviso refers to "where such use is in a factory...different from his factory where the goods have been manufactured". The learned counsel submits that the word used in the proviso is not where such use is in a factory different from the workshop where the goods have been manufactured. He submitted that if the intention was to limit the exemption to manufacture in a 'workshop', the proviso would not have used the word 'factory'.

According to the learned counsel, the proviso thus makes it clear that the manufacture of the goods claimed for exemption need not be in a separate workshop. Learned counsel also submitted that the Tribunal had always interpreted the notification as to include production within the entire factory. The learned counsel, in this context, referred to the decision of the Tribunal in the cases Indian Iron & Steel Co. Ltd. v.C. C.(T) and Steel Authority of India Ltd. v. C.

C. E., Raipur 3.1 Learned counsel for M/s. ICL Foundries Ltd. submitted that the notification's purpose was to grant exemption to all goods manufactured in a workshop of a factory and used in the same factory or another factory of the appellants for repairs or maintenance. He submitted that the notification should be interpreted so as not to defeat this purpose. He also submitted that the Tribunal has already held in its decision in the case of Indian Iron and Steel Co. Ltd. reported in 1990 (46) E.L.T. 409 (T) that the size of a workshop is immaterial and therefore, the term 'workshop' used in the notification does not mean a smaller place. He submitted that in the absence of a definition of 'workshop' in the notification itself, the entire factory should be taken to mean the 'workshop' and the production in the factory as production in the workshop. He submitted that this is particularly necessary since the notification exempts "all the goods". He also submitted that no special meaning is to be attributed to the words "workshop within a factory" so as to restrict the scope of the exemption and to insist that the workshop should be a separate entity located within a factory. He submitted that the notification's purpose will be served only when all the goods manufactured in a factory are given the exemption provided they are intended for use in the factory of production or in any other factory of the same manufacturer for repairs or maintenance of machinery installed in the said factory or factories. The purport of the exemption is to exempt goods used for repair or maintenance in the factory of production and the insistence that the production should be in a separately located workshop within the factory would go against this purpose and for that reason, such an interpretation is to be avoided. Viewed from this point of view, the words 'within a factory' would appear to be of no significance and is only a surplusage.

3.2. The learned CDR submitted that there is a clearly understood distinction between 'factory' and 'workshop' and the Revenue was, therefore, right in holding that manufacture in the factory cannot be equated with manufacture "in a workshop within a factory. He submitted that the appellants were using goods manufactured in one factory for repair of goods in another factory and granting exemption to such goods would be going well beyond the scope of the exemption notification. The exemption is in respect of all goods manufactured in a workshop.

Therefore, the goods eligible for exemption are the separate production of workshop and not the commercial produce of the factory. Assorted goods come to be produced in non-commercial quantities in workshops for use in the repair and maintenance of machinery installed in the factory. The Notification No. 281/86 exempts such goods and not the goods mass/commercially produced in the factory. According to him, there is no ambiguity regarding the scope of the notification. He also submitted that even if the wording of the notification is amenable to interpretation so as to cover production in a factory, and not merely the production in the factory's workshop, the narrower interpretation limiting the exemption to production in the factory's workshop is required to be adopted as exemptions are to be construed strictly and ambiguity resolved in favour of the Revenue. He relied on the decision of the Supreme Court in *Novopan India Ltd. v. Collector of C. Ex. and Customs, Hyderabad* reported in 1994 (73) E.L.T. 769 (S.C.) in support of this contention. He referred in particular to the following observation of the Supreme Court in paragraph 18 :- "18. We are, however, of the opinion that, on principle, the decision of this Court in *Mangalore Chemicals* - and in *Union of India v. Wood Papers* referred to therein represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go the State. This is for the reason explained in *Mangalore Chemicals* and other decisions, viz., each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in *Hansraj Gordhandas v. H.H. Dave* 1969 (2) S.C.R. 253 that such a Notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e. by the plain terms of the exemption." 4. The

impugned order denied the exemption to TISCO on the ground that treating the production in the factory as the production eligible for the exemption would render the expression 'in workshop' appearing in the notification redundant and such an interpretation would be contrary to the settled point of interpretation of law that the wordings of law should not be interpreted in a manner which would make certain express provisions redundant or superfluous. The Collector has held that the notification cannot be interpreted ignoring the relevance of the expression 'workshop'. The order also observes that it is a known fact that in a number of cases, a manufacturer has a workshop where some items exclusively required for maintenance purposes are produced/manufactured. By virtue of the present notification, the Central Government has exempted from the purview of central excise levy, such items manufactured in a factory but captively used for the purpose of maintenance of machine/machinery. The order also notes that it is not the appellants' case that the type of bearings required by them for repair/maintenance are different from what is sold by them to their customers and that the bearings required for maintenance or repairs are manufactured separately in a workshop for captive consumption.

4.1 In the case of ICL Foundries Ltd., the order-in-original denied the benefit of exemption notification because, according to the assessee themselves, they did not possess a separate workshop for the manufacture of goods for use in repair and maintenance. The claim was in respect of rough castings manufactured in the factory. The Assistant Collector held that the intention of the notification clearly is that goods should be manufactured separately and not that the goods should be manufactured in the normal course in the factory. In the impugned order-in-appeal, the Collector (Appeals) has observed that under Notification No. 281/86, exemption is to goods manufactured in a workshop within a factory. The notification clearly makes a distinction between the terms 'workshop' and 'factory' by stating that excisable goods manufactured in a workshop within a factory and intended for use in the said factory or in any other factory of the same manufacturer are exempted. According to the judicial pronouncements, the wordings used in a notification will have to be strictly interpreted so as to give a cogent meaning to the notification, and further, so as not to render any wordings as superfluous or redundant. Viewed from these parameters, it is clear that

workshop should be a different place within the factory premises where such excisable goods claiming the benefit of exemption are manufactured. The CEGAT's decision only held that the notification does not define a 'workshop' and that the Revenue cannot give a finding that 'workshop' refers to a smaller place called a tool room. This does not necessarily mean that the requirement of a separate place known as 'workshop' within a factory can be dispensed with. In the present case, the appellants are manufacturing castings in a different workshop totally known as the foundry but, as contemplated in the notification, there is no separate workshop within the factory of production. Further, it has also not been explained as to how these castings can be said to be used for repairs and maintenance of the machinery installed in the appellants' premises.

5. We have perused the records and have considered the submissions made by both the sides. The issue for decision is what is the effect of the words "manufactured in a workshop within a factory" occurring in the notification. The appellants contend that in the absence of definition of 'workshop' in the exemption notification, the production in the entire factory should be treated as the manufacture contemplated in the notification and that the definition of the word 'factory' in Central Excise in Section 2(e) of the Central Excise Act is an extended one, as to cover premises including the precincts thereof. In view of this definition of 'factory' in the Central Excise Act and the dictionary meaning of the word 'workshop', the term 'workshop' used in the notification should be taken as extending to the whole factory and co-terminus with 'factory' itself. Further, the intention of the notification is to grant exemption to goods produced in a factory of a manufacturer provided they are intended for use in maintenance or repair in the factories of the manufacturer. Therefore, the term 'workshop' should be taken as to include the entire factory and if necessary, the words "in a workshop" may be treated as surplusage. As against this contention of the appellants, the Revenue authorities have held that the notification is clear that the exemption is only in respect of production in a workshop within a factory. Therefore, if the production is not carried out separately in a workshop situated within the factory, the exemption would not be available. The Collectors have also held that it is not permissible to treat certain words in a notification as surplus. The words used in a notification will have to be strictly interpreted so as to give a cogent meaning to a notification; so

as not to render any words as superfluous or redundant. The orders have also observed that in the case of the present appellants, exemption claim was not in respect of goods produced in workshops within the factories. The goods were only part of the general produce of the factories. Therefore, on facts as well as on a correct interpretation of the notification, the appellants have no claim to the exemption under the notification. The learned CDR has also relied on the decision of the Supreme Court in the case of Novopan India Ltd. (supra) that the provisions of an exemption notification should be construed strictly at the stage of determination whether the assessee falls within its terms or not and in case of doubt or ambiguity, benefit of it must go to the State.

6. The settled rule of legal construction is to presume the Legislature to have meant what they have actually expressed. The intention of the Parliament must be deduced from the language used. (Maxwell on Interpretation of Statutes). Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise. In the instant case, the notification clearly states that the exemption is to goods manufactured "in a workshop within a factory".

The intention is clear and unambiguous from these words. The exemption shall be available only to production within a workshop, that too, situated within a factory. If the production is not carried out in a workshop or the workshop is not situated within a factory, there shall not be any exemption under this notification. As against this, the appellants are seeking to read the notification treating certain words as having no effect or meaning, as a mere, surplusage. It is settled principle that a construction which would leave without effect any part of the language of the Statute will normally be rejected. Such an interpretation is also not warranted in the present case as there is no ambiguity in the meaning or intention emerging from the language of the notification. If the notification is read treating some words as surplus, the result would be to hold that exemption is available to all goods manufactured in a factory. A vastly expanded meaning, broadening the scope of the exemption. This is to almost re-write the notification according to one's own purposes ignoring the intention of the legislature. If the legislature meant to grant exemption on an extended scale so as to include all goods manufactured in a factory provided they are intended for maintenance or repair it would have stated

so in plain terms by omitting the words which the appellants now submit to be surplus. This is a course which interpreting authorities should avoid.

Further, this is not a case where intention is required to be ascertained through interpretation. Adherence to the ordinary meaning of the words used in Notification No. 281/86 and to the grammatical construction of those words do not lead to any manifest absurdity which would render the notification a futility. The intention is clear from the language of the notification itself. The Notification, as it is worded, grants exemption to a class of goods. That class would be, eligible for the exemption when the notification is construed treating all the words in the notification to be having effect. Thus, the exemption under Notification No. 281 /86 is only in respect of goods separately produced in a workshop within a factory for repair/maintenance. Goods which are the commercial/mass production of the factory, when used for repair/maintenance shall not be eligible for the exemption.

7. There was nothing in the facts of present cases also to allow the benefit of the exemption to the appellants. There was no claim by either of the appellants that there were workshops in the factories or that the goods in respect of which exemption was sought were manufactured in such workshops. Therefore, the appellants' cases do not come within the eligibility criterion of the notification.

8. Reliance has been placed by the appellant on the decisions of CEGAT in the case of Indian Iron & Steel Co. Ltd. (supra) and Steel Authority of India Ltd. (supra). We find no warrant in these decisions to extend the exemption under Notification No. 281/86 to all the manufacture from a factory by treating some of the words in the notification as surplus.

In both the cases, the assessee had contended that they had workshops located within the factory and parts of rolling mills, parts of cranes etc. were being produced for use in the repair and maintenance of the machinery in those workshops. The dispute was only with regard to the Revenue's contention whether 'workshop' could be treated as a small area like a tool room. The Tribunal, after considering the language of the notification, definition of 'workshop' in the dictionaries and the guidelines laid down by the Apex Court with regard to interpretation of taxing statutes, held that there was no warrant for treating the

'workshop' as a smaller place called a tool room. The Tribunal followed the rule laid down by the Supreme Court with regard to interpretation of taxing statutes in its decision in Hemraj Gordhandas v. H.H. Dave, Asstt. Collr. of Central Excise & Customs, Surat and Ors. reported in 1978 (2) E.L.T. (J 350). We reproduce below the extract from that judgment :- "It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different but that is not the case here. In this connection we may refer to the observations of Lord Watson in Salomon v. Salomon and Co., 1897 AC 22 at p. 38 : "Intention of the legislature is a common but very slippery phrase, which, popularly understood may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication".

" The relevant extract from the judgment in Coromandal Fertilisers Ltd. v. Union of India and Three Others reported in 1979 (4) E.L.T. (J 501) is also reproduced below :- "Taxing Statute - Interpretation : The rules and notifications issued under Taxing Statutes are to be understood strictly and with the aid of the language employed therein. There is no scope for any element of intention while interpreting taxing statutory provisions and notifications." 9. Thus, we find that the decision of the CEGAT in Indian Iron & Steel Co. Ltd. and other cases have no application to the facts in the present appeals. During personal hearing, learned counsel for the appellants drew our attention to the decisions of the Supreme Court in Union of India v. Wood Papers Ltd. reported in 1990 (47) E.L.T. 500 (S.C.) and Mangalore Chemicals & Fertilisers Ltd. v. Dy. Commr.

reported in 1991 (55) E.L.T. 437 (S.C.) with regard to the interpretation of Statutes. We find that the observations of the Supreme Court in these judgments are not of assistance to appellants.

10. In the Wood Papers Ltd. case (supra), the Supreme Court held as under with regard to interpretation of exemptions :- "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 on 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." In the Mangalore Chemicals & Fertilisers Ltd. case (supra); the Supreme Court followed its earlier decision in Wood Paper's case and held that "stringency and mandatory nature of conditions of exemption must be justified by the purpose intended to be served and that the mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve." The Court also noted its observation in its earlier decision in M/s. Park Exports (P) Ltd. reported in 1988 (38) E.L.T. 741 (S.C.) that "While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided." The Court further emphasised that "The choice between a strict and liberal construction arises only in case of doubt with regard to the intention of the Legislature manifest on the statutory language. Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. If the words are plain

and clear and directly convey the meaning, there is no need for any interpretation." The learned CDR has urged a strict interpretation of the exemption in favour of the Revenue based on the observations of the Supreme Court in the case of Novopan India Ltd. (supra). In that judgment, the Supreme Court had taken note of its earlier decisions in Hansraj Cordhandas v.H.H. Dave, Wood Papers Ltd. and Mangalore Chemicals & Fertilisers Ltd. and confirmed that exemption being in the nature of exception is to be construed strictly at the stage of determination whether assessee falls within its terms or not and in case of doubt or ambiguity, benefit of it must go to the State.

11. From the above-mentioned decisions of the Supreme Court, the rule of construction to be followed is that if the words are plain and clear and directly convey the meaning, there is no need for any interpretation. As we have indicated earlier in this order, Notification No. 281/86 applies only to goods manufactured in a "workshop within a factory". There is no ambiguity about the intention or policy behind the exemption notification. The exemption would be available only to the production in a workshop within a factory and not to the produce of the factory. Even if the absence of a definition of "workshop" in the notification causes some ambiguity, the notification's applicability to a particular assessee is to be arrived at by a strict construction and the benefit must go to the State.

Viewed from this principle, it is clear that the eligibility to exemption under Notification No. 281/86 is limited to the production in a workshop within a factory, and not to the entire production of the factory.

12. In the light of the above discussions, we hold that the appellants were not eligible for the exemption under Notification No. 281/86. The references are answered accordingly. The appeals are also dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com