Breach Candy Hospital and Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-19-2000

Reported in : (2000)(70)ECC123

Appellant : Breach Candy Hospital and

Respondent : C.C.E.

Judgement :
1. These appeals are before us on reference by a Division Bench. The issue referred is as under.

2. The dispute related to concessional assessment of Air-Conditioners received by the appellants. Notification No. 56/78, dated 1-3-1978 (as amended) granted exempted lower rates at 25% ad valorem subject to certain conditions. The concession was in respect of Air-Conditioners used in the establishments stipulated in the Schedule to the notification. Sl. No. 11 of the Schedule related to "Any hospital run by the Central Government, a State Government, a Local Authority or a Public Charitable Institution". The conditions of the notification are as under : - "(i) the Collector of Central Excise is satisfied that such air-conditioners are required for use in any of the establishments specified in the Schedule hereto annexed; (ii) the manufacturer furnishes to the Collector of Central Excise a written undertaking by the owner, or, as the case may be, the Chief Executive of the establishment in respect of which such air-conditioners are required, that he will satisfy the proper officer of the Central Excise - (a) within one month of the date of clearance of such air-conditioners by the manufacturer, after

payment of duty, or such extended period as the Collector of Central Excise may allow, that the air-conditioners are actually used in such establishment and, in default, to pay the portion of the duty which is exempt under this notification; and (b) the air-conditioners shall not be resold within a period of five years from the date the air-conditioners are installed in such establishment, and in the event of breach of any of the terms of the undertaking aforesaid, he shall pay, on behalf of the manufacturer, the portion of the duty which is exempt under this notification, and (iii) the procedure specified in Chapter X of the Central Excise Rules, 1944, is followed." 3. The dispute has arisen in this case about satisfying the proper officer of Central Excise within one month from the date of clearance of the Air-Conditioners that the air-conditioners are actually used in the hospital. When the case was heard by a Division Bench, the learned Judicial Member was of the opinion that the requirement of the notification has been substantively complied as the air-conditioners had been installed within the stipulated period and the delay in intimating the department and procedural requirements are not sufficient for denying the benefit of the notification. The learned Vice President also agreed with the Judicial Member that this is a case in which there has been substantive compliance by the appellants with the conditions of the notification and the delay in intimating the department is condonable and is not, in any case, such which may be fatal to their claim for benefit of Notification No. 56/78. However, in view of the decision of the Tribunal in the case of Jyoti Ltd. v.Collector of Customs, Baroda (Final Order No. 81/96-B, dated 26-2-1996) and the rulings of the Supreme Court in Thermax Pvt. Ltd. v. Collector of Customs reported in 1992 (61) E.L.T. 352, he felt that the issue may be referred to a Larger Bench. Therefore, the matter was placed before a Third Member. The learned Judicial Member who heard the difference of opinion favoured referring the issue to a Larger Bench in the light, of the Supreme Court's decision in Novopan India Ltd. v. Collector of C.Ex. and Customs, Hyderabad reported in 1994 (73) E.L.T 769 (S.C.). The reference has come to this Larger Bench in view of the majority opinion.

4. When the issue came up for hearing on 6-3-2000, the Counsel appearing for the appellants submitted that as the case related to very old period, the appellants are not able to locate the relevant papers and therefore, requested for adjournment of the case. The Counsel also produced a copy of appellants' letter, dated 21-2-2000

seeking adjournment on the said ground. Since the hearing before the Larger Bench had been specifically fixed and sufficient notice had been given to both the parties, the adjournment prayed for was not granted.

Accordingly, we are passing this order after hearing the learned CDR who represented the Revenue and the Intervener learned Advocate Shri A.R. Madhav Rao.

5. As already stated above, the reference has been made to this Larger Bench in view of the decisions of the Supreme Court in Thermax Pvt.

Ltd. (supra) and Novopan India Ltd. (supra) and the decision of the Tribunal in jyoti Ltd. (supra). The learned CDR submitted that the principles governing the interpretation of exemption notifications have been the subject of several pronouncements by the Supreme Court. He referred in particular to the decisions of the Supreme Court in the cases of Kedarnath Jute Manufacturing Company reported in 1965 (3) SCR 626 (S.C.), Mangalore Chemicals & Fertilizers Ltd. reported in 1991 (55) E.L.T 437 (S.C.), Union of India v. Wood Paper Ltd. reported in 1990 (47) E.L.T. 500 (S.C.) and Novopan India Ltd. reported in 1994 (73) E.L.T 769 (S.C.). He also referred to several decisions of the Tribunal.

6. The learned CDR submitted that the rule relating to interpretation of exemption notifications emerging from the judgments of the Supreme Court is that exemption being in the nature of exceptions, it is to be construed strictly at the stage of determination whether assessee falls within its term or not and in case of doubt or ambiguity, benefit of it must go to the State. He referred in this context to the decision of the Supreme Court in Novopan India Ltd. (supra). He also pointed out that the Tribunal had noted this decision while deciding the case of Jyoti Ltd. in favour of the Revenue. Further, he pointed out that Jyoti Ltd.'s case was specifically with reference to exemption under Notification No. 56/78 as in the present appeals and therefore urged that the Tribunal may follow that decision and answer the reference in favour of the Revenue.

7. The construction of exemption notifications was the subject of the Supreme Court in the case of Novopan India Ltd. (supra), Wood Paper Ltd. (supra),

Mangalore Chemicals & Fertilizers Ltd. (supra) and other cases. In Wood Paper Ltd.'s case, the Supreme Court ruled as under :- "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." 8. In the Mangalore Chemicals & Fertilizers Ltd. case, while dealing with the question of satisfaction of conditions in the exemption notifications for availing of the benefits, the Supreme Court observed that "if the condition was a substantive one and one fundamental to the policy underlying the exemption, failure to satisfy the same would lead to denial of the exemption" and the Court ruled as under :- "Stringency and mandatory nature must be justified by the purpose intended to be served. 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." These observations of the Supreme Court were made after taking note of its decision in Kedarnath Jute Manufacturing Co. relied upon by the learned CDR.9. In the Thermax Pvt. Ltd. case [reported in 1992 (61) E.L.T. 352], the Supreme Court, while dealing with the requirement of satisfying the procedural conditions of Chapter X, upheld the view that the benefit is not deniable if substantive conditions of intended use as per exemption notification is satisfied though procedural conditions have not been fully satisfied.

10. The issue before us is, thus required to be answered in conformity with the above rulings of the Apex Court. It is clear that exemption notifications are exceptions and therefore, eligibility to an exemption should be strictly established from the language of the notification.

But, once the eligibility of the claimant is established, a liberal and wider construction should be given to allow the benefit flowing from the policy of the notification. Thus, a notification is to be subjected to liberal and strict construction at different stages of interpreting it. In the instant case, there is no dispute raised that the policy of the exemption notification was to grant exemption to certain establishments. It is not in dispute that the appellants' hospital fulfilled the criterion.' Thus, at the eligibility stage, according to the strict construction of the notification, the appellants are eligible for the benefit. There is also no dispute raised that the appellants fulfilled the condition of using the exempted goods in the hospital for the approved purposes. The dispute is only about the delay in intimation and inspection by Excise etc. These conditions cannot be treated as substantive and mandatory and based on considerations of Policy. As the Supreme Court pointed out in the Mangalore Chemicals & Fertilizers Ltd. case, it would be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purpose they were intended to serve. As the Court observed, there are conditions and conditions. The Supreme Court also held in the Thermax Ltd. case that the failure to adhere to procedural conditions of Chapter X would not make the benefit of the exemption deniable provided the substantive condition of intended use as per the exemption notification is satisfied. In the present case, the intended use of the air-conditioners was in a hospital establishment. Nobody doubts that that intention has been satisfied.

11. In the facts of this case, we are clear that the appellants satisfy the substantive and mandatory condition of using the air-conditioners in an approved establishment and the slip is only with reference to procedural conditions. The appellants, therefore, satisfy the criterion laid down in the rulings of the Supreme Court. We, therefore, answer the reference in favour of the appellants. In fact, both the Members of the Division Bench which heard the case, were also satisfied that the appellants have satisfied the substantive requirements of the notification. We

confirm this finding. The appeals are also allowed. We are not able to follow the decision of this Tribunal in the case of Jyoti Ltd. as that decision appears to us to be contrary to the Supreme Court's ruling that a notification must be strictly construed with regard to eligibility and liberally construed with regard to procedure.