**Commissioner of Customs Vs. Bharat Forge Ltd.**

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**SooperKanoon Citation** : sooperkanoon.com/28672

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Aug-07-2002

**Reported in** : (2002)LC967Tri(Mum.)bai

**Judge** : S T Gowri, G Srinivasan

**Appellant** : Commissioner of Customs

**Respondent** : Bharat Forge Ltd.

**Judgement** :

1. In its order disposing of the appeal filed by Bharat Forge Ltd., the Tribunal accepted the contention of the appellant that the importer was entitled to claim benefit of the exemption contained in Notification 154/86 in respect of the item which was imported in pursuance of a contract which was registered under the Project Import Regulations, claiming benefit of assessment under Heading 98.01 of the Tariff. The application by the Commissioner contends that there was an error in this order, since it is contrary to the ratio of the judgment of the Supreme Court in Tamil Nadu Newsprint & Papers Ltd. v. Appraiser, Appraiser Dept., Custom House - 2000 (116) E.L.T. 3 (S.C.). The departmental representative contends that this judgment is binding on the Tribunal, failure to consider is a mistake apparent on the record and requires correction.

2. Counsel for the respondent contends that this decision was not pointed out to the bench which decided the appeal and, therefore, failure to consider it is not a mistake apparent on the record, citing in support the judgment of the Supreme

Court in Dokka Samuel v. Dr.

Jacob Lazarus Chelly (1997) 4 Supreme Court Cases 478. Since the issue was not very clear, we had requested Mr. V. Sridharan, Advocate, to assist us in the matter. He brings to our notice the judgment of the Supreme Court in Poothundu Plantations Pvt. Ltd. v. Agricultural Income-tax Officer (1996) 221ITR 557. In this judgment, the court said, "If the mistake of law has to be established for construing the words of section to find it proper meaning, then such an error cannot normally be a rectifiable under Section 36 (36 of the Kerala Agricultural Income-tax Act). If two views are possible, then obviously the error will not be an error apparent from the record. It is, however, well-settled that if the Supreme Court has construed the meaning of a section, then any decision to the contrary given by any other authority must be held to be erroneous and such error must be treated as an error apparent on the record." The judgment of the Supreme Court in Tamil Nadu Newsprint & Papers Ltd. has decided upon the relevant entries of the tariff and notification and therefore settled the issue. Counsel for the respondent cites the judgment of the Supreme Court in Abrol Watches Pvt. Ltd. v. CC - 1997 (92) E.L.T. 311 in which it has been held that the benefit of exemption to horological machines and equipment could not be denied on the ground that the benefit of the exemption to project imports had been claimed in respect of other goods under contract of which the import under consideration found the part. He contends that since there are two judgments of the Supreme Court which contradict each other, the issue is not settled.

3. We are not able to agree. The two judgments of the court were in clearly distinct situations. The judgment in Abrol Watches Pvt. Ltd. relied upon a specific condition in the notification then in force relating to project imports, providing that nothing contained therein shall affect the exemption granted under any other notification. It is upon this basis that we find the judgment to rest. These words are not seen to be present in the notification that was considered in the judgment of Tamil Nadu Newsprint & Papers Ltd. That latter is also the case with regard to the notification under consideration by us. On the other hand note 1 to Chapter 98 which the counsel for the respondent relies upon, leads support to the contrary view that the chapter applies to the goods satisfying the condition even though

they may be covered by a heading elsewhere.

4. The judgment of the Supreme Court in Dokka Samuel was passed under Rule 1 of the Civil Procedure Code, 1908 which provided for correction of an error apparent on the face of the record. The judgment in Poothundu Plantations Pvt. Ltd. v. Agricultural Income-tax Officer was concerned with error from the record. Section 129(b) also uses the same words "any mistake apparent on the record". The judgment of Poothundu Plantations Pvt. Ltd. v. Agricultural Income-tax Officer therefore will apply to the facts before us.

5. It is not disputed by either side that the Tribunal's order is in fact contrary to the ratio of the judgment in Tamil Nadu Newsprint & Papers Ltd. Since we have already held that the omission to cite the judgment does not fetter the department from raising a plea of error, the application has to be accepted and the order recalled. By applying the provisions of the judgment of the Supreme Court, it will have to be held that the benefit of the project imports was not available. The order of the Commissioner (Appeals) also extending the benefit of the notification is therefore to be set aside and the order of the Assistant Commissioner demanding duty by denying the exemption is restored.