

Arvind Mills Ltd. Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-17-2003

Reported in : (2003)(159)ELT779Tri(Mum.)bai

Judge : K Kumar, S T C.

Appellant : Arvind Mills Ltd.

Respondent : Commissioner of Customs

Judgement :

1. Shri V. Sridharan, learned Advocate appearing for the appellants inter alia states as follows :- The appellants imported a consignment of Reverse Osmosis Elements and Membranes Housing Fibreglass Reverse Osmosis Pressure Vessels vide bill of entry dated 5-6-97.

(2) The appellants claimed the benefit of Sl. No. 150 of Notification No. 11/97-Cus. Sl. No. 150 granted exemption to machinery or equipment specified in List 10 to Notification No. 11/97-Cus. required for textile industry. Sl. No. 30 of List 10 covered the following: "Effluent Treatment Unit with automatic sensing devices, automatic controller chemical dosing air flotation (DAF), reverse osmosis, sludge dewatering, decanters, ultra filters, vacuum filters to deliver water for reuse." (3) According to the appellants, the equipment imported by them is covered in Sl. No. 30 of List 10 of Notification No. 11/97-Cus., the benefit of exemption is available to them.

(4) The lower authorities have held that the exemption is available only if all the equipments are imported; since the appellants have not imported all the equipments but only one of the equipment specified in the list, the exemption is not available.

(5) According to the appellants, the exemption is available to any of the equipments specified in List 10. Sl. No. 30 covers various equipments or machinery of effluent treatment unit. All the equipments listed in Sl. No. 30 are for effluent treatment. All the equipments listed in Sl. No. 30 cannot be used simultaneously. This is evident from the technical not submitted.

(6) If the list of items indicated in Sl. No. 30 is read with Sl.

No. 150 of Notification No. 11/97-Cus., it is evident that any machinery used in effluent treatment unit is eligible for exemption.

Unit is defined as self-contained portion of any plant. Thus, in the entire effluent treatment plant, each machinery used for specific process will be treated as effluent treatment unit. Thus, any imported machinery used in the said unit is eligible for exemption.

(7) Alternatively, the appellants have been contending that the benefit of Sl. No. 151 to Notification No. 11/97-Cus. should be granted to the imported goods. This Sl. No. grants exemption to parts falling under any chapter, used for manufacture of machinery or equipment listed in List 30 is exempt. The benefit under this Sl.

No. is available subject to following the procedure prescribed in Customs (Import of goods at concessional rate of duty for manufacture of excisable goods) Rule, 1996. There is no dispute that the goods were installed in the appellants factory in the effluent treatment unit/plant. Further non-following of procedure cannot be ground to deny the benefit of Sl. No. 151 inasmuch as the appellants have complied with the requirement of these 1996 rules otherwise. In this regard, reliance is placed on the decision of the Supreme Court in *thermax Ltd. - 1992 (61) E.L.T. 352 (SC)*.

2. Shri Ishwar Singh, learned J.D.R. appearing for Revenue supports the orders passed by the lower authorities.

3. After hearing rival submissions and perusal of case records we observe that the Commissioner (Appeals) has dealt with the issue in detail as follows :- "I have considered the points raised in the appeal and at the time of personal hearing. I observe that the Asstt. Commissioner has denied the benefit of exemption notfn. 11/97 to the 'Reverse Osmosis System' imported by the appellants as detailed in para 1 above. The appellant's contention is that any of the devices mentioned in the entry of Sr. No. 30 of list 10 appended to the notfn. would be entitled to the benefit vide Sr. No. 150 of the notfn. They have contended in this regard that the commas in the entry should be read as 'or' and that accordingly, any of the devices would be entitled to the exemption. Also they have invited my attention to certain entries in list 11A to say that if the intention was otherwise, the word 'and' would have been used between the expressions of the last 2 devices of the particular entry. Acting on the same rationale and reasoning, I have examined the various Sr. Nos. of list 10 appended to the notfn. I find that Sr. No. 21 of list 10 reads as "Indigo Dyeing range with or without sizing plant" indicating thereby that when it was considered not necessary to have the import of all the devices in the entry altogether it has been specifically made clear using the word 'without'. There are many entries where by the use of the symbol of oblique (/), the permissibility of the alternative is indicated. Even the word 'or' is used in some entries like Sr. No. 119. Therefore, the scheme of the notfn. has not left any scope for adding 'or' in place of commas in the entry of Sr. No. 30. Further I notice that if at all any scope or any debate is left further, the same is sealed by Sr. No. 25 of list 10 which reads as follows :- "Effluent treatment unit with bio-paq reactor, activated sledge process, activated carbon, ultra filtrations ozonisation facilites".

Thus there are 2 entries for 'Effluent treatment unit', those at Sr.

Nos. 25 and 30 (Which the appellant is invoking). If the contention of the appellants were correct all the devices or systems/sub-systems components of the 'Effluent treatment unit' should have been shown under one and the same Sr. No. by inserting commas in between. The very fact that there are 2 serial nos. for

'Effluent treatment Unit' shows that the Effluent treatment unit, at Sr. No. 25 will be imported with the devices/sub-systems/components mentioned at that entry and that the Effluent Treatment Unit at Sr.

No. 30 would necessarily have to be imported complete with the devices/sub-systems/components mentioned in that entry.

I observe from the findings above that the scheme of the notfn.

providing for alternatives clearly, wherever intended and making separate entries for different groups of machines/units, has specifically provided two different entries for 'Effluent treatment unit' categorically indicating that the entry of 'Effluent treatment unit' at Sr. No. 25 is different from that of the 'Effluent treatment Unit' at Sr. No. 30 and that each unit will have to be with the devices mentioned in the entry of the Sr. No. concerned. In that view of the matter, I do not find any ambiguity in the notification as the plain reading of the notfn. itself makes the provision of the notfn. clear. As such there is no scope or warrant for dealing with the various rules regarding interpretation and the judicial pronouncements cited in that regard by the appellant.

In view of the above I observe that the Asstt. Commissioner has rightly observed that the benefit of notfn. No. 11/97 vide Sr. No. 150 of the table thereof would be available only to a complete effluent treatment unit with the various devices mentioned at Sr.

No. 30 of list 10 appended to the notification." 4. The view taken by the Commissioner (Appeals) as above is legally correct. However, as pointed out by the learned Advocate for the appellants, such legalistic and mechanical interpretation of the notification would result in denying the benefit to a textile mill which under the Pollution Control law is required to install the imported equipment as a mandatory requirement and would, therefore, defeat the very object of the notification. It has also been pointed out by the learned Advocate that both ultra-filter and Reverse Osmosis Elements cannot be the parts of any single system as one is used in lieu of the other. We are of the view that drafting of the notification has not been done very carefully. There would have been no ambiguity if the word

'and' or 'or' was used in the Entry No. 30 to clearly indicate whether the exemption applies to an Effluent Treatment Unit imported alongwith all the listed components or to any of the listed components.

In the absence of such clarity and the fact that some of the elements are mutually exclusive and cannot be part of any single system, we are inclined to extend the benefit of the exemption notification to the impugned goods under import so as not to defeat the very purpose of the exemption granted to effluent treatment units.

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