

Pcs Industries Vs. C.C.

Pcs Industries Vs. C.C.

SooperKanoon Citation : sooperkanoon.com/36142

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-03-2004

Judge : S T S.S., T Anjaneyulu

Appellant : Pcs Industries

Respondent : C.C.

Judgement :

1. a) Appellants imported Silane Treated Glass Fabric vide Bills of Entry No. and claimed benefit of Notification No. 88/9-1 on the ground that the said item, "Silane treated glass fabric" was imported for use in the manufacture of copper clad laminates. The assessment were so made.

However, less charge demand was made by the Department on BE No. 432 of Rs. 9,32,834/- and on BE No. 10660 of Rs. 7,81,013/-. On the grounds that Notification No. 88/94 was amended by Notification No. 197/94 dated 9.12.1994, by which, the imported item. viz. Silane Treated Glass fabric" is eligible for concessional rate of duty only if it were imported for use in the manufacture of "Silane treated glass fabric / cloth for use in copper clad laminates phenolic or paper phenolic or glass epoxy types, printed circuit boards". Since the importers have provided the end use certificate showing that the imported goods were used in the manufacture of copper clad laminates, the tariff rate of duty will be applicable.

i) The amending notification No. 197/94 dated 9.12.94 had rendered original Notification No. 88/94 substantially redundant.

Notification, as amended would inter alia, envisage import of "silane treated glass fabric" use in the manufacture of "silane treated glass fabric / cloth for use in copper clad laminates,". It absurd to suggest that one would imports "silane treated glass fabric" for use in the manufacture of "silane treated glass fabric" which in turn will be used in the manufacture of copper clad laminates. ! ii) The amendment No. 197/94 dated. 9.12.94 to the notification 88/94, has been rendered that exemption redundant and otiose, in respect of the first four items as in table 3 of the said notification 88/94 viz.

Because these four items could never be used in the manufacture of silane treated glass fabric / cloth the term brought in by amendment not. 197/ 94 in column No. 4 of the Table. Only two items, Silane and Glass filament yam could be used in the manufacture of silane treated glass fabric / cloth. The amendment renders absurd the exemption into four items. If the intention of the Government was not to allow concessional customs duty for the first four items, then the amendment could have deleted the first four items in column No. 3. The fact that these items were not amended or deleted, clearly shows that the intention of the government was not to deny the benefit to these items and continue the exemption as originally envisaged, under notification 88/94.

iii) This absurdity required a correction which was effected within a few days by notification No. 202/94-cus dated 30th December 1994.

Item 13 of Notification No. 88/94 was substituted with a new entry.

It substantially retained columns 1,2 and 3. In column 4 the entry as it appeared in the original notification 88/94 was reintroduced in so far as the first four items, including Silane fabrics. The amended part as per 197/94 was maintained in respect for the rest of the two items. Thus the intent of the Government was clarified by this amendment. The restoring of the entitlements & benefit of the original notification, would indicate that the amendments by notification No. 202/94 should be deemed to be clarificatory in nature. It simply is setting right, the

absurdity & anomaly created by the amendment dated 9.12.94. Hence, the appellants are entitled to the benefit of Notification No. 84/94 notwithstanding the changes brought about by Notification No. 197/94. Punjab Rubber & Allied Industries & Ors. v. Union of India.

"It is a well-known rule of interpretation of statutes or statutory provision having the force of law that an interpretation which leads to absurd result cannot be made and what is required to be seen is as to what was the real intention in framing the relevant provision" (at page 72).

"7. We find the Tribunal gave good reasons for rejecting the interpretation given by the department. Having considered the submissions for the parties we find in case interpretation given by the department is to be accepted, no assessee could get exemption unless all the machines are imported as one composite machine reference of each separate machine with (') would have no meaning.

This will make this notification unworkable, hence Tribunal rightly rejected Revenue interpretation. The notification has to be interpreted to give true import and meaning not to make it purposeless and nugatory." (emphasis supplied). [Para 7 at page 77] "In the instant case also, we are of the opinion that the intention of the authorities was to grant exemption to certain life saving and sight saving articles manufactured in the country and once this intention is clear from the subsequent notifications issued under Section 5A of the in 1995, we do not see any reason why we should take a narrow view to confine the two items produced by the appellants to entry 3005,90 rather than place them in the wider connotation of surgical appliances in entry 90.18 of chapter 90".

(emphasis supplied). (at the end of para 10 at page 28) "Having considered the rival submissions and having applied our mind to the relevant Notification 12 of 1989 we have no hesitation to come to the conclusion that Entry 2 of that Notification relates to all goods other than Entry 1 and the subsequent Notification issued on 20th March 1990 by the Revenue is merely a clarificatory one."(emphasis supplied) "10. In the case of Gujarat Co-operative Oil Seeds Growers Federation Ltd., v. CCEx (1999 (114) ELT 376) the Hon'ble Supreme Court held that the subsequent amended notification allowing the benefit of the

earlier notification is clarificatory in nature. In this instant case also it is seen that subsequently on 28-2-1999, the entry pertaining to the goods in question was amended clarifying the position. As such, it can be safely concluded that the subsequent notification was clarificatory in nature and the intention of the Government all along was to allow the exemption to CAPD fluid bags." [emphasis supplied] - (para 10, at pages 656-657)Swadeshi Polytex Ltd v. Collector of C.Ex.

"It is true when in a fiscal provision, if benefit of exemption is to be considered, this should be strictly considered. But the strictness of the construction of exemption notification does not mean that the full effect to the exemption notification should not be given by any circuitous process of interpretation. After all, exemption notifications are meant to be implemented... .. " (at page 85)Union of India v. Wood Papers Ltd. "A construction which results in inequitable results, and is incongruous, has to be avoided." 2. The submission of the appellants has force of the decision of the Apex Court in the case of Johnson and Johnson (1997 (42) ELT 23 SC) to give a wider meaning to the intent of the exemption by notification of 88/94 to be continued Silane Treated Glass Fabrics during the period 9/12/94 to 29.12.94 was eligible by reading the amendments by notification 202/94 dated 30.12.1994 to be classificatory. We are reinforced in our view on applying the ratio of Apex Court decision in the case of Gujarat Co-op seed Growers Federation Ltd. (1999 (114) ELT 376 SC). While we appreciate the efforts of the Ld. DR to seek reliance on the decision of Rukmani Packaging 2004 (64) RLT 378 SC & to plead that notification have to be strictly interpreted & do not have any quarrel with that plea, yet we find that the question herein is not of a strict or liberal interpretation of a notification, but it is whether during the period 9.12.94 to 29.12.94 the notification exemption to Silane Treated Glass Fabrics would be available. We find no reason to deny the interpretation that notification 202/94 to be clarificatory and would to grant the exemption during the period of dispute herein.

3. Consequently, no reason is found to uphold the duty demands. The same are set aside and appeal allowed.