

Basf India Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-02-1988

Reported in : (1989)(20)ECC1

Appellant : Basf India Ltd.

Respondent : Collector of Central Excise

Judgement :

1. This appeal arises from the order of the Collector reviewing the order in original passed by the Assistant Collector under Section 35-A (2) of the Central Excises and Salt Act, 1944 as it stood then.
2. Briefly the facts are that the appellants manufacture polystyrene into which goes styrene, as an input. On 27-2-1980 the Central Government issued a notification No. 6/80 exempting polystyrene from the duty of excise in excess of 27% ad valorem where the resins were manufactured from chemicals derived from raw naphtha. The appellants availed of the notification during the period 7th September 1980 to 31st October 1981.
3. A show cause notice was issued to the appellants on 21-12-1981 by the Superintendent of Central Excise, asking them to show cause why differential duty should not be recovered from them on the ground that the concessional rate of assessment was available only if duty paid input is used in the manufacture of polystyrene, and not imported input is used. The Assistant Collector, after due process, passed an order dropping the show cause notice and accepting the

appellants' plea that the benefit of exemption under notification No. 6/80 was admissible to polystyrene manufactured from imported styrenes also.

4. This order was reviewed by the Collector who after giving due opportunity to the appellants set aside the Assistant Collector's order and ordered that differential duty be paid on polystyrene manufactured from the imported styrene. Hence this appeal.

5. The question that arises for decision in this appeal is whether under notification No. 6/80, polystyrene manufactured from imported raw materials is entitled to the benefit of the notification or not. The Assistant Collector held it was so entitled and this order was modified by the Collector who held that it was not so entitled.

6. Shri Taraporewala, the learned Advocate for the appellants argued that the Collector was wrong in comparing the provisions of notification No. 6/80 with those of the provisions of 7/80. Making submission on the interpretation of Notifications, the learned Advocate referred to 1986 ELT (25) 861 (SC) in the case of Coromondal Fertilisers Ltd. v. Collector of Customs, Madras. He also argued that the scope of the word "levy" was much wider than the scope of the words "collected" or "paid". In this context the learned Advocate referred to a judgment of the Supreme Court in Assistant Collector of Central Excise, Calcutta v. National Tobacco Co. of India Ltd. reported in AIR 1972 Supreme Court 2563. He further submitted that there can be no room for any intendment but regard must be had to the clear meanings of the words in a notification while interpreting it.

7. Shri G.V. Naik, the learned Jt. CDR opposing the arguments submitted that for purposes of interpretation a notification can be compared with another and relied on a judgement of the Bombay High Court in the case of Ashok Traders v. Union of India and Anr. reported in 1987 (32) ELT 262 (Bombay). He submitted that notification No. 6/80 did not refer to customs duty and the meaning of the notification was that Central Excise duty should have been paid. He argued that the phrase "if leviable" occurring in the notification was only a "general proposition without significance" and that its mention makes no difference as "leviability" was only an expression. He submitted that the question involved is only if the Central Excise duty is paid or not and that the question of levy is not relevant. He argued

that on the imported styrene no excise duty was paid or was to be paid and, therefore, there was no question of extending the benefit of notification. Referring to the judgement of the Bombay High Court in *Ashok Traders*, he submitted that this judgement squarely covers the present matter. Arguing that "leviability" is a wider form and covers collection and assessment he submitted that the correct interpretation of the Notification was that concession would be given only if Central Excise duty was paid. He reiterated that the words "if leviable" were used "in ordinary parlance" and should not be interpreted in the way the Assistant Collector did. Referring to Maxwell's "Interpretation of Statutes" (4th Edition 1981) the learned Jt. CDR argued that the intention of the legislature is relevant and should be kept in mind when interpreting a statute. In this matter, according to the Jt. CDR, legislative intention is quite clear that if Central Excise duty was not paid, there could be no benefit under the notification. In conclusion he argued that levy is a part of the Central Excise Act and not a "differential word". He submitted that during the drafting of the Notification the words "if leviable" might have been placed there "by the way" and did not really have any significance.

8. We have considered the arguments of both sides. Before proceeding to discuss the merits of the matter we reproduce the Notification No.6/80-C.E., dated 17.2.80 as amended by Notification No. 136/80-C.E., dated 29.8.80: "In exercise of the powers conferred by Sub-Rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts polystyrene resins, falling under sub-item (1) of Item No. 15A of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) and manufactured from chemicals derived from raw naphtha or any other materials, on which the appropriate amount of duty of excise, if leviable, has already been paid, from so much of the duty of excise leviable on such polystyrene resins as is in excess of twenty-seven per cent ad valorem." 9. We refer to the arguments of the learned Jt. CDR which were in effect that the phrase "if leviable" occurring in the Notification did not have any significance and was, therefore, to be ignored while construing the Notification. Ignoring the phrase would be against all principles of interpretation, as a notification has to be read as it is. As pointed out by the learned Advocate for the appellants the Hon'ble Supreme Court in *Coromondal Fertilisers Ltd. v. Collector of Customs, Madras* (supra) observed that "we are not to ascertain the intention of the Government by a comparison of the

exemptions used in the two different Notifications...". In their judgement in Hemraj Gordhandas v. H.H. Dave, Assistant Collector of Central Excise and Customs, Surat and Ors. [1978 ELT (J 350)] the Hon'ble Supreme Court observed as follows : "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." It is an application of this principle that a statutory notification may not be extended so as to meet a casus omissus. As appears in the judgement of the Privy Council in Crawford v. Spooner (1846) 6 Moo PC 1 (9): "...we cannot aid the legislature's defective phrasing of the Act, we cannot add, and mend, and, by construction, make up deficiencies which are left there." Learned Counsel for the respondents is possibly right in his submission that the object behind the two notifications is to encourage the actual manufacturers of handloom cloth to switch over to powerlooms by constituting themselves into Cooperative Societies. But the operation of the notification has to be judged not by the object which the rule-making authority had in mind but by the words which it has employed to effectuate the legislative intent."

10. In view of these clear views of the Hon'ble Supreme Court, there is no scope for ignoring any words in the notification or for searching for the intention of the legislature when interpreting a Notification.

We may also mention that the learned JCDR did not bring on record or show any proof of what the legislature intended.

11. We examined the decision of the Bombay High Court in Ashok Traders (supra) on which the learned Jt. CDR heavily relied. That judgement was examining the scope of notification No. 302/79. This notification granted certain exemptions to artificial or synthetic resins and plastic materials in the following terms: "In exercise of the powers conferred by Sub-Rule (1) of Rule 8 of the Central Excise Rules 1944, the Central Government hereby exempts artificial or synthetic resins and plastic materials specified in column (2) of the Table below, falling under sub-item (1) of Item No. 15-A of the First Schedule to the Central Excises and Salt Act, (1 of 1944), and manufactured from raw naphtha or any chemical derived therefrom, on which the appropriate amount of duty of excise has already been paid, from so much of the duty of excise leviable thereon as is in excess of the duty of excise specified in the corresponding entry in column (3) thereof.-----Sl.No. Description

Rate of duty-----1.

2.

3.-----1. Low-density polyethylene, high-density polyethylene and 27 per cen ad valorem2. Polyvinyl chloride 33 per cent ad Valorem----- 2. This notification shall be in force upto and inclusive of 30th day of November, 1980.

12. We note that in this notification one of the two conditions was that if the appropriate amount of duty of excise has already been paid on the raw naphtha or any chemicals derived therefrom, exemption was granted for manufacturing. The wording of the Notification No. 6/80 is not identical to the wording of this Notification. As mentioned earlier we cannot ignore the phrase "if leviable" which referred to the levy of Central Excise duty. It is no body's case that Central Excise duty was leviable on the imported styrene. Reading the Notification as it is worded, it is clear that as Central Excise duty was not leviable on the imported styrene, the appellants are entitled to the concession granted by it as the conditions laid down in the Notification have been satisfied. In this view any discussion about the scope of the term "levy" is not necessary though we take note that in Assistant Collector

v. National Tobacco Company (supra) the Hon'ble Supreme Court has observed that the term levy appears to be wider in its connotation than the term assessment. This strengthens our finding and does not advance the case of the Revenue.

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