

Collector of Customs Vs. Keltron Component Complex Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-25-1991

Reported in : (1992)(41)LC161Tri(Delhi)

Judge : H Chander, Vice-, J T P.C.

Appellant : Collector of Customs

Respondent : Keltron Component Complex Ltd.

Judgement :

1. Collector of Customs, Madras has filed an appeal being aggrieved from the order passed by the Collector of Customs (Appeals), Madras Briefly, the facts of the case are that M/s. Keltron Component Complex Ltd., Cannanore had imported automatic stitcher and winder which were used for the manufacture of electrolytic capacitors assessable at the rate of 30% + 5% under notification No. 118/80-Cus vide bill of entry No. D1380/27th August, 1982. The respondents had claimed the benefit of notification No. 118/80-Cus dated 19th June, 1980 vide serial No. 29.

The Assistant Collector in his order observed that invoice No. 82/1224 dated 22nd April, 1982 showed that separate value was charged for stitching machine, winding machine and spare parts and accessories and as such, it could not be construed to be a complete unit for according the benefit of concessional rate of duty in terms of notification No.118/80-Cus and had rejected the claim.

2. Being aggrieved from the aforesaid order, the respondents had filed an appeal before the Collector of Customs (Appeals), Madras. Before the Collector of Customs (Appeals), Madras certificate from the Department of Electronics was filed and the Collector of Customs (Appeals), Madras took the view that the machines imported were fully covered by serial No. 29 of the notification No. 118/80-/Cus and as per Import Policy, item 33, serial No. 11 of Appendix II also clearly showed that the goods were allowed to be imported under the OGL. After examining the catalogue and the certificate issued by the Department of Electronics, the Collector (Appeals) had ordered the extending of the benefit of notification No. 118/80-Cus and had ordered the consequential refund benefit to the respondents.

3. Being aggrieved from the aforesaid order, the revenue has come in appeal before the Tribunal.

4. Shri S.K. Roy, the learned SDR has appeared on behalf of the revenue. He relied on the order-in-original. He pleaded that stitchers and winder machines for the manufacture of electrolytic capacitors are separate machines and the benefit of notification No. 118/80-Cus, serial No. 29 can only be extended if it is a combined one machine. He pleaded that earlier the benefit of the notification was not available to the respondents and the later amendment to the notification vide notification No. 272/83 shows that serial No. 29 was amended in place of word "and" the word "or" was put in. He pleaded that the respondents are not entitled to the benefit of the notification and the order passed by the Collector (Appeals) is not correct. He has pleaded for the acceptance of the revenue's appeal.

5. Ms. Anuradha, Liaison Officer who has appeared on behalf of the respondent company relied on the order passed by the Collector of Customs (Appeals), Madras. She referred to notification No. 118/80-Cus, serial No. 29. She pleaded that though the word "and" is there in the notification, but for all practical purposes it should be read as "or".

She requested for the extension of the benefit of notification No.118/80-Cus and pleaded for the dismissal of the appeal filed by the revenue.

6. We have heard both the sides and have gone through the facts and circumstances of the case. We have looked into the invoice. In the invoice the values have been given for stitching machine with winding machine and spare parts. We have also looked into the notification No.118/80-Cus dated 19th June, 1980. For proper appreciation of the correct position relevant extract of notification No. 118/80-Cus is reproduced below: Exemption to specified goods for electronics industry.-In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts the goods specified in the Table below and falling within Chapter 84 or Chapter 85 or Chapter 90 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), and are designed for use in the electronics industry, when imported into India, from so much of that portion of the duty of customs leviable thereon, which is specified in the said First Schedule, as is in excess of 25 per cent ad valorem.²⁹.

Automatic stitcher and winder for electrolytic capacitors.

A simple perusal of serial No. 29 shows that the benefit is available for automatic stitcher and winder for electrolytic capacitors. It is not disputed before us that the machines imported are automatic stitcher and automatic winder for the manufacture of electrolytic capacitors. In the grounds of appeal there is a mention that notification No. 118/80-Cus has been amended by notification No.272/83, where serial No. 29 reads "automatic stitcher or automatic winder or a combination thereof, for electrolytic capacitors." A comparative study of both the notifications shows that the latter amended notification is a clarificatory notification. In the earlier notification the word "and" and in the latter amended notification the word "or" are there. The Tribunal had the occasion to deal with imilar situation in the case of Consolidated Petrotech Industries Ltd. v. Collector of Customs, Bombay in appeal No. C/622/89-B2, order No.C/133/91-B2 dated 31st May, 1991 1991 (37) ECR 75 (Cegat SB-B2). There the dispute was as to extending of the benefit of notification No.125/86-Cus and serial No. 17 related to "FFS with vacuumising and inert gas flushing." In that matter the assessee had imported a consignment of automatic form, fill and seal packaging machine and the machine had no vacuumising facility. The department had taken the view that the benefit can only

be extended if there was facility of vacuumising also.

The word "and" was there. The Tribunal had at length made observations as to the meaning of the word "and" and "or". The relevant extract from the said judgment is reproduced below: The meaning of the word "and" in Black's Law Dictionary 5th edition of St. Paul Minn West Publishing Co. 1979 at page 79 has been given as under: AND. A conjunction connecting words or phrases expressing the idea that the latter is to be added to or taken along with the first.

Added to; together with; joined with; as well as; including.

Sometimes construed as "or". *Land and Lake Ass'n v. Conklin* 182 A.D. 546, 170 N.Y.S. 427, 428.

It expresses a general relation or connection, a participation or accompaniment in sequence, having no inherent meaning standing alone but deriving force from what comes before and after. In its conjunctive sense the word is used to conjoin words, clauses, or sentences, expressing the relation or addition or connection, and signifying that something is to follow in addition to that which proceeds and its use implies that the connected elements must be grammatically co-ordinate, as where the elements preceding and succeeding the use of the words refer to the same subject matter.

While it is said that there is no exact synonym of the word in English, it has been defined to mean "along with," "also", "and also", "as well as", "besides", "together with". *Oliver v. Oliver* 286 Ky. 5, 149 S.W. 2d 540, 542.

When expression "and/or" is used, that word may be taken as will best effect the purpose of the parties as gathered from the contract taken as a whole, or, in other words, as will best accord with the equity of the situation. *Bobrow v. U.S. Casually Co.* 231 A.I. 91, 246 N.Y.S. 363, 367.

Maxwell on the Interpretation of Statutes, 12th edition by P. St. J. Langan published by N.M. Tripathi Pvt. Ltd. at pages 232 to 233 has held as under: In ordinary usage, "and" is conjunctive ([1967] 1 A.C, 192) and "or" disjunctive. (2 Q.B. 970). But to carry out the intention of the legislature (*Uddin v. Associated*

Portland Cement Manufacturers Ltd. [1965] 2 Q.B. 582; R. v. Surrey Quarter Sessions, ex p. Commissioner of Metropolitan Police [1963] 1 Q.B. 990 it may be necessary to read "and" in place of the conjunction "or," and vice versa.

The Disabled Soldiers Act, 1601, for example, in speaking of property to be employed for the maintenance of "sick and maimed soldiers," referred to soldiers who were either sick or maimed, and not only to those who were both. (Duke, Charitable Uses, p. 127).

The expression "local and public authorities", in Section 4(2) of the Prevention of Corruption Act, 1916 has been held by Vinn. J. not authorities which are either local or public." (R. v. Newbould [1962]).

By Section 48(1) of the Mines and Quarries Act 1954: "It shall be the duty of the manager of every mine to take, with respect to every road and working place in the mine, such steps by way of controlling movement of the strata in the mine and supporting the roof and sides of the road or working place secure." Lord Reid said that he could not "suppose that it was intended that in every case the manager must both attempt to control movement of the strata and provide support.

...The natural meaning of the words of the section is that one or other of the prescribed methods must be adopted in every case." John G. Stein & Co. Ltd. v. Illanlon (1965) A.C. 890, at p. 904.

Conversely, the court may substitute "and" for "or". An example is provided by the Bankrupts Act, 1603, which made it an act of bankruptcy for a trader to leave his dwelling house "to the intent, or whereby his...creditors...shall or may be defeated or delayed." If construed literally, this would have exposed to bankruptcy every trader who left his home, even for an hour, if a creditor called during his absence for payment. This absurd consequence was avoided by reading "or" as "and" so that an absence from home was an act of bankruptcy only when coupled with the design of delaying or defeating creditors." Fowler v. Padget (1978) 7 T.R. 509. of R. v. Mortlake (1805) 6 East 397.

In his book Principles of Statutory Interpretation, 4th edition 1988 Justice G.P. Singh at page 250, 251 and 252 has written as under: The word 'or' is normally disjunctive and 'and' is normally conjunctive but at times they are read as vice versa to give effect to the manifest intention of the Legislature as disclosed from the context. *Ishwar Singh Bindra v. State of U.P.* ; *M. Satyanarayan v. State of Karnataka* . As stated by SCRUTTON, L.J.: "You do sometimes read 'or' as 'and' in a statute.

But you do not do it unless you are obliged because 'or' does not generally mean 'and' and 'and' does not generally mean 'or'. *Green v. Premier Glynrhonwy Slate Co.* (1928) 1 KB 561, p. 568, *Nasiruddin v. State Transport Appellate Tribunal*, *Municipal Corporation of Delhi v. Tek Chand Bhatia*, *State (Delhi Administration) v. Puran Mal* . And as pointed out by LORD HALSBURY the reading of 'or' as 'and' is not to be resorted to, "unless some other part of the same statute or the clear intention of it requires that to be done". [*Mersey Docks and Harbour Board v. Henderson Bros.* (1888) 13 AC 595 (HL), p. 603]. See further *Puran Singh v. State of M.P.* ; *Municipal Corporation of Delhi v. Tek Chand Bhatia*, *supra*. But if the literal reading of the words is less favourable to the subject provided that the intention of the Legislature is otherwise quite clear.

In Section 2(1)(d)(i) of the Bombay Lotteries and Prize Competition Control and Tax Act, 1948, (as amended by Act 30 of 1952) the Supreme Court read 'or' as 'and' to give effect to the "the clear intention of the Legislature as expressed in the Act read as a whole." *State of Bombay v. HMD Chamarbaugwala* The words 'owner or master' as they occur in Section 1(2) of the Oil in Navigable Waters Act, 1955 were construed by the House of Lords to mean 'owner and master' making both of them guilty of the offence under that section as reading of 'or' as 'or' would have produced an absurd result of leaving it to the Executive to select either the owner or master for being prosecuted without the Act giving any guidance for the selection. Such a result would have also been against the constitutional practice. [*Federal Steam Navigation Co.*

Ltd. v. Department of Trade and Industry (1974) 2 All ER 97 (HL).

Similarly in Section 42(2) of the Income-tax Act, 1922 the result produced by reading 'or' as 'or' could not have been intended" and the word 'or' was read in the context as meaning 'and'. *Mazagaon Dock Ltd. v. CIT & EPT*. In Section 11 of the Suits Valuation Act, 1887, Clauses (a) and (b) of Sub-section (1) although separately by the word 'or' have been read conjunctively as that is the obvious intention disclosed by Sub-section (2). *Kiran Singh v. Chaman Paswan Tilkayat Shri Govindlalji v. State of Rajasthan* Speaking generally, a distinction may be made between positive and negative conditions prescribed by a statute for acquiring a right or benefit. Positive conditions separated by 'or' are read in the alternative but negative conditions connected by 'or' are construed as cumulative and 'or' is read as 'nor' or 'and'.

In the case of *R. v. Oakes* reported in (1959) 2 All ER 92 it was held as under: In Section 7 of the Official Secrets Act, 1920, which reads: 'Any person who attempts to commit any offence under the principal Act or this Act, or solicits or incites or endeavours to persuade another person to commit an offence, or aids or abets and does any act preparatory to the commission of an offence', the word 'and' printed in Italics was read as 'or' for by reading 'and' as 'and' the result produced was unintelligible and absurd and against the clear intention of the Legislature.

(Extract taken from Principles of Statutory Interpretation by Justice G.P. Singh page 252). Hon'ble Supreme Court in the case of *Shwar Singh Bindra and Ors. v. State of U.P.* Now if the expression "substances" is to be taken to mean something other than "medicine" as has been held in our previous decision it becomes difficult to understand how the word "and" as used in the definition of drug in Section 3(b)(i) between "medicines" and "substances" could have been intended to have been used conjunctively. It would be much more appropriate in the context to read it disjunctively. In *Stroud's Judicial Dictionary*, 3rd Ed.

it is stated at page 135 that "and" has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of or. Sometimes, however, even in such a connection, it is, by force of a context, read as "or". Similarly in *Maxwell on Interpretation of Statutes*, 11th Ed., it has been accepted that "to carry out the intention of the legislature it is occasionally

found necessary to read the conjunctions "or" and "and" one for the other. *M. Satyanarayana v. The State of Karnataka and Anr.*

the statute cannot be construed merely with reference to grammar.

Para No. 5 from the said judgment is reproduced below:

5. If the expression "and" in Clause (a) is read independently then there was no need for him to suffer at all and mere participation would be enough to make him a political sufferer. That would defeat the rationale behind the rule. It would, therefore, frustrate the intention and purpose of the legislature. The expression 'and' in these circumstances cannot be read disjunctively. It is not possible to hold that Sub-clause (b). A statute cannot be construed merely with reference to grammar. Statute whenever the language permits must be construed reasonably and rationally to give effect to the intention and purpose of the legislature. The expression 'and' has generally a cumulative effect, requiring the fulfilment of all the conditions that it joins together and it is antithesis of 'or'. In this connection reference may be made to *AM. Copalan v. State of Madras*. See also the observations of this Court in *Ishwur Singh Bindra v. State of U.P.* *Shri G. Ramaswami*, the learned Senior Advocate, has also relied on the following judgments where the word "and" has to be substituted by "or": The Tribunal had the occasion to deal with the interpretation of exemption notification in the case of *Collector of Customs v. Delhi Tubes* observations that the object of the exemption notification was to confer a certain benefit upon the manufacturer or the buyer/consumer as the case may be, as an incentive, with a view to encourage production or consumption. But, it could not be said that this would virtually amount to adding a part of the excise duty to the manufacturing cost and profits while arriving at the assessable value under Section 4 of the Central Excise Act. The order in the case of *Delhi Tubes* passed by the Tribunal was affirmed by the Supreme Court in Civil Appeal No. 4887/90. The Tribunal had relied on a decision of the Andhra Pradesh High Court in the case of *Andhra Pradesh Paper Mills Ltd. v. Assistant Collector of Central Excise* reported in 1980

(8) ELT

210. It is also a settled proposition that where two interpretations are possible, the interpretation which is in favour of the assessee should be adopted. Hon'ble Supreme Court had held so in the case of CIT v. Kulu Valley Transport Co. (P) Ltd. . Hon'ble Supreme Court also made

(1) Commissioner of Income-tax, West Bengal v. i cgetabk Products Ltd.

(2) Commissioner of Income-tax, West Bengal v. Naga Ilills Tea Co. Ltd.

(3) Controller of Estate Duty v. R. Kanakasabai and Ors.

In the following decisions the various courts had held that where a literal construction would defeat the obvious intention of the legislation and produce a wholly unreasonable result, the courts must "do some violence to the words" and so achieve that obvious intention and produce a rational construction: Commissioner of Income-tax, Central Calcutta v. National Taj Traders.

(3) Commissioner of Income-tax, Bangalore v. J.II. Golta Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the Legislature, the court might modify the language used by the Legislature so as to achieve the intention of the Legislature and produce a rational construction. The task of interpretation of a statutory provision is an attempt to discover the intention of the Legislature from the language used. It is necessary to remember that language is at best an imperfect instrument for the expression of human intention. It is well to remember the warning administered by Judge Learned Hand that one should not make a fortress out of the dictionary but remember that statutes always have some purpose or object to accomplish and sympathetic and imaginative discovery is the surest guide to their meaning.

7. In the matter before us, the respondents had imported automatic stitcher and winder for the manufacture of electrolytic capacitors by notification No. 118/80-Cus dated 19th June, 1980. The intention of the Government is to boost the manufacture of electrolytic capacitors. If it is deemed that one of the two machines

is to be imported, the manufacture of electrolytic capacitors will not be possible and as such, the intention of giving concession for import at the concessional rate will be defeated. In the matter before us, the Government amended the notification vide notification No. 272/83-Cus and serial No. 29 was amended.

8. In view of the above discussion, we are of the view that the word "and" should be interpreted as "or" in a disjunctive manner.

Accordingly, we set aside the impugned order and order that the respondents are entitled to the benefit of notification No. 118180-Cus dated 19th June, 1980, and the appeal filed by the revenue is dismissed.

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