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Court : Delhi

Decided On : Mar-21-1990

Reported in : 41(1990)DLT194; 1990(49)ELT39(Del)

Judge : Charanjit Talwar and; S.N. Sapra, JJ.

Acts : Finance Act, 1982 - Sections 50; Central Excise Act; General Clauses Act, 1897 - Sections 6

Appeal No. : Civil Writ Petition No. 3401 of 1982

Appellant : Goodyear India Ltd. and anr.

Respondent : Union of India and ors.

Advocate for Def. : Mr. Rajinder Dutt

Advocate for Pet/Ap. : Ravinder Narayan and; Rajender Dutt, Advs

Judgement :

S.N. Sapra, J.

(1) By the present writ petition, petitioners seek to, interalia, challenge the Directive No. 15/16/63-CXI of the Central Board of Excise and Customs, respondent no. 2 herein, whereby it has been clarified that, where an exemption of set off is given under the notification, the special duty of excise is to be calculated

first, without applying the exemption notification, which is to be applied thereafter.

(2) To appreciate the respective contentions of learned counsel for parties, it will be useful, to refer to, in briefs, the facts of the case.

(3) Petitioner No. 1 manufactures tyres, tubes, flaps and rubber products, which are classifiable under Tariff Items 16, 16A and 68 of the 1st Schedule to the Central Excise and Salt, 1944, hereinafter referred to as the Act. In the manufacture of finished products, petitioner Company uses certain raw materials, which are classified and, on which duty is paid under Tariff Item 68 of the 1st Schedule to the Act. Petitioner, also uses synthetic rubber, carbon black and rubber processing Chemicals, in the manufacture of rubber products. These products, are, hereinafter, referred to as the inputs.

(4) On June 4, 1979 the Central Government, issued a notification No. 201/79-CE whereby, exemption was granted to goods, in the manufacture of which, items failing under Tariff Item 68, have been used as inputs, to the extent of duty paid, on such inputs. The Central Government, further issued an amendment to notification, dated March 1. 1979, vide notification No. 58/82-CE dated February 28, 1982, by which, the Central Government, exempted tyres and lube-, in the manufacture of which, synthetic rubber, carbon black and rubber processing Chemicals have been used to the extent of the duty, paid on such synthetic rubber, carbon black and rubber processing Chemicals.

(5) On September 7, 1982, petitioners wrote to the Assistant Collector of Central Excise, thereby pointing out, that on a true and proper interpretation of Section 50 of the Finance Act, 1982, the exemption of set off, granted under the aforesaid notifications, would be availed of first, and the. special duty, to be calculated thereafter.

(6) It is further alleged that petitioners, however, came to know that the Central Government, had issued a Directive to all Collectors of Central Excise that, where exemption was granted by set off, the special excise duty was to be calculated first, and the exemption by way of set off, availed off', subsequently.

(7) On the basis of the aforesaid Directive, issued by respondent no. 2, the Assistant Collector, respondent No. 4 herein, vide his letter dated September 24, 1932, rejected the contention of petitioners, and directed petitioners to first calculate special excise duty, and claim exemption, by set off thereafter. According to petitioners, this letter was issued by respondent no. 4, without giving a personal hearing to petitioners, before passing the order, thereby rejecting the contention of petitioners. This is in complete violation of the principles of natural justice. Respondent no. 4, in his said letter, also directed petitioners, to debit the credit taken, in respect of exempted tyres, under the aforesaid notification. It is thus clear from the letter of respondent no. 4, that he is acting on the basis of the Directive, issued by respondent no. 2. In view there of, petitioners have no other remedy, but to approach this Court by way of writ petition. Petitioners have thus submitted that the impugned Directive (annexure 'D'), of respondent no. 2, the letter dated September 21, 1982, (annexure 'E'), issued by respondent no. 4 and the letter of the Superintendent dated September 13, 1982, are illegal without jurisdiction and contrary to law.

(8) Respondents have not filed any reply to the writ petition. However reply has been filed to the application, being C.M. No. 4929 of 1982, for temporary stay. Mr. Rajinder Dutt, learned counsel for respondents, has submitted that this reply, be treated, as reply to the writ petition.

(9) In their reply, respondents have alleged that the writ petition is not maintainable, as, petitioners have alternative efficacious remedies, available to them, under the amended Act.

(10) According to respondents, the letter, issued by respondent no. 2, is only a clarification and, it is not in the nature of direction. The Assessing Authorities, under the Act, are discharging their functions independently and in accordance with law. The Assistant Collector has not acted on the basis of any direction, issued by respondent no. 2. It is further alleged by respondents that the special excise duty, is to be calculated first, on the chargeable basis of the excise duty and set off/Performa credit, available on the raw materials/ component parts, is to be availed of thereafter.

(11) It is further alleged that petitioners are manufacturing dutiable, as well as, non-dutiable tyres and they can avail of proforma credit in respect of, duty paid on the inputs, in accordance with notification No. 201/79 (annexure 'A'). Petitioners are not entitled to avail of proforma credit, in respect of tyres, which are exempted from whole of the duty of excise or are chargeable to nil rate of duty.

(12) Mr. Rajinder Dutt has raised a preliminary objection, that the writ petition is not maintainable, on the ground, that petitioners have alternative remedies, available to them, under the Act. Petitioners ought to have availed of and, exhausted those remedies, such as, by way of appeal and revision, as provided under the Act.

(13) Mr. Ravinder Narain, contests this plea of the Union of India, on the ground, that petitioners are challenging the Directive, issued by the Central Board of Excise and Customs, respondent no, 2 herein, which is the highest Administrative Authority, under the Act. In fact respondent no. 2 has, by way of clarification, issued a Directive to its subordinate officers, including the Collectors and the Assistant Collectors, to the effect that the special duly of excise was to be calculated first, on the basis of the duty and, set off paid on [he components, where permissible, was to be allowed thereafter. The effect of this clarification is that the subordinate officers, will follow this, as Directive. In view of this Directive, petitioners have no other equally efficacious remedy but to approach this Court, by way of writ petition.

(14) Mr. Ravinder Narain has referred to the letter, dated September 24, 1982, (annexure 'E'). to show that the Assistant Collector has adopted the impugned Directive, so issued by respondent no. 2. He has placed reliance upon the judgment in Orient Paper Mills Ltd. v. Union ofIndia 1978 E.LT 345, wherein the Supreme Court held :

'IF the power exercised by the Collector was a quasi-judicial power as we hold it to be, that power cannot be controlled by the directions issued by the Board. No authority however high placed can control the decision of a judicial or a quasi-judicial authority. That is the essence of our judicial system. There is no provision in the Act empowering the Board to issue directions to the assessing authorities or

the appellate authorities in the matter of deciding disputes between the persons who are called upon to pay duty and the department. It is true that the assessing authorities as well as the appellate authorities are judges in their own cause; yet when they are called upon to decide disputes arising under the Act they must act independently and impartially. They cannot be said to act independently if their judgment is controlled by the directions given by others. Then it is a misnomer to call their orders as their judgments; they would essentially be the judgments of the authority that give the directions and which authority had given those judgments without hearing the aggrieved parly. The only provision under which the Board can issue directions is Rule 233 of the Rules framed under the Act. That rule says that the Board and the Collectors may issue written instructions providing for any supplemental matters arising out of these Rules. Under this rule the only instruction that the Board can issue is that relating to administrative matters, otherwise that rule will have to be considered as ultra virus of Section 35 of the Act.'

(15) We accept this contention of Mr. Ravinder Narain as, in our view, the present writ petition is maintainable.

(16) The main question, which arises for consideration is, as to whether, under Section 50 of the Finance Act, 1982, the exemption of set off, granted under the aforesaid notifications should be availed of first and, the special duty is to be calculated thereafter, or the special excise duty is to be calculated, in accordance with the impugned Directive, issued by respondent no. 2.

(17) The answer to this question, depends upon the true interpretation of Section 50 of the Finance Act, 1982.

(18) Mr. Ravinder Narain has contended that the words 'so chargeable' in the Section, clarify the amount of duty, livable under the Act, read with any notification, in force, relating to the duty under the Act. It means, that on a true and proper reading of this Section, special duty is to be calculated, after giving effect to the notification, granting exemption by way of set off, under various notifications, which are not in general terms.

(19) Section 50 of the Finance Act, 1982, reads as under :

'50.Special duties of excise:-(1) In the case of goods chargeable with a duty of excise under the Central Excise Act, as amended from time to time, read with any notification for the time being in force issued by the Central Government in relation to the duty so chargeable, there shall be levied aud collected a special duty of excise equal to ten per cent of the amount so chargeable on such goods. (2) Sub-section (1) shall cease to have effect after the 31st day of March, 1983, except as respect things done or omitted to be done before such cessor and Section 6 of the General Clauses Act 1897 shall apply upon such cesser as if the said sub-section had then been repealed by a Central Act. (3) The special duties of excise referred to in sub-section (1) shall be in addition to any duties of excise chargeable on such goods under the Central Excises Act or any other law for the time being in force. (4) The provisions of the Centr-1 Excises Act and the rules made there under, including those relating to refunds and exemptions rom duties, shall, as far as may be, apply in relation to the levy and collection of the special duties of excise livable under this section in respect of any goods as they apply in relation to the levy and collection of the duties of excise on such goods under that Act or those rules as the case may be.'

(20) The principles of law, governing the interpretation of statutes, are now well settled, by judicial pronouncements. In Chief Justice of Andhra Pradesh and another v, L.V.A. Dikshitulu and others etc., : [1979]1SCR26 , it has been held :

'THE primary principle of interpretation is that a constitutional or statutory provision should be construed 'according to the intent of they that made it' (Coke). Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise and plain and thus by itself, proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision arc imprecise, protean, or evocative or can reasonably bear meaning more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to

go beyond the arid literal confines of the provisions and to call in aid other well-recognised rules of construction, such as its legislative history, the basic scheme and framework of the statute as a whole, each portion throwing light on the rest, the purpose of legislation, the object sought to be achieved, and the consequence that may flow from the adoption of one in preference to the other possible interpretation. Where two alternative constructions are possible, the Court must choose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working, and eschew the other which leads to absurdity, confusion or friction, contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment. These canone of construction apply to the interpretation of our Constitution with greater force, because, the Constitution is a Jiving, integrated organism, having a soul and consciousness of its own. The pulse beats emanating from the spinal cord of the basic framework can be felt all over its body, even in the extremities of its limbs. Constitutional exposition is not mere literary garniture, nor a mere exercise in grammer. As one of us (Chandrachud J. as he then was) put it in Kesavananda Bharoti's case : AIR 1973 SC1461 while interpreting words in a solemn document like the Constitution, one must look at them not in a school-masterly fashion, not with the cold eye of lexicographer, but with the realization that they occur in 'a single complex instrument in which one part may throw light on the other' so that construction must hold a balance between all its parts.'

(21) The Central Government, from time to time, has been levying special duty of excise on goods, which are liable to basic duty of excise, under the Act. The basic duty of excise is chargeable, under the Act. But, the special duty of excise, is levied by Finance Acts, which are passed, from year to year. In the present case, the special duty was levied, under Section 50 of the Finance Act, 1982. Identical provisions, for levying the special duty of excise, were enacted in all the Finance Acts, earlier to the Finance Act, 1982.

(22) The Central Government, has issued several notifications, as mentioned above, thereby granting by way of set off, the final products, to the extent of duty paid on inputs. These notifications, granting exemption by set off, have been

issued under Rule 8 of the Central excise Rules, 1944, hereinafter referred to as Rules. Section 50(1) of the Finance Act, 1982, provides that in case of goods, chargeable with a duty of excise, under the Act, as amended From time to time, read with any notification, for the time being in force, issued by the Central Government, in relation to the duty, so chargeable, there shell be levied and collected, a special duty of excise. Thus, the Section provides that in a case, where the goods are chargeable with a basic duty of excise under the Act, then, in relation to the duty, so chargeable, there shall be levied and collected a special duty of excise.

(23) Under Section 50 (1) of the Finance Act, 1982, special duty of excise, is to be levied and collected, equal to ten per cent of the amount, so chargeable on such goods. The Legislature, has expressed its intention clearly, by inserting the words 'read with any notification for the time being in force, issued by the Central Government, in relation to the duty so chargeable.' It means that in order to calculate the special excise duty, the exemption by set off has to be claimed, before the special duty of excise, is levied.

(24) In other words, the liability of the assessue, is to pay, such amount of basic excise duty, after giving effect to the exemption notifications, for the time being in force. So, this is the amount 'so chargeable'.

(25) In our view, this intention of the Legislature is expressed, with sufficient clarity, by the language of Section 50(1) of the Finance Act, 1982. We hold that the exemption by set off, was first to be given effect and special excise duty was to be calculated thereafter.

(26) The result is, that the clarification, given by the impugned Directive, issued by respondent no. 2, is not correct.

(27) We may note that the language of Section 50 of the Finance Act, 1982, has now been amended by Section 55 of the Finance Act, 1983.

(28) The last contention of Mr. Ravinder Narain is that the Directive, given to petitioners, by respondent no. 4, to debit the credit, taken in respect of exempted

tyres, tubes and flaps, under the notification, is illegal and contrary to law. He has urged that the notification No. 201/79 was issued in supersession of earlier notification No. 178/77-C.E., as the earlier notification had caused substantial difficulty to the industry and, the Central Government on the representation of the industry, specifically repealed the first notification and issued the notification No. 201 of 1979.

(29) Under the present notification, a manufacturer is required to take proforma credit of the duty, paid on inputs, as soon as, the inputs are brought in to the factory. This credit is, then utilised and the manufactured goods are cleared and is not linked to pay particular item of the manufactured product The language of the new notification, does not require the inputs to be co product with end-product. Similarly, under Rule 56-A of the Rules, which is the procedure, applicable to notification No. 95/79-CE, as amended by notification No. 58/82CE, no co-relation is required between the inputs and the final product. Moreover, the notification No. 201/79, as well as, Rule 56-A of the Rules as, are self contained codes and, the manner in which exemption is to operate, is laid down in the appendix to the said notification as well Rule 56-A.

(30) Mr. Rajinder Dutt, on the otherhand, has contended that the direction, given by the Assistant Collector, is an accordance with law. As per the aforesaid notification No. 201/79 and Rule 56-A of the Rules, nothing apply to the goods, which are exempted from the whole of the duty of excise and/or are chargeable to nil rate of duty.

(31) In our view, there is a force in the contention of Mr. Ravinder Narain. It appears that the extent of credit, available in the account, maintained in RG-23, can be utilised, at the time of clearing of the product, and there is no provision in the appendix to the notification, as well as, in Rule 56-A, that at every stage of clearance of the end product, utilisation of credit has to be co-related to the quantum of inputs, used in the manufacture of end product.

(32) In fact, the scheme provides that the credit can be utilised for payment of duty, against any excisable products, that are brought from the factory. No debit can be claimed after the credit has been taken on goods, brought into the factory.

Once, raw materials enter the factory of petitioner company, credit is to be taken in accordance with the procedure, prescribed in the Rules, without any co-relation to the end product. The credit can be utilised by petitioner, for the payment of duty on any goods, for which credit is taken. These goods need not be exempted goods, but will be those goods, on which duty is payable under the Act.

(33) In our view, in terms of the said notification, there need not be any nexus between the inputs and out-puts.

(34) Under the facts and circumstances of the case, we allow the writ petition and the Rule is made absolute. No order as to costs.

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