

Union of India and Others

Vs

Wood Papers Ltd. and Another

Civil Appeal No. 539 of 1976

(K. Jagannatha Shetty, R. M. Sahai JJ)

24.04.1990

JUDGMENT

R. M. SAHAI, J. -

1. By this appeal Union Government has challenged correctness of construction by High Court of Gujarat of Notification No. 163 of 1965 issued under Rule 8 framed under Central Excise and Salt Act allowing exemption to all sorts of papers by "any factory commencing production" to refer" not to the production of excisable goods - paper in general falling under Item 17, but to production of these specified exempted categories of paper in Column 2 of this notification" and canvasses for acceptance of the construction put on it by the Collector, Central Excise "that the factory must have commenced production on or after that date and not that the production of these items must have been commenced after the date".

2. M/s. Arvind Boards & Paper Products Limited, Antalia, Bilimora, Gujarat State, was established in 1942. From 1944 when it went into production till 1964 it manufactured only strawboards and millboards. It expanded its activities in 1965 and commenced manufacture of duplex board. The packing and wrapping paper was manufactured on experimental basis in 1966 and on commercial basis after 1967. In December 1971 the company wrote a letter to the Assistant Collector of Central Excise inquiring as to whether the company would be entitled to exemption under Notification No. 163/65 both in respect of the production attributable to its installed capacity as in 1967 as well as in respect of the production attributable to its expanded capacity. In 1972 it was informed that it would be entitled to concession under Column 5 of the Table of the notification in respect of the production attributable to the enlarged capacity, namely, the third machine only. Consequently the claim of the petitioners for exemption on capacity as it existed in 1967 was not accepted. The order was maintained in appeal as well. The Appellate Collector held :-

"I do not agree with the appellant's contention that the Assistant Collector erred in holding that "any factory which commenced production" related to any factory manufacturing paper falling under Item 17 of the said schedule irrespective of the varieties manufactured thereof. The exemption contained in the aforesaid Notification No. 163/65 as amended is in respect of the goods. Said exemption is conditional i.e. it is applicable to paper produced in a factory which commenced production on or after a specific date. Therefore, the condition is that the factory must have commenced production on or after that date and not that the production of these items must have been commenced after that date."

The High Court did not agree with the construction of the Notification made by the Collector

(Appeal) and held :-

"That is why the whole controversy has arisen as regards these key words "commencement of production". On a plain literal construction, bearing in mind the context of the exemption, where only certain specified categories of paper which is excisable item as specified in Column 2 has been exempted, it is obvious that the commencement of production must refer not to the production of excisable goods - paper in general falling under Item 17, but to production of these specified exempted categories of paper in Col. 2 of this notification. Any other interpretation would make the specification of various kinds of paper in Column 2 which alone attracted exemption redundant and would make even this condition in Cols. 3, 4 and 5 unworkable."

Excise duty was leviable under the Act on manufacture and clearance of paper under Item 17 of Schedule 1 to the Act. It reads as under :-

"MANUFACTURED GOODS CLASSIFIED CHIEFLY BY MATERIAL"

17. Paper, all sorts (including pasteboard, millboard, strawboard and cardboard), in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power,

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(3) Printing and writing paper, packing and wrapping paper, straw board and pulp board, including grey board, corrugated board, duplex and triplex boards, other sorts 35 paise per kg."

In 1965 the Central Government issued notification exempting papers of all sorts, from so much of the excise duty leviable thereon under the said item read within notification for the time being in force issued by the Central Government in relation to the duty so leviable, as is specified in the corresponding entry in Columns 3, 4, 5(a), 5(b) & 5(c) of the Table as the case may be :

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TABLES. No. Des- Any factory Any factory Any factory commencing cription which com- which comme- production for the first menced pro- nced produc- time on or after March 1, duction be- tion on or 1964, on any factory fore April after April existing immediately, 1961 1, 1961 but before March 1, 1964 before March whose production capaci- 1, 1964. ty has been enlarged and brought into operation on or after March 1, 1964 to the extent such production is attributable to the enlarged capacity During During During the the fi- the se- period sub- rst 12 cond 12 sequent months months of to the of the the comm- first 24 commenc- encement months of ement of produc- the comme- of pro- tion ncement of duction proiduction 1 2 3 4 5(a) 5(b) 5(c)

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4. Entitlement of exemption depends on construction of the expression "any factory commencing production" used in the Table extracted above. Literally exemption is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in a growing economy. For instance tax

holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective etc. That is why its construction, unlike charging provision, has to be tested on different touchstone. In fact an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment state revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking, liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. Therefore, the first exercise that has to be undertaken is if the production of packing and wrapping material in the factory as it existed prior to 1964 is covered in the notification.

5. From the table extracted above it is clear that it is in two parts and exemption is allowable in the first part to the factory commencing production on or after 31st March, 1964, and in the second part to the existing factory to extent of enlarged capacity. If the first part is read in isolation it is susceptible of construction as was adopted by the High Court. But the notification has to be read in its entirety and construed as a whole. Once that is done cloud of uncertainty disappears. A close reading of both the parts together leaves no room for doubt that it was intended to be exhaustive granting exemption to all factories producing packing and wrapping paper whether existing or commencing production from 1st March, 1964. To the former to the extent of enlarged capacity and to latter to full extent. The ambiguity arose because of absence of words 'new' before 'factory' or 'goods' after the word 'production' in the first clause. To harmonize it the High Court added the word 'goods'. But what was lost sight of that the words 'commencing' in the first part and 'existing' in the second part had to be read in juxtaposition. That is all those factories which were existing from before were entitled to exemption on production of goods to the extent of enlarged capacity. This enlargement could be as a result of installation of additional machinery. The word capacity must necessarily relate to capacity of factory and not to goods. For instance a factory with capacity of say 1 lakh kg. of paper but producing only 75 thousand kg. achieving maximum after 1964 could not be covered in the clause as the production cannot be held to be due to enlarged capacity. That could be only if the capacity to produce goods increased due to installation of additional machinery. If this be true and correct, as it appears to be, then the first part presents no difficulty. The expression 'commencing production' has to be read as commencing production of goods by a factory which was not existing and has started production on or after 1st March 1964. Any other construction shall result in discrimination. A factory like respondent existing from 1942 producing straw board and millboard shall be entitled to exemption on production of wrapping and packing paper on construction of the expression 'commencing production' by the High Court even though it switched over from strawboard and millboard to packing and wrapping paper after the relevant date whereas another unit existing and producing wrapping and packing paper itself from before 1st March 1964 could not be entitled to exemption except to the extent of enlarged capacity. That is if an existing unit would have installed a new machinery it would have been entitled to exemption of production only to that extent whereas any unit producing goods other than the exempted goods would become entitled to exemption in respect of entire production. That could not have been the intention. A construction which results in inequitable results and is incongruous, has to be avoided. Therefore, production of packing and wrapping paper by respondent was entitled to exemption only to the extent it was attributable to enlarged capacity and not to the existing capacity.

6. Hansraj Goverdhan v. H. H. Dave, Asstt. Collector, Central Excise & Customs, Surat ((1969) 2 SCR 252 : AIR 1970 SC 755), relied on behalf of respondent demonstrates mis-conception about interpreting and exemption provision. It was a case where goods of third persons were manufactured by cooperative society. But once initial hurdle was crossed and it was held that goods has been produced by cooperative society it was found squarely covered in the notification and the Court extended it to goods manufactured by third persons and repelled the submission that object of granting exemption was to encourage formation of cooperative societies and it should be confined to goods manufactured by its members and not others. Similarly in Commissioner of Income Tax v. Madho Prasad ((1976) 4 SCC 92 : 1976 SCC (Tax) 443), the provision allowing exemption to 'such part of the income in respect of which the said tax is payable under the head 'property' as is equal to the amount of rent payable for a year', was construed liberally and it was held that the expression 'equal to the amount of rent payable for a year' did not 'warrant the inference that the benefit of exemption' could be claimed only once' because the amount of rent which was sought to be deducted in more than one year was found squarely to fall in Item 30 of notification. It was again a case of interpreting an exemption notification at later stage. Recently in Tata Oil Mills Co. Ltd. v. Collector of Central Excise ((1989) 4 SCC 541 : 1990 SCC (Tax) 22), exemption was to soap made from indigenous rice bran oil as against edible oil. The assessee was engaged in manufacture of soap from rice bran fatty acid which was extracted from rice bran oil, in assessee's factory. It was found rice bran oil as such could not be used unless it was converted into fatty acid. Therefore, the assessee was covered in the notification. Once the ambiguity about manufacture of soap from rice bran fatty acid was removed the Bench proceeded to construe the word "indigenous" in the notification liberally. In Collector of Central Excise v. Parle exports (P) Ltd. ((1989) 1 SCC 345 : 1989 SCC (Tax) 84 : AIR 1989 SC 644), this Court while accepting that exemption clause should be construed liberally applied rigorous test for determining if expensive items like Gold Spot base of Limca base or Thumps Up base were covered in the expression food products and food preparations used in Items No. 68 of First Schedule of Central Excise and Salt Act and held ' that it should not be in consonance with spirit and the reason of law to give exemption for non-alcoholic beverage basis under the notification in question. 'Rationale or Ratio is same. Do not extend or widen the ambit at stage of applicability. But once that hurdle is crossed construe it liberally. Since the respondent did not fall in the first clause of the notification there was no question of giving the clause a liberal construction and hold that production of goods by respondent mentioned in the notification were entitled to benefit.

7. In the result this appeal succeeds and is allowed. The order of the High Court is set aside and the Writ Petition is dismissed with costs.

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