

SUPREME COURT OF INDIA

Collector of Customs

Vs.

United Electrical Industries

(A Mishra and R Sethi JJ.)

23.03.1999

JUDGMENT

A.P. MISRA AND R.P. SETHI, JJ.

1. The short question which is raised in this appeal relates to the interpretation of entry 58 of the Notification No. 118/80-Cus. Entry 58 reads as under:

(58) Automatic lead welding, lacquering, testing, colour coating, sorting and packing machine for resistOrs.

2. The facts are that the respondent imported three machines in two separate consignments and claimed benefits under entry 58 of the said notification. The case of the Department is that each of these machines were imported separately and between them the machines imported would do all jobs enumerated in the aforesaid entry 58 but each machine separately could not do all the jobs and as the words in this entry is 'Machine' not 'Machinery' no benefit could be given to the assessee. On the other hand contention of the learned Counsel for the assessee is that word 'Machine' is to be read as 'Machines' to give true meaning to the notification and hence each of the machines referred to therein is entitled for exemption.

3. The Appellate Collector accepted Revenue stand and held to the same effect that the machines imported by the respondent would do all the jobs enumerated in the aforesaid entry 58 but each machine separately could not do all the jobs. It further recorded that there seems to be slip in the issuance of the original notification. But being a quasi judicial authority, it can only interpret the law as it stands and cannot correct the law. Hence interpreted the said notification to be for one single composite machine, so no benefit could be given, hence respondent's appeal was rejected. A

revision was preferred by the assessee before the Central Government which was subsequently transferred to the Tribunal. The Tribunal allowed the Revision. Aggrieved by this order Revenue has filed the present appeal.

4. The assessee produced two letters before the Tribunal, one is letter dated 29th November, 1980 of the Department of Electronics that the notification of the Department at the time of recommending the equipment for concessional duty was to allow the benefit both with automatic lead welding, colour coating, lacquering, testing, sorting and packing machines when imported as a complete plant or as separate machines. The other letter is dated 7th February, 1983 which is stated as under:

In this connection it is clarified that no single unit of machine can perform all the functions namely, lead welding, lacquering, testing, colour coating, sorting and packing. Keeping this in view Item No. 58 of Ministry of Finance Notification No. 118/80, dated 19-6-1980 has been amended vide Notification No. 33/81, dated 1-3-1981 to read as under :

Automatic machines for resistors with one or more of the following functions, namely,

- (a) Lead welding
- (b) Lacquering
- (c) Testing
- (d) Colour coating
- (e) Sorting
- (f) Packing.

According to the said letter the aforesaid notification was clarified and amended vide Notification No. 33/81, dated 1-3-1981.

5. For the Revenue reliance is placed on a decision of this Court in Collector of Customs, Bombay v. Perfect Machine Tools Co. Pvt. Ltd. . This Court in para 4 relied on an earlier decision of this Court in the case of Novopan India Ltd. v. Collector of Central Excise and Customs 1994 Supp (3) SCC 606, in which this Court recorded as under :

The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision; they have to be construed strictly; A" person invoking an exception or an exempting provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt of ambiguity, benefit of it must go to the State.

6. Thus submission is that construction of exempting provision has to be construed strictly and the burden is on the assessee invoking the exemption clause to establish that he is covered by the said provision. This was a case where the question was, whether accessory could be included within the notification of exemption which qualifies machine only. It was held that before exemption could be claimed, it is to be proved that the accessory is included within the notification and the burden is on

the assessee to prove it to be included within the word 'machine'. This case would render no help to the revenue to the question raised in the present case. In the present case, the question for consideration is, whether the entry 58 of the notification using word 'Machine' in singular not plural viz. 'Machines', could it include other machines referred in the same notification for granting exemption or it qualifies only one composite machine for resistor to give benefit under it?

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 machines 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. It is well settled which is also provided in Section 13 of the General Clauses Act, 1897 of the Central Acts that unless there is anything repugnant to the subject or context the word singular shall include plural and vice versa. The Tribunal interpreted the word 'machine' to be 'machines' and, in our opinion, rightly so. It seems by this restrictive interpretation the very purpose of this notification since completely diluted which led into clarification/modification by the Government through the aforesaid letter.

8. Therefore, we find this appeal by the Collector of Customs, Bombay has no merit. The same is, accordingly, dismissed. There shall be no order as to costs.