

Collector of Central Excise

Vs.

The Himalayan Cooperative Milk Product Union Ltd. etc.

(U.C.Banerjee and Brijesh Kumar, JJ.)

Civil Appeal Nos. 77-78 of 1989 with Civil Appeal No. 637 of 1991

07.11.2000

JUDGMENT

Brijesh Kumar, J.:- Since the above noted two appeals involve a common question for determination, as to the interpretation of a Notification issued by the Central Government under sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, exempting goods falling under Item No. 68 of the First Schedule to the Central Excise and Salt Act 1944, on fulfilment of certain conditions, the appeals are being disposed of by this common judgment. As usual in such cases, the Revenue is trying to bring manufacturers within its net to charge it with the excise duty whereas the manufacturer-respondents trying to get out of it claiming benefit under the aforesaid Notification.

2. The brief facts of the case are that the manufacturer-respondent, Himalayan Cooperative Milk Product Union Limited manufactures butter and skimmed milk powder etc. in its industrial complex. For purposes of chilling plant of Dairy Unit, the respondent seems to have installed a plant manufacturing liquid nitrogen which item, undisputedly falls under Item 68 of the Excise Tariff. By means of Notification No. 105/80-C.E. dated 19.6.1980 the excise duty payable on goods falling under Item No. 68, is exempted in respect of the first clearances of the said goods for home consumption by or on behalf of a manufacturer from one or more factories upto a value not exceeding rupees thirty lakhs inter alia on the condition that the total of the value of the capital investment made from time to time, on the machinery installed for manufacturing said goods is not more than rupees ten lakhs. According to the manufacturer - respondents the total capital investment in the plant and machinery manufacturing liquid nitrogen is less than rupees ten lakhs, therefore the benefit of exemption from excise from excise duty is admissible under the Notification in question dated 19.6.1980.

3. The Assistant Collector, Central Excise, Siliguri Division by order dated 5.9.1983 rejected the claim of the respondents and confirmed the demand as raised by the Superintendent of Central Excise under Central Excise Rules, observing that the respondents are using all the plants and machinery for purposes of manufacturing all kinds/varieties of excisable goods falling under different Tariff items, the total value of capital investment of all plants and machineries, installed in the said factory are to be taken into account and no exemption on investment which was more than ten lakhs was admissible. Thus according to the excise authorities the total value of investments in all the plants manufacturing butter and skimmed milk powder and other dairy products as well as for manufacturing of liquid nitrogen was to be taken into account. According to the respondents Himalayan Cooperative Milk Product Union Limited the value of investment on liquid nitrogen plant which alone is relevant is much less than rupees ten lakhs. The appeal preferred against the order of Assistant Collector was also dismissed by the Collector (Appeals), Central Excise, Calcutta by order dated 9.1.1984. Both the authorities have, however, held that liquid nitrogen itself is a

finished product and falls under Tariff Item 68.

4. The respondents preferred an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi. The Appellate Tribunal by its order dated 21.1.1988 allowed the appeal holding that the respondents would be entitled for the benefit under the Notification of exemption. On facts though the Tribunal remanded the matter to the original adjudicating authority for computing the capital investment on plant and machinery referable to liquid nitrogen and the common plant and machinery in the same industrial complex so as to ascertain the capital investment on generator used for the chilling water.

5. We feel it would be better to peruse the Notification dated 19.6.1980 exempting the payment of excise duty on goods falling under Item 68 of the Tariff. It reads as follows:

"In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, and in supersession of the notification of the Govt. of India in the Ministry of Finance (Department of Revenue) No. 89/79 - Central Excises, dated the 1st March 1979, the Central Government hereby exempts goods, falling under Item No. 68 of the First Schedule to the Central Excise and Salt Act 1944 (1 of 1944), (hereinafter referred to as the said goods), in respect of the first clearances of the said goods for home consumption by or on behalf of a manufacturer from one or more factories upto a value not exceeding rupees thirty lakhs, cleared on or after the 1st day of April in any financial year, from the whole of the duty of excise leviable thereon:

Provided that during the period commencing on the 19th day of June, 1980 and ending on the 31st day of March, 1981, the value of the clearances of the said goods eligible for exemption under this notification shall be subject to the following conditions, namely:-

(i) The aggregate of the value of clearance eligible for exemption contained in this notification during the aforesaid period, and the clearances, if any, already effected by or on behalf of a manufacturer in terms of the exemption contained in the notification No. 89/79 - Central Excises, dated the 1st March, 1979 aforesaid, during the period commencing on the 1st day of April, 1980, shall not exceed rupees thirty lakhs; and

(ii) The value of clearances eligible for exemption contained in this notification during the aforesaid period commencing on the 19th day of June, 1980 and ending on the 31st day of March, 1981 shall, in no case, exceed rupees twenty four lakhs.

Provided further that an officer not below the rank of an Assistant Collector of Central Excise is satisfied that the sum total of the value of the capital investment made from time to time on plant and machinery installed in the industrial unit in which the said goods, under clearance, are manufactured, is not more than rupees ten lakhs. (Underlined by us for emphasis).

2. Where a factory producing the said goods is run at different times during a financial year by different manufacturers, the total value of the clearances of the said goods from such factory eligible for exemption under this notification in such year

shall not exceed rupees thirty lakhs.

3. Nothing contained in this notification shall apply to a manufacturer, if the total value of the said goods cleared, if any, for home consumption by him or on his behalf from one or more factories in the proceeding financial year exceeded rupees thirty lakhs.

Explanation 1 - While determining the sum total of the value of the capital investment, only the face value of the investment at the time when such investment was made shall be taken into account, but the value of the investment made on plant and machinery which have been removed permanently from the industrial unit or rendered unfit for any use shall be excluded from such determination.

Explanation II. - In this notification, the expression 'factory' has the meaning assigned to it in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948).

Explanation III. - For the purpose of computing the value of clearances under this notification, the clearances of the said goods which are exempted from the whole of the duty of excise leviable thereon by any other notification issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944, and for the time being in force shall not be taken into account".

6. A bare perusal of the Notification quoted above shows that the Central Government under Rule 8(1) of the Excise Rules exempts goods in respect of first clearance for home consumption by or on behalf of the manufacturer from one or more factories upto a value not exceeding rupees thirty lakhs. The exemption would however be allowable on fulfilment of a condition as contained in the proviso to clause (ii) of the Notification which says that an officer not below the rank of an Assistant Collector of Central Excise is to be satisfied that the sum total of the value of the capital investment made on the plant and machinery installed in the industrial unit manufacturing "said goods under clearance" is not more than rupees ten lakhs. On perusal of the proviso under consideration, it would be clear that it does not refer to any other goods under clearance except the goods falling under Item 68 of the First Schedule to the Central Excise and Salt Act, 1944. In the beginning itself of the Notification says that the goods falling under Item 68 are to be referred to, in the Notification, as 'said goods'. According to own findings of the Assistant Collector, liquid nitrogen is itself a finished product and falls under Tariff Item No. 68. In that view of the matter the question of taking into account the value of the capital investment made on plants and machinery manufacturing goods other than covered under Item No. 68 does not arise. We find no force in the submissions made on behalf of the appellants that value of all plants and machinery manufacturing butter and skimmed milk powder etc. has also to be added up so as to find out as to whether total value of the capital investment in the plant and machinery is rupees ten lakhs or more. In our view the value of the capital investment, has to be in respect of the plant and machinery manufacturing the "said goods" viz. goods covered under Item No. 68 of the Tariff, clearances of which alone is taken into account in exempting from payment of excise duty under the Notification in question. The said goods in the present case is only liquid nitrogen. Thus the value of investment in the plants and machinery manufacturing other goods not covered under Item 68 has no relevance nor it is to be taken into account.

7. The Tribunal while allowing the appeal followed a decision of Bombay High Court reported in 1984 (16) E.L.T. 30 (Bom.) Devidayal Electronics & Wires Ltd. and another versus Union of India

and another. The similar notification in respect of an earlier year was under consideration before the Court. It had been noticed that two words have been used in the Notification namely, the 'factory' and 'industrial unit'. The two expressions would be presumed to have been used for different meaning. It was held that industrial unit would mean something other than the factory, which is exclusively used for manufacture of goods for which exemption is claimed. Learned counsel for the appellant tried to distinguish the case on facts. We, however, find that in principles what has been held in Devidayal (supra) as followed by the Tribunal, cannot be said to be an incorrect view. The factual deviation would be a matter on facts of each case. The other case which the Tribunal has referred to is reported in 1987 (27) E.L.T. 273 (A.P.) Golden Press versus Deputy Collector of Central Excise, Hyderabad and Another. In this case a notice was issued on the manufacturer of cartons as to why penalty be not imposed since the goods manufactured were removed without payment of duty. It was pleaded that cartons were exempted under a notification exempting all products of printing industry. The Court, however, held that cartons though may be printed, cannot be held to be product of printing industry. They will be relatable to packaging industry. Hence, the benefit, as pleaded, was not admissible. In so far as the other arguments raised about the value of the investment made for manufacture of printed cartons, it was held that cost of cutting machines etc. could not be excluded which according to the manufacturer was not used for printed cartons. The argument that the value of the investment in the plant and machinery manufacturing a particular item under a separate tariff would alone be taken into consideration was not accepted. The language of the exemption notification as involved in that case was quoted which was to the effect:

"The sum total of the value of the capital investment made from time to time on plant and machinery installed in the industrial unit in which the goods under clearance are manufactured, is not more than rupees ten lakhs". (As quoted in Para 22 (b) of the judgment).

8. It is then observed that according to the said notification total value of the entire machinery in the industrial unit should be taken into account as there was no occasion for allocating the machinery between various goods manufactured therein and by way of an example, it was observed that it may create complications where a factory manufacturing goods falling under more than one tariff item but has only one generator of power plant, so in such cases in what manner generator or power plant was to be allocated between two items. The plea raised was negatived and it was held that total should be taken into account. At this stage, it would be appropriate to point out the difference in the language used in two notifications. We find that in the Notification dated 19.6.1980, with which we are presently concerned, the proviso to clause (ii) of the Notification says "... the capital investment made from time to time on plant and machinery installed in the industrial unit in which the said goods under clearance are manufactured...". The expression "said goods" is not used in the Notification interpreted in the case of Golden Press (supra). The "said goods" signifies or identifies the goods which are covered under Item 68 in respect of which exemption has been granted. But the word "said" is not used in the Notification under consideration in the case of Golden Press (supra) as indicated above says "... industrial unit in which the goods under clearance are manufactured...". The goods have not been specified by using the expression "said goods". In the Notification dated 19.6.1980, as already indicated earlier, the goods falling under Item 68 are to be referred as "said goods". Therefore, in our view it will not be possible to take into consideration the value of investment of all the plants and machinery manufacturing different items viz. goods other than the "said goods".

9. In our view the Tribunal rightly preferred the view taken in the case of Devidayal (supra). The factual hurdles like a common generator may be in use by different units in the factory complex as

indicated in the case of Golden Press (supra) can well be worked out by devising proper method while apportioning the value of different plants proportionately. In no way such hurdle, as posed, would change the meaning of a Notification which on the face of it and by the plain language used therein has unambiguous and clear meaning.

10. Such Notifications by which exemption or other benefits are provided by the Government in exercise of its statutory power, normally have some purpose and policy decision behind it. Such benefits are meant to be provided to the investors and manufacturers. Therefore, such purpose is not to be defeated nor those who may be entitled for it are to be deprived by interpreting the notification which may give it some meaning other than what is clearly and plainly flowing from it.

In view of the discussion held above, we find no merit in the appeals and they are hereby dismissed. No order as to costs.