

SUPREME COURT OF INDIA

Collector of Central Excise, Pune

Vs.

Tata Engineering and Locomotives Co. Ltd.

(Ruma Pal and Ashok Bhan JJ.)

04.11.2003

JUDGMENT

Ruma Pal, J.

1. The respondent-assessee manufactures various items such as Fork Lift Trucks, lifting tackles, trolleys, conveyors and measuring instruments such as gauges/templates for being utilised costively in the manufacture of their final products. They claimed exemption from payment of excise duty under Notification No. 217/86-C.E., dated 2nd April 1986 for the period 1986-1995.

2. The notification in so far as it is relevant reads as follows:

"The Central Government hereby exempts goods specified in column (2) of the Table hereto annexed (hereinafter referred to as 'inputs') manufactured in a factory and used within the factory of production, in or in relation to the manufacture of final products specified in column (3) of the said Table, from the whole of the duty of excise leviable thereon which is specified in the Schedule to the *Central Excise Tariff Act, 1985* (5 of 1986);

Provided that nothing contained in this notification shall apply to inputs used in or in relation to the manufacture of final products which are exempt from the whole of the duty of excise leviable thereon or is chargeable to nil rate of duty.

Explanation - For the purposes of this notification, 'inputs' does not include –

(i) machines, machinery, plant, equipment, apparatus, tools or appliances used for producing or processing of any goods or for bringing about any change in any substance in or in relation to the manufacture of the final products."

3. The Department rejected the respondent's claim for exemption. However, the Tribunal allowed the respondent's appeals and granted it the benefit of the notification. Being aggrieved, the Revenue has preferred this appeal.

4. The benefit of the notification is available in respect of (1) inputs, (2) which are manufactured in the assessee's factory (3) which are used within the factory, (4) in or in relation to the manufacture of final products specified in column (3) of the Table to the notification. There is no dispute that the items in respect of which exemption is claimed fulfil all four conditions. However, the submission of the Revenue is that by virtue of the explanation, the goods in question are excluded from the ambit of the notification. According to the Revenue, the goods are "used for producing or for processing or for bringing about a change in the substance in relation to the manufacture of the final products", within the meaning of the phrase in the Explanation. Reliance has been placed upon the decisions of this Court in *Indian Cooper Corporation v. CCE*¹, *J.K. Cotton Mills v. STO*² and *CCE v. Rajasthan State Chemical Works*³ to contend that the goods in question form an integral part of the entire production chain essential for the manufacture of the final products and that their use constituted an activity 'in relation' to the manufacture of the final products.

5. The respondent on the other hand has submitted that the exclusion clause which specifically uses the phrase "used for producing or processing of any goods or for bringing about any change in any substance in or in relation to the manufacture of the final products" serves to draw a distinction between different varieties of capital goods. According to the respondent, the exclusion clause applies only to production and processing machines and that the exemption was available in respect of other varieties of capital goods which were otherwise covered by the notification.

6. Learned counsel appearing for M/s Bajaj Auto Ltd., the respondent-assessee in the connected appeal (C.A. No. 2346 of 2000), contended that the exemption clause in the body of the notification had been widely worded and the exclusion clause in the Explanation had a narrower operation. It was submitted that the word 'used' occurs in the body of the notification and in the exclusion clause. It is argued that unless the word was given a different meaning in the exclusion clause the entire notification would be rendered meaningless. It was finally submitted that the identical issue in respect of a previous period had been decided by the Tribunal in favour of M/s Bajaj Auto Ltd. and the benefit of the notification had been granted to it (CEGAT order No. E/1348/98-B1 dated 2nd September 1998). The Revenue had not challenged this decision. On the basis of the decision of this Court in *Union of India v. Kaumudini Narayan Dalal* 249 ITR 219, it is submitted that it is not open to the Revenue to accept the CEGAT judgment in respect of one period and challenge its correctness in respect of another without any or at least any just cause.

7. The notification proceeds on the basis that were it not for the exclusion clause, all inputs would be entitled to the benefit of the exemption. That the goods are, in this case, covered by the description of 'inputs' in the Table to the Notification, is, as already noted, undisputed. The only question, therefore, is as to the scope of the exclusion under the Explanation. The phrase "in or in relation to the manufacture of the final products" is common to both the exemption and the exclusion. All the decisions cited by the appellant relate to the meaning of this phrase. Reference to them was unnecessary since there is no dispute that the items in question are inputs and covered by this common phrase. The difference between the exemption and the exclusion lies in the phrases "used for producing or processing of any

goods" and "goods for bringing about any change in any substance" occurring only in the exclusion. These operative words in the exclusionary clause "used for producing or processing" and "bringing about any change in any substance" must mean something less than "used in or in relation to the manufacture of the final products". The Tribunal has said that the operative phrases in the exclusion "indicated direct or immediate use in actual production or processing of goods or bring about any change in any substance". We agree. Some meaning must be attached to the operative phrases which qualify the words "in relation to the manufacture of the final products". We cannot suppose that they were merely a superfluous legislative flourish. The words were designedly used to describe items which would be a sub-group of the goods referred to in the exemption part of the notification.

8. If machinery/equipment manufactured in a factory costively used in relation to the final product are wholly exempt by the main part of the notification, the exclusion clause cannot be interpreted to extend to the very same machinery/equipment, as then the grant of exemption to such items in the first place was unnecessary. It would not be reasonable to impute a statutory exercise in futility by including goods for the grant of benefit in the substantive portion of the notification only to exclude the same goods by way of an explanation. The only reasonable construction that could be put on the exclusionary words in the explanation, in the circumstances, is the one contended by the respondent and accepted by the Tribunal. In other words, all machinery etc. which are inputs are entitled to exemption from excise duty excepting those which actually produce or process or bring about a change. It is not the appellant's case that the items in question have any of the last mentioned characteristics. They are, therefore, exempted from payment of excise duty under the 1986 Notification.

9. Apart from the question of interpretation of the Notification, the appellant has not offered any explanation why the decision of the Tribunal dated 2.9.98 in M/s Bajaj Auto Case in respect of an earlier year allowing the benefit of the 1986 notification in respect of the gauges manufactured and costively used in the factory of M/s Bajaj Auto, had not been challenged. We can, in the circumstances, conclude that the Tribunal's interpretation was accepted by the Revenue and they are precluded from taking an inconsistent stand now. [See *Union of India v. Kaumudini Narayan Dalal* (supra)].

10. The appeals are accordingly dismissed with costs.

¹1965 (16) STC 259

²1997 (91) ELT 34

³1991 (55) ELT 444