SUPREME COURT OF INDIA

Messrs Castrol India Limited

Vs.

Commissioner of Central Excise, Calcutta-I

Appeal (Civil) 6289-6290 of 1999

(Ruma Pal and Arijit Pasayat JJ.)

25/02/2005

JUDGMENT

ARIJIT PASAYAT J

Appellant calls in question legality of the judgment rendered by Customs, Excise & Gold (Control) Appellate Tribunal, Calcutta (in short the 'CEGAT'). Initially there was a difference of opinion between two Members i.e. Technical Member and the Judicial Member and the matter was referred to a third member. The third member agreed with the Technical Member and by majority the decision went against the assessee-appellant. The judgment is reported in 1999 Indlaw CEGAT 4043 Tribunal (Castrol India Ltd. v. Commissioner of Central Excise, Calcutta-I).

The factual position in a nutshell is as follows:

The appellant is engaged, inter alia, in the manufacture of blended or compounded lubricating oils. It also processes a product called 'Super TT' which the appellant claimed to be a blended lubricating oil ordinarily used for lubrication. The undisputed process of manufacture of the said product as stated by the appellant is as under:

*"Base Oils are taken to the blending kettle, heated to remove moisture. Additives are added and mixed well. Temperature reduced and MTO and green dye added and mixed well, to get the final product." **

Admittedly, the flash point of the 'Super TT' is below 94oC Therefore, assessee appellant claimed

that the same is not classifiable under Heading 2710.60 of the Tariff under Customs Tariff Act, 1985 (in short the 'Tariff Act') as the same covers lubricating oils having flash point more than 94C. As such, the product was claimed to be classifiable as 'others' under sub-heading 2710.99. Revenue disputed the position and held that the benefit of the Exemption Notification No.120/84-CE dated 11.5.1984 is applicable only to the lubricating oils falling under sub-heading 2710.60, as there is no other heading for lubricating oil in the Tariff Act. The appellant's stand was that the said Exemption Notification extends the benefit to all types of lubricating oils, irrespective of their classification. As its product is admittedly a lubricating oil, the scope of the Notification cannot be restricted to the lubricating oils falling under a particular tariff entry.

Two show-cause notices issued related to demand of duty against the assessee in respect of their blended "Super TT" which was cleared at "nil" rate of duty during different periods. The said notices culminated into two different orders whereby proposed amount of duty and personal penalty were confirmed. The dates of show-cause notices, the period involved, the duty demanded and the penalty demanded are as follows:-

Sl. No

Date of show cause notice

Period involved

Demand of duty

Penalty

1 a)

29.1.1992

1.8.1991 to 31.12.1991

Rs.20, 46, 994.23

Nil

b)

3.8.1992

1.1.1992 to 29.2.1992

Rs.10, 77, 390.00

Nil

c)

1.10.1992

1.3.1992 to 31.8.1992

Rs.19, 96, 362.88

Nil

d)

25.2.1993

1.9.1992 to 31.1.1993

Rs.19, 83, 411.76

Nil

Total

Rs.71, 04, 159.47

2.

28.1.1994

7.1.1989 to 31.7.1991

Rs.47, 59, 343.40

Rs.30 lakhs

Assessee preferred two appeals before the CEGAT. It was submitted that for a long time Exemption Notification dated 16.3.1976 in relation to Item no.11B and the rate of duty was nil was held applicable to it. The Entry 11B was repealed in the year 1984 and it became a part of Item 68. Thereafter Notification no. 120/84 covered the field and the same notification continued upto 1994. In between the Tariff Act was introduced which introduced a new tariff in Chapter 27 w.e.f. 1.3.1986 under the Tariff Act. Section 5A(4) of the Central Excise Act, 1944 (in short the 'Act') all along held the field.

Originally Item No.11B was a part of the First Schedule of the Act. Prior to introduction of Section 5A(4)in the Act w.e.f. 19.5.1988 Rule 8 of the Central Excise Rules, 1944 (in short the 'Rules') provided for exemption. The Notification No. 120/84-CE was issued on 11.5.1984 when the earlier Excise Tariff was a part of the First Schedule of the Act.

The said notification exempted blended and compounded lubricating oils i.e. lubricating oils obtained by straight blending of mineral oils or by blending or compounding of mineral oils with

other ingredients. The said exemption was granted without reference to any tariff item under which such blended and compounded lubricating oils were classified. The new Excise tariff contained in the Tariff Act came into force w.e.f. February 1986. Under that Tariff, blended or compounded lubricating oils with flash point above 94degree C were classifiable under sub-heading 2710.60 and other lubricating oils along with other petroleum products were classified under Chapter sub-heading 2710.99 which was a residuary entry.

The Exemption Notification No.120/84-CE continued un-amended till it was rescinded by Notification No.64/94-CE dated 1.3.1994. Three classification lists were filed by the appellant which were operative from 1.4.1986, 5.5.1996 and 1.3.1998. All these classification lists were approved by Assistant Commissioner by extending the benefit of Notification No.120/84. The classification list dated 18.3.1988 was operative for the relevant period under dispute. Since product was having flash point below 94: C, therefore, there was no question of any suppression as alleged by the Department.

It was further submitted that the notices were issued after prescribed period of limitation.

The assessee-appellant's stand was resisted by the Revenue on the ground that the assessee-appellant had given description of its product to claim benefit under Notification No.120/84 CE. Its product was not classifiable under Heading 2710.60. Wrong claiming of benefit establishes mala fide intention and, therefore, the extended period of limitation was rightly invoked by the Department. There is specific and unambiguous definition of lubricating oil under Chapter Heading 2710.60 of Chapter 27. Chapter Heading 27.10 covers a number of petroleum products and each category is further covered under a separate sub-heading. Sub-heading 60 covers lubricating oil and there is no other sub-heading covering lubricating oils. When the exemption notification granted exemption it necessarily means that lubricating oil falling under said sub-heading alone was covered.

While the Judicial Member accepted the stand of the assessee- appellant, the Technical Member took the view that for the purpose of Exemption Notification No. 120/84-CE lubricating oil for flash point below 94degree C ceases to be lubricating oil as it acquires general description 'others' under sub-heading 2710.99. Therefore, the Department's view was accepted. With the similar observations the third member concurred with the member technical and upheld the Department's stand.

In support of the appeal, Mr. Joseph Vellapally, learned senior counsel submitted that the two members constituting the majority lost sight of the fact that there may be lubricating oils having flash point 94degree C which may be classified under Tariff sub-heading 2710.99 as "others". The view of the majority that "lubricating oil" has been defined in a particular manner under heading 2710.60 is apparently erroneous.

In response, Mr. Mohan Parasaran, learned Additional Solicitor General submitted that the Exemption Notification has to be strictly construed and the view taken by the majority of the members is on a proper reading of the various provisions and the Notifications.

It would be relevant to take note of the entries and relevant Notifications at different points of time. The Notification dated 16.3.1976 read as follows:

"The Central Government has exempted the excisable goods of the description in column (3) of the Table below and falling under the Item of the First Schedule to the Central Excise and Salt Act, 1944 (1 of 1944), specified in the corresponding entries in column (2) of the said Table, from so

*much of the duty of excise leviable thereon under Section 3 of said Act as is in excess of the duty leviable at the rates specified in the corresponding entries in column (4) of the said Table **

S.No

Item No.

Description

Rate of duty

(1)

(2)

(3)

(4)

6.

11B

Blended or Compounded lubricating oils and greases

Nil."

Notification dated 11.5.1984 reads as follows:

"BLENDED OR COMPOUNDED LUBRICATING OILS AND GREASES. 120/84-CE, dt. 11.5.1984.

Blended or compounded lubricating oils and grease are fully exempt from basic excise duty.

G.S.R. 354(E). In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts blended or compounded lubricating oils and greases, that is to say lubricating oils and greases obtained by straight blending of mineral oils or by blending or compounding of mineral oils with any other ingredients, from the whole of the duty of excise leviable thereon under Section 3 of the Central Excises and Salt Act, 1944 (1 of 1944).

*Explanation. The expression "mineral oil" has the meaning assigned to it in Explanation 1 to Item No.6 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944)." **

Entry no. 11B read as follows:

"11B. Blended or compounded lubricating oils and greases:

"Blended or compounded lubricating oils and greases" means lubricating oils and greases obtained by straight blending of mineral oils or by blending or compounding of mineral oils with any other ingredients.

*Explanation. The expression "mineral oil" has the meaning assigned to it in Explanation 1 of Item No.6." **

Chapter 27 so far as relevant for the purpose of present dispute contains sub-headings 2710.60 and 2710.99 which read as follows:

*"2710.60- Lubricating oil, that is to say, any oil as is ordinarily used for lubrication, excluding any hydrocarbon oil which has it s flash point below 94o C. 2710.99 Others." **

In Collector of Customs, Bangalore v. Maestro Motors Ltd. 5 (SC), this Court held as follows:

"It is settled law that to avail the benefit of a notification a party must comply with all the conditions of the Notification. Further, a Notification has to be interpreted in terms of its language. If in the Notification exemption is granted with reference to tariff items in the First Schedule to the Customs Tariff Act, 1975, then the same Rules of Interpretation must apply. In that case the goods will be classified, even for the purposes of the Notification, as they are classified for purposes of payment of duty. But where the language is plain and clear effect must be given to it.

*In this Notification what is exempted is components, including components of fuel efficient motor cars in semi-knocked down packs and completely knocked down packs. Undoubtedly, for purposes of levy of custom duty, by virtue of Interpretative Rule 2(a), the components in a completely knocked down pack would be considered to be cars. But in view of the clear language of the Notification the components including components in completely knocked down packs are exempted. Effect must be given to the wording of the Notification. Thus components in completely knocked down packs would get the exemption under this Notification, even though for purposes of classification they may be considered to be cars." **

Section 5A(4)of the Act reads as under:

"Every notification issued under sub-rule (1), and every order made under sub-rule (2) of Rule 8 of the Central Excise Rules, 1944, and in force immediately before the commencement of the Customs and Central Excise Laws (Amendment) Act, 1987 shall be deemed to have been issued or made under the provisions of this Section and shall continue to have the same force and effect after such commencement until it is amended, varied, rescinded or superseded under the provisions of this

*Section." **

Undisputedly in the present case there was no reference to any tariff entry in the Notification. Therefore, the majority view is clearly unsustainable. Additionally, we find that CEGAT had in some other cases taken the same view as the minority view. It is fairly accepted by learned Additional Solicitor General that there has been no challenge to the said decisions one of which is Bharat Petroleum Corporation Ltd. v. Commissioner of Central Excise, Kolkata-I (2003 (154) ELT 698 (Tri-Kolkata) decided on 30.10.2002. #

Exemption Notification 120/84-CE dated 11.5.1984, in view of what is prescribed in Section 5A(4) of the Act, continued to be operative and effective as it was not amended, varied, rescinded or superseded under the provisions of Section 5A of the Act.

In Stroud's Judicial Dictionary, 4th Edition, Vol.5, at page 2753, we find: "That is to say" is the commencement of an ancillary clause, which explains the meaning of the principal clause. It has the following properties: (1) it must not be contrary to the principal clause; (2) it must neither increase nor diminish it; (3) but where the physical clause is general in terms it may restrict it; see this explained with many examples, Stukeley v. Butler Hob, 1971". The quotation, given above, from Stroud's Judicial Dictionary shows that, ordinarily, the expression "that is to say" is employed to make clear and fix the meaning of what is to be explained or defined. Such words are not used as a rule, to amplify a meaning while removing a possible doubt for which purpose the word "includes" is generally employed. In unusual cases, depending upon the context of the words "that is to say", this expression may be followed by illustrative instances. (See State of T.N. v. Pyare Lal Malhotra , Mahindra Engineering and Chemical Products Ltd. v. Union of India); Sait Rikhaji Furtarnal v. State of A.P.); and R. Dalmia v. C.I.T.).

The expression "that is to say" is descriptive, enumerative and exhaustive and circumscribes to a great extent the scope of the entry. (See Commissioner of Sales Tax, M.P. v. Popular Trading Company, Ujjain).

The expression "that is to say" in sub-heading 2710.60 has to be interpreted to be words of limitation. The fact that sub-heading 2710.60 contains an exclusion clause goes to show that there may be other lubricating oils which may fall in the residuary heading "others".

The sub-heading 2710.60 significantly uses two expressions. They are (i) "that is to say" and (ii) "excluding". The first expression is used in description, enumerative and exhaustive sense and to a great extent circumscribes the scope of the entry. But the second expression dilutes the pervasiveness by carving out an exception for the purpose of the particular sub-heading a particular type of lubricating oil. All other types of lubricating oil are covered by the residuary entry i.e. 2710.99.

Under the Notification 120/84CE lubricating oil was exempted without reference to any tariff heading/sub-heading. Consequently, the criteria specified in the Notification were satisfied. # That being so, majority view contained in the order of the CEGAT is not sustainable and is set aside.

The minority view as expressed is confirmed.

The appeals are allowed with no order as to costs.