

# SUPREME COURT OF INDIA

Commissioner of Central Excise, Calcutta-(II)

Vs.

I.T.C. Limited

C.A.No.6295 Of1999

(S. H. Kapadia, S. N. Variava and Dr. AR. Lakshmanan JJ.)

08.02.2005

## JUDGMENT

### **S. H. Kapadia, J.**

1. This Appeal is filed against the Judgment of the Customs, Excise and Gold (Control) Appellate Tribunal (in short "CEGAT") Calcutta dated 19th April 1999. The question before the Court is whether concessional rate of duty under Notification No. 138/86-C.E., dated 1st March, 1986 is available only for clearances made for home consumption and or it is also available for all clearances.

The Tribunal has, by a majority decision, held that the benefit of the Notification is not limited only to clearances for home consumption. We are not completely in agreement with the reasoning given by the Tribunal for arriving at this conclusion but in our view the ultimate conclusion is correct.

The Notification reads as follows:-

"Notification No. 138

Chapter 48 Paper and paperboard etc. 48.12

Concessional rate of duty for paper and paperboard made by smaller paper mills using unconventional raw materials. 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 Government of India in the Ministry of Finance (Department of Revenue) No. 25/84-Central Excises, dated the 1st March, 1984, the Central Government hereby exempts paper and paper board falling within Chapter 48 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), taken together, up to a quantity specified in column (2) of the Table hereto annexed, cleared on or after the 1st day of April in any financial year, by or on behalf of a manufacturer from one or more factories from so much of the duty of excise leviable thereon which is specified in the said Schedule as is in

excess of the amount calculated at the rate specified in the corresponding entry in column (3) of the said Table :

S. No.

Quantity

Rate (per tonne)

(1)

(2)

(3)

1

First clearance up to an aggregate quantity not exceeding 3000 tonnes

Rs. 325/-

2

Clearances of an aggregate quantity not exceeding 45, 000 tonnes immediately following the clearance specified in SI. No. 1

Rs. 700/-

3

Clearances of an aggregate quantity not exceeding 45000 tonnes immediately following the clearance specified in SI. No. 2

Rs. 1, 100/-

4

Clearances of an aggregate quantity not exceeding 45000 tonnes immediately following the clearance specified in SI. No. 3

Rs. 1, 300/-

5

Clearances of an aggregate quantity not exceeding 45000 tonnes immediately following the clearance specified in SI. No. 4

Rs. 1, 650/-

Provided that –

(i) the aggregate clearance of paper and paperboard from any factory, for home consumption, by or on behalf of one or more manufacturers, at the reduced rate as specified in this notification, shall not exceed the limits specified in column (2) of the said Table in any financial year;

(ii) such paper and paperboards have been manufactured out of pulp containing not less than 50 per cent, by weight, of pulp made from materials (other than bamboo, hard woods, reed or rags);

(iii) the exemption contained in this notification shall not apply to paper and paperboards falling under sub-heading No. or Heading No. 48.09, 4811.40, 48-15 or as the case may be, 48.16;

(iv) the factory does not have a plant attached thereto for making bamboo pulp or wood pulp;

(v) the exemption contained in this notification shall not apply to a manufacturer of paper or paperboards who avails of the exemption under notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 175/86-Central Excise, dated the 1st March, 1986.

2. The exemption contained in this notification shall not apply if the aggregate clearances of all paper and paperboards falling within Chapter 48 of the said Schedule for home consumption, by or on behalf of a manufacturer from one or more factories, or from a factory by or on behalf of one' or more manufacturers, had exceeded 33, 000 tonnes in the preceding financial year.

Explanation:-For the purposes of computing the aggregate clearance under to nil rate of duty or which are exempted from the whole of duty of excise leviable thereon by any other notification, (not being a notification where exemption from the whole of the duty of excise leviable thereon is granted, based upon the value or quantity of clearances made in a financial year) issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944, or under sub-section (1) of section 5A of the *Central Excise and Salt Act, 1944* (1 of 1944) and for the time being in force, shall not be taken into account."

3. Under this Notification concessional rate of duty is granted to paper and paperboard made by smaller paper mills using unconventional raw material. The concession is granted up to

the quantities specified in Column (2) of the Table annexed to the Notification. The Table, annexed to the Notification, shows that as the quantity increases the concession also increases. The Table also indicates that the concessional rate of duty is available for clearances, which may go up to even 2 lakh tonnes. Proviso (i) and Clause (2) of the said Notification lay down limits in respect of clearances for home consumption. Under Clause (2) the maximum clearance for home consumption can be 33, 000 tonnes. This shows that the balance clearances at concessional rate must be for exports. Undoubtedly, proviso (i) and Clause (2) of the Notification use the word "home consumption" but they do not specify that the entire clearances must only be for home consumption. All that is provided is that the clearances for home consumption must be within the limits specified therein. If the clearances for home consumption exceed the limits specified in 1st proviso and in Clause (2) then the benefit of the Notification would be lost. However, if the clearances for home consumption do not exceed those limits then even though the other clearances are for exports the benefit of the Notification would be available. #

4. In this view of the matter, we see no reason to interfere. The Civil Appeal stands dismissed. There shall be no order as to costs.