SUPREME COURT OF INDIA

Union of India

Vs.

Inter Continental (India)

C.A.No.6529 of 2002

(Ashok Bhan and Dalveer Bhandari JJ.)

23.04.2008

ORDER

1. The short question which arises for consideration in the present appeal filed by the revenue is "whether the end-use verification of the products is necessary for availing the benefit of concessional rate of duty".

2. Respondent-assessee (hereinafter referred to as the 'assessee') is engaged in the business of trading in various commodities including Crude Palm Oil and Crude Palmolin of Non-Edible Grade which is imported in accordance with law. On 28.3.2001, assessee imported consignments of Crude Pal Oil and Crude Palmolin and it is alleged that the assessee got them cleared after paying concessional rate of duty at the rate of 35% as per entry 29 of the Notification No.17/2001-Customs dated 1st March, 2001 instead of clearing the same after paying duty at the rate of 75% as per entry 34 of the same notification. The goods were provisionally allowed to be cleared after taking Bank Guarantee of Rs.10 crores for the differential duty due. Provisional assessment was allowed directing the assessee to produce End-use Certificate so as to avail concessional rate of duty as per Board's Circular No.40/2001-Cus. dated 13th July, 2001.

3. Assessee, instead of producing the End-use Certificate, filed a writ petition in the High Court questioning the direction to produce the End-use Certificate which was to be issued by the Assistant/Deputy Commissioner of Central Excise having jurisdiction over last such purchaser on the ground that a new condition could not be added to the notification by issuing a circular. According to the assessee, the Board Circular seeking to impose a limitation on the exemption notification or whittling it down by adding a new condition was not binding on the assessee as it travelled beyond the said notification.

4. It may be mentioned here that the samples taken from the imported crude oil were sent for testing to the Chemical Examiner, Customs House, Kandla and Public Analyst, Food & Drug Laboratory, Vadodara for their opinion to ascertain as to whether the oil is fit for human consumption or not. Both the laboratories opined that the imported oil was not fit for human consumption.

5. The High Court by the impugned order has accepted the writ petition by holding that the Central Board of Excise and Customs could not, by issuing a circular subsequent to the issuance of the notification, add a new condition thereby restricting the scope of the exemption notification. It was held that the impugned circular No.40/2001-Cus. dated 13.7.2001 being contrary to the notification No.17/2001-Cus. dated 1st March, 2001 could not be sustained as it cannot override the said notification. In para 16, the High Court observed as under:

> "In relation to entry at Sr.No.29 no condition is prescribed. Similarly no condition is prescribed in relation to entry at Sr.No.34 or even in entry No.28. If the Notification No.17 has not provided for any condition, in our opinion, subsequent circular cannot impose such a condition as the same would tantamount to rewriting Notification No.17 or in other words legislating by circular, which is not permissible in law. As can be seen from the relevant provisions with special reference to Section 25 read with Section 159 of the Act, a notification under Section 25 of the Act requires publication in the official gazette as well as requires tabling before both the Houses of Parliament and if that exercise has been carried out without any condition being imposed in the Notification No.17 it would not be permissible to permit revenue to impose such condition by way of circular. If the revenue is allowed to undertake such an exercise, the requirement of publication in official gazette and laying a notification before each House of the Parliament would become nugatory and such a course of action is not envisaged by the Act. It would give licence to the executive to bypass/override the legislature and cannot be countenanced."

6. We entirely agree with the view taken by the High Court that the department could not, by issuing a circular subsequent to the notification, add a new condition to the notification thereby either restricting the scope of the exemption notification or whittle it down.

7. A three Judge Bench of this Court in the case of *Tata Teleservices Ltd. v. Commissioner of Customs*[1] has taken a similar view. In para 10, it was held as under:

> "We are of the view that the reasoning of the Bombay Bench of the Tribunal as well as that of the Andhra Pradesh High Court must be affirmed and the decision of the Delhi Tribunal set aside insofar as it relates to the eligibility of LSP 340 to the benefit of the exemption notification. The Andhra Pradesh High Court was correct in coming to the conclusion that the Board had, in the impugned circular, predetermined the issue of common parlance that was a matter of evidence and should have been left to the Department to establish before the adjudicating authorities. The Bombay Bench was also correct in its conclusion that the circular sought to impose a limitation on the exemption notification which the exemption notification itself did not provide. It was not open to the Board to whittle down the exemption notification in such a manner."

8. Following the aforesaid decision of this Court in Tata Teleservices Ltd.(supra), we do not find any merit in this appeal and dismiss the same leaving the parties to bear their own costs.

[1] *(2006) 1 SCC 746*