

SUPREME COURT OF INDIA

Commnr. of Central Excise, Jaipur

Vs.

Mewar Bartan Nirman Udyog

C.A.No.3269 of 2003

(S.H. Kapadia and B. Sudershan Reddy JJ.)

30.09.2008

ORDER

In C.A.No.3269/2003:

1. The short controversy which arises for determination in this Civil Appeal is: Whether the respondent-assessee was entitled to claim benefit of exemption Notification No.3/2001-CE, dated 1.3.2001? The assessee claims exemption under S.No.200 of the said Notification which claim was denied by the Department on the ground that trimmed or untrimmed circles of brass cannot fall under S.No.200 but they fall under S.No.201 where rate of duty is Rs.3500 PMT. It may be stated that if the product in question falls under S.No.200, then the rate of duty is nil. This is the narrow controversy in the present case.

2. To resolve this dispute, we quote hereinbelow relevant extract of Notification No.3/2001-CE, dated 1.3.2001. S.No. Chapter or Description of goods Rate under Condition No. heading No. the First the Second or sub- Schedule heading No. 200 74.09 All goods other than Nil - 32 trimmed or untrimmed If such goods are not sheets of circles of copper, produced or intended for use in the manufactured by a manufacture of utensils or manufacturer who handicrafts produces or manufactures copper from copper ore or copper concentrate. 201 74.09 Trimmed or untrimmed Rs.3500 - 33 sheets of circles of copper, per metric intended for use in the tonne If,- manufacture of (a) no credit of duty handicrafts or utensils paid on inputs under rule 57AB or rule 57AK of the Central Excise Rules, 1944 has been taken; (b) the entire amount of duty is paid in cash or through account-current; and (c) such goods are not produced or manufactured by a manufacturer who produces or manufactures copper from copper ore or copper concentrate:

3. Provided that the duty shall not be payable by a manufacturer who produces or manufactures trimmed sheets or circles from duty paid untrimmed sheets or circles.

4. In this case it is not disputed by the Department before the Tribunal that the circles manufactured by the assessee are from brass. According to the Department, brass is an alloy of copper/zinc and, consequently, trimmed or untrimmed circles of brass used in the

manufacture of utensils would also fall in the Entry at S.No.201 of the Notification and, therefore, the assessee was liable to pay duty on such goods at the rate of Rs.3500 PMT. We find no infirmity in the impugned order of the Tribunal. On comparing the two Entries, it is clear that if the goods in question are goods other than trimmed or untrimmed circles of copper, intended for use in the manufacture of utensils, then what is attracted is the nil rate of duty under Entry at S.No.200. In this case, we are concerned with interpretation of Entries in the Notification. The exemption Notification covers goods which squarely falls under Chapter Heading 74.09. In fact, both S.No.200 and S.No.201 of the Notification deal with Chapter Heading 74.09. However, while giving exemption, a dichotomy is created between trimmed/untrimmed sheets of copper which attracts duty at the rate of Rs.3500 PMT on one hand and, on the other, all goods other than trimmed/untrimmed circles of copper intended for use in the manufacture of utensils which attract nil rate of duty. In this case, circles manufactured by the assessee are made from brass. Therefore, in our view, S.No.200 would apply and the assessee would be entitled to claim nil rate of duty under the said Notification.

5. We may also point out at this stage that it is well settled position in law that exemption Notification has to be read strictly. A notification of exemption has to be interpreted in terms of its language. Where the language is plain and clear, effect must be given to it. While interpreting the exemption notification, one cannot go by rules of interpretation applicable to cases of classification under the Tariff. Tariff items in certain cases are required to be interpreted in cases of classification disputes in terms of HSN, which is the basis of the Tariff. In this case, we are not concerned with interpretation of Tariff. In fact, as stated above, the product in question falls under Chapter Heading 74.09. It is the dichotomy which is introduced by the exemption Notification which needs to be interpreted. Items made from copper attract duty at the rate of Rs.3500 PMT whereas circles made from brass attract nil rate of duty. As stated above, in this case, the Department has not disputed the fact that the circles were manufactured by the assessee from brass. This is expressly recorded in the findings given by the Tribunal.

6. In the circumstances, we find no infirmity in the impugned decision.

7. Consequently, the Civil Appeal filed by the Department stands dismissed, with no order as to costs.

8. In C.A.Nos.1269/2005,3688/2005,3636/2006,1477/2007,2725/2007, 383/2008 and S.L.P.(C) No.6398/2007: Leave granted in S.L.P.(C) No.6398/2007. Delay condoned in C.A.No.3636/2006.

9. In view of the order passed today in C.A.No.3269/2003, these appeals are dismissed, with no order as to costs.