

ITC BHADRACHALAM PAPER BOARDS LTD.

A

v.

COLLECTOR OF CENTRAL EXCISE, HYDERABAD.

APRIL 15, 1994

[B.P. JEEVAN REDDY AND B.L. HANSARIA, JJ.]

B

*Central Excise Rules, 1944: Rule 8 (1)—Exemption from excise duty on paper for five years from date of first clearance or of notification, later extended by amendment to paperboard in 1984—Held, the expression "this notification" in the amendment notification refers to the original notification of April 24, 1981 only.*

C

*Constitution of India, Article 14—Exemption from duty on paper from 1981 onwards extended to paperboard from 1984—Held, not discriminatory, arbitrary or irrational.*

D

*Interpretation of Statutes—Beneficial construction—Held, scope of exemption from duty being extended to paperboard only from 1984 is one of policy for the Government to decide and the Court cannot by interpretation enlarge the scope of the exemption.*

**By a notification dated April 24, 1981 fifty per cent exemption on excise duty was made available on printing and writing paper provided the clearances were not effected "after the expiry of five years from the date of first clearance of the said goods". By a subsequent notification dated April 2, 1984, the exemption was extended to paperboards and by a third notification dated November 9, 1984 it was clarified that the exemption would not be available to clearances effected after the expiry of five years from the date of first clearance from the factory "or the date of publication of this notification whichever was later."**

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**The Appellant claimed the exemption from 1979 when it started manufacturing paperboard but it was given the benefit only from April 24, 1981. The CEGAT rejected the Appellant's plea. Hence this appeal.**

G

**Dismissing the Appeal, this Court**

**HELD : 1. The expression "this notification" appearing in the notification dated November 9, 1984 has to refer to the notification of April**

H

A 24, 1981. The contention that the word "this" in the notification dated November 9, 1984 refers to the notification dated April 2, 1984 cannot be accepted on the plain language of the notification dated November 9, 1984.

[535-A-B]

B 2.1. There was no irrationality in exemption of printing and writing paper from April 1981 while giving the benefit of the same to paper board for the first time from April 1984. Insofar as utility of the product is concerned, paper board does stand on a footing different from printing and writing paper. If it is borne in mind that the concerned notification was issued on representation of the Paper Industry that confining the exemption to printing and writing paper alone was not achieving the object, the rationality of the notification becomes apparent and acceptable. [538-A-B]

C *Shri Sitaram Sugar Co. Ltd. v. Union of India*, JT (1990) 1 SC 462, referred to.

D 2.2. There is no discriminatory treatment in denying full benefit to those units which started production prior to 1.4.84, as for different purposes different cut off dates may be fixed having regard to the purposes to be achieved. [538-B-C]

E 2.3. The differential treatment given to the paper board is not even arbitrary as good reasons exist for treating it differently and exempting it from different dates. [538-C]

F 3.1. Why exemption to paper board was given by notification of April 1984 and not by April 1981 notification is really a question of policy, the scope and width of which is for the Government to decide and not for this Court. [536-H, 537-A]

G 3.2. The view taken here cannot be said to be unduly restricted interpretation of the notification of April, 1984. An endorsement of the appellant's contention would amount to enlarging the scope of exemption which the Court cannot. [537-A-B]

*K.P. Varghese v. Income Tax Officer*, [1982] 1 SCR 629; *Union of India v. Suksha International and Nutan Gems*, [1989] 1 SCR 1; *Union of India v. Wood Paper Ltd.*, [1990] 2 SCR 659 and *Collector of Central Excise v. Newoli Sugar Factory*, [1993] Supp. 3 SCC 69, referred to.

H *Indian Express Newspaper v. Union of India*, [1985] 2 SCR 287;

*Collector of Central Excise v. Parley Exports (P) Ltd.*, [1988] Supp. 3 SCR 933 and *Tata Oil Mills v. Collector of Central Excise*, [1989] 3 SCR 839, distinguished. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4990 (NM) of 1991. B

From the Judgment and Order dated 14.11.91 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. E/25.75.87-C.

H.N. Salve, Mrs. Alpana Poddar and Kailash Vasdev for the Appellant. C

K.T.S. Tulsi, Additional Solicitor General V.K. Verma and G.Prakash for the Respondent.

The Judgment of the Court was delivered by D

**HANSARIA, J.** The only point for determination in this appeal against the judgment of the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) is whether the appellant is entitled to the exemption from such portion of excise duty as has been spelt out in Notification No. 108/81 Central Excises dated 24.4.81 read with Notification Nos. 83/84 Central Excises dated 2.4.84 and 214/84 Central Excise dated 9.11.84. (Though there is yet another Notification bearing No. 139/84 dated 2.6.84 that however is not material for our purpose.) E

2. All the aforesaid notifications owe their origin to the Central Government's decision to attract investment in industries manufacturing paper, the bulk of which relating to writing and printing was being imported at the relevant time. On this subject Minister of State for Industries made a speech on the floor of the House on 24th April, 1981 regarding incentives, *inter alia*, to paper industry and stated about the excise duty concession to the extent of 50% to those industries which had commenced clearance for the first time during the period from 1.4.79 to 31.3.84. F

3. This policy statement saw the first of the aforesaid notifications which was issued on 24.4.81 itself and exempted printing and writing paper from so much of duty of excise leviable thereon as was in excess of the duty calculated at the rate of 50% of the rate of duty leviable on the said H

A goods. That notification was issued in exercise of power conferred by Rule  
8(1) of the Central Excise Rules, 1984. It had three provisos. The first of  
these stated, *inter alia*, that exemption would be available to the aforesaid  
goods which were manufactured in a factory whose clearance had com-  
menced from 1.4.79. The second proviso is important for our purpose  
B which read as below :

"Provided further that the exemption contained in this notifica-  
tion shall not apply to clearances of the said goods effected after  
the expiry of a period of five years from the date of first clearance  
of the said goods from such factory."

C 4. On the matter being taken up with the Government, an amend-  
ment was issued on 2.4.84 to the notification of 24.4.81 by substituting the  
words 'paper and paper board' for the words 'printing and writing paper'  
in the first notification. This apart, the rate of exemption was enhanced to  
80%. By the 2nd June, 1984 notification referred in parenthesis earlier, the  
D rate was brought down to 50%. Finally came the notification of 9th Novem-  
ber, 1984 which substituted the second proviso in the first notification as  
below :

E "Provided further that the exemption contained in *this notifica-*  
*tion* shall not apply to clearances of the said goods affected after  
the expiry of a period of five years from the date of first clearance  
of the said goods from such factory or the date of publication of  
*this notification* in the Official Gazette, whichever is later."

(Emphasis supplied)

F 5. Despite exemption of excise duty having been given to the paper  
board also by the notification of 2.4.84, the appellant could not get full  
benefit of the same because it had started manufacturing paper board in  
1979 and the Department is said to have given benefit from 24.4.81 (which  
date is irrelevant according to the appellant as stated in the written  
G submissions filed on 5th April), and so benefit from 1979 till 1.4.81 got  
denied. The contention of the appellant however is that the notification of  
9th November, 1984 which stated that the period of exemption would be  
from the "date of first clearance of the said goods" or "the date of the  
publication of this notification", whichever is later, would require exemp-  
H tion to be given to the appellant from 1979 as the word "this" is in the

notification refers not only to the first notification of 24th April, 1981 but also the second notification of 2nd April, 1984. A

6. On the plain language of the last notification which has been quoted above, the aforesaid contention cannot be accepted in as much as the last notification clearly speaks of substitution of the second proviso in the first notification which is of 24.4.81; and therefore the expression "this notification" appearing in the last notification has to refer to the notification of April 1981. Even if these words were to relate to the notification of November 1984 that cannot help the appellant in claiming exemption as notification of November 1984 had not granted any exemption. B

7. Faced with the aforesaid position as emerging from the literal interpretation of the notifications at hand, Shri Salve, learned counsel appearing for the appellant, has strenuously contended that the entire object behind the exemption and more particularly one sought to be achieved by the last notification would be only partially achieved if benefit were not to be given to the appellant's clearance of paper board from 1979. According to the learned counsel the notification of November, 1984 was required to be issued to take care of an anomaly which would have arisen in case clearance had started from say from August, 1979 in which event the five year period would have come to end of August, 1984, because of which the concession would have really been available for 40 months, that is, from April 1981 to August, 1984, as the first notification was issued in April, 1981 as a result of which the concession could not have been available for five years to the clearance of the aforesaid type, whereas in those cases where clearance was from April 1981, full five year exemption would have been available. It is correct that the notification of November 1984 takes care of this anomaly by making the terminus a quo relatable to the date whichever is *later*. C D E F

8. Nothing, however, turns on the aforesaid contention. The appellant would not be entitled to the exemption as claimed unless we were to agree that what has been stated in notification of November, 1984 were really to take within its fold the notification of April, 1984 also. The strained submission of Shri Salve in this connection is that though the April, 1984 notification speaks about amendment of the April 1981 notification, that notification in fact is a substantive one given exemption to paper board and what has been stated in notification of April, 1981 should be read by G H

A reference in the notification of April, 1984. To put it differently, according to the learned counsel, April 1984 notification re-enacts the contents of April, 1981 notification in so far as paper board is concerned; and so, the words "this notification" in November 1984 notification would take within its fold notification of April, 1984 also. Shri Salve would say that if his contentions were not to be accepted the object behind granting of exemption, if not frustrated totally, would be made lame.

9. To persuade us to agree with him, Shri Salve urges and strenuously that in a case of present nature object must be kept in view; and to support him, we are referred to a number of decisions of this Court to wit, *K.P. Varghese v. Income Tax Officer*, [1982] 1 SCR 629; *Indian Express Newspaper v. Union of India*, [1985] 2 SCR 287; *Collector of Central Excise v. Parley Exports (P) Ltd.*, [1988] Supp. 3 SCR 933; *Union of India v. Suksha International and Nutan Gems*, [1989] 1 SCR1; *Tata Oil Mills v. Collector of Central Excise*, [1989] 3 SCR 839; *Shri Sitaram Sugar Co. Ltd. v. Union of India*, J.T. (1990) 1 SC 462; *Union of India v. Wood Paper Ltd.*, [1990] 2 SCR 659 and *Collector of Central Excise v. Newoli Sugar Factory*, [1993] Supp 3 SCC 69. A persual of these decisions show that a Court should apply its mind to the object and purpose if literal interpretation were *inter alia* to give rise to manifest absurdity, which would have been the result in *Varghese* and *Newoli Sugar Factory* cases. The present is apparently not such a case. As to the decision in *Parley Exports* case it may be stated that there the question was whether benefit of exemption of the concerned notification which stated about "all kinds of food products and food preparations" could be extended to non-alcoholic beverages, in trying to find out which the purpose of exemption was taken not of. The present is a case different in nature. The judgment in *Indian Express Newspaper's* case (which was mentioned in the written submission of 5th April) is not relevant as that case deals basically with the scope of Article 19(1) (a) of the Constitution and has spelt out as to when tax on newspaper industry would be violative of the freedom protected by the aforesaid clause.

10. In *Suksha International* case, this Court, while concerned with a beneficial provision of statute opined that the same should not be interpreted so as to unduly restrict the beneficial scope of the policy. By disagreeing with Shri Salve, we would not be doing anything of such nature inasmuch as to why exemption to paper board was given by the notification of April, 1984 and not by April, 1981 notification is really a question of

policy, the scope and width of which is for the Government to decide and not for this Court. Indeed, by agreeing with Shri Salve we would be extending the benefit to the appellant though the policy of the Government as incorporated in April, 1984 notification did not visualise the same. So, the view taken by us is not one about which it could reasonably be said that we are interpreting the April 1984 notification with undue restriction. Indeed, our endorsement of Shri Salve's contention would amount to enlarging the scope of exemption which we cannot.

11. The decision in *Tata Oil Mills'* case too has no cutting edge, because there the question for consideration was whether rice brand oil converted into hydrogenated oil used in manufacturing of soap was entitled to rebate. This Court was called upon there to decide whether rice bran fatty acid is different from rice brand oil, as what had been exempted was such "soap as is made from indigenous rice bran oil." This Court took the view that the Tribunal proceeded on too narrow an interpretation, as while interpreting the notification of the type which came for consideration, Court should apply its mind to the object and purpose of exemption. The facts of the present case are much different from those which had confronted this Court in *Tata Mills'* case.

12. The *Wood Paper's* case (referred in the written submission of 5th April) supports the broad contention of Shri Salve only partially, as, while stating that inequitable and incongruous result flowing from an exemption notification should be avoided, it has also held that such a notification must be strictly construed insofar as subject of exemption is concerned. Of course after ambiguity about applicability of the exemption is removed full play must be given and at that stage liberal construction would be called for.

13. The decision in *Shri Sitaram Sugar Company's* case was concerned with the question of price fixation and it was stated in paragraph 58, which alone is pressed into service by Shri Salve, that the judicial function in respect of such matter is exhausted when is found to be rational basis for the conclusions reached by the concerned authority. Though Shri Salve has contended that there is no rational basis for granting exemption from excise duty for full five years to those industries manufacturing paper board which had started clearance from 2nd April, 1984. Indeed, this would be discriminatory as highlighted in the aforesaid written submission

- A** as units which commenced production from 1.4.79 to 1.4.84 would not get exemption for full five years. If it is borne in mind that the concerned notification was issued on representation of the Paper industry that confining of the exemption to printing and writing paper alone was not achieving the object, the rationality of the notification becomes apparent and acceptable. It may be mentioned that in so far as utility of the product is concerned, paper board does stand on a footing different from printing and writing paper. There was therefore no irrationality in exemption of printing and writing paper from April, 1981 while giving the benefit of the same to the paper board for the first time from April, 1984. We do not also read any discriminatory treatment in denying full benefit to those units which started production prior to 1.4.84, as, for different purposes different cut off dates may be fixed having regard to the purpose to be achieved. So, the differential treatment given to the paper board is not even arbitrary, as good reasons exist for treating it differently and exempting it from a different date. We do not, therefore, read any vice discrimination as submitted.
- D**

14. In view of the above, we would hold that what had been stated in the notification of 9th November, 1984 cannot relate to the notification of April, 1984. We would add that granting of exemption to the paper board from 2nd April, 1984 does not suffer from any irrationality or discriminatory treatment. So, no case for our interference with the impugned judgment of CEGAT, in exercise of power under Article 136 of the Constitution, has been made out. The appeal is, therefore, dismissed. In the facts and circumstances, we leave the parties to bear their own costs.

**E**

S.M.

Appeal dismissed.