IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.07.2016

Pronounced on : 18.04.2017

C O R A M :

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice D.Krishnakumar

Civil Miscellaneous Appeal No.3282 of 2010

The Commissioner of Central Excise
and Service Tax
Large Taxpayer Unit
1775, Jawaharlal Nehru
Inner Ring Road
Anna Nagar Western Extension
Chennai - 600 101. ... Appellant

Vs.

M/s. Ford India Pvt. Ltd.,
S.P. Koil Post
Chengalpattu - 603 204. ... Respondent

Prayer: Appeal filed under Section 35G of Central Excise Act, 1944 against the final order No.408/2010 dated 07.04.2010 on the file E/706/2003 passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) South Zonal Bench, Chennai.

For appellant : Mr. A.P. Srinivas, SSC

For respondent : Mr. Raghavan Ramabadran
for Mr. Lakshmikumaran

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J U D G M E N T

(Judgment of the Court was made by D. Krishnakumar,J)

The Revenue has filed this Appeal against the final order in No.408/2010 dated 07.04.2010 of Customs, Excise and Service Tax Appellate Tribunal, Chennai.

2. The facts of the case as narrated in the appeal, are as follows :-

The respondent Ford India Pvt. Ltd., is engaged in the manufacture of motor cars falling under Chapter 87 of the I schedule to the Central Excise Tariff Act, 1985. During the period under dispute, the respondent assessee cleared the motor cars on payment of the normal rate of duty of 32% ad valorem. Some of those motor cars were registered by the Transport authorities as taxis. As per the notification No.3/2001 dated 01.03.2001, issued under Section 5A(1) of the Central Excise Act, the respondent assessee is eligible for exemption of special excise duty of 16% advalorem, if condition No.40 of the notification is fulfilled and also prescribes the procedure for availing the concessionary rate, which is to be claimed as a refund. The respondent assessee has been claiming refunds on the cars registered as taxi. It is stated that the refund claims were filed by the respondent assessee, after the expiry of six months from the date on which the duty was paid on the motor vehicles. Therefore, the Assistant Commissioner of Central Excise, Chengalpattu Division issued three show cause notices vide C.No.V/87/18/222/01-RF dated 14.03.2002 read with corrigendum dated 07.05.2002, C.No. C.No.V/87/18/260/02-RF dated 07.05.2002 and C.No.V/87/18/ 303/02-RF dated 11.06.2002 proposing to disallow the claims as time barred. All the three shows cause notices were adjudicated vide a common Order in Original No.48/2002 dated 20.11.2002 and the adjudicating authority, rejected 31 claims for Rs.22,95,991 as time barred and partially rejected Rs.8,03,833 relating to 6 claims and the respondent assessee was sanctioned with the eligible claims.

3. Aggrieved by the rejection orders, the respondent assessee filed an appeal before the Commissioner (Appeals), Chennai but the same was dismissed vide Order in Appeal No.36/2003 (M-III) dated 11.06.2003, observing that the Commissioner was not vested with any powers to relax limitation of time prescribed with respect to filing of refund claims. Hence, the respondent assessee filed a further appeal before the CESTAT and the Tribunal vide its Final Order No.408/10 dated 07.04.2010, observing that the period of limitation under Section 11B is one year and so the notification seeks to whittle down the period provided under the statute and allowed the

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appeal filed by the respondent assessee. Hence, the appellant department has come up with the instant appeal before this Court.

4. Learned counsel for the appellant submits that Notification No.3/2001 dated 01.03.2001 was issued under Section 5A(1) of the Central Excise Act, 1944, for granting exemption from Excise Duty and Special Excise duty on various goods, subject to the fulfilment of the conditions stated in the said notification. It is useful to extract the Notification No.3/2001-CE dated 01.03.2001:-

> " Effective rates of basic excise duty for specified goods of Chapters 9 to 96 :-
>
> In exercise of the powers conferred by sub-section (1) of Section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts excisable goods of the description specified in column (3) of the Table below or specified in column (3) of the said Table read with the concerned list appended hereto, as the case may be, and falling within the Chapter, heading No. or sub-heading No. of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Central Excise Tariff Act). Specified in the corresponding entry in column (2) of the said Table, -
>
> (a) from so much of the duty of excise specified thereon under the First Schedule to the Central Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table; and
>
> (b) from so much of the Special duty of excise leviable thereon under the Second Schedule to the Central Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said Table, subject to the relevant conditions specified in the annexure to this Notification, and referred to in the corresponding entry in column (6) of the said Table;
>
> Explanation ,- For the purpose of this notification, the rates specified in column (4) and (5) of the said Table are ad valorem rates, unless otherwise specified :-

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TABLE

S.No.	Chapter of heading No. or sub heading No.	Description of goods	Rate under the First Schedule	Rate under the Second Schedule	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
225.	87	Motor Vehicle falling under-			
		(i) sub-heading No.8702.10 or 8703.90, which after clearance has been registered for use solely as ambulance; or	16%	Nil	40
		(ii) sub-heading No.8703.90 which after clearance has been registered for use solely as taxi.	16%	Nil	

The relevant portion, in condition 40 of the Notification, is extracted below :-

(a) ....

(b) the manufacturer files the claim for refund of duty paid in excess of that specified under this exemption, in the proforma prescribed under rule 173S of the Central Excise Rules, 1944, with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction, before the expiry of six months from the date of payment of duty on the said motor vehicle;

(c) the manufacturer furnishes to the said Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, a certificate from an officer authorised by the concerned State Transport Authority, to the effect that the said motor vehicle has been registered for use solely as ambulance or taxi, as the case may be, within three months, or such extended period not exceeding a further period of three months as the said Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, may allow,

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from the date of clearance of the said motor vehicle from the factory of the manufacturer;

(d) where the manufacturer has collected an amount, as representing the duties of excise, in excess of the duties payable under this exemption from the buyer, on receipt of a communication from the said Deputy Commissioner or Assistant Commissioner, as the case may be, that the claim is otherwise eligible for sanction, the manufacturer shall return the excess amount so collected and submit evidence to the said Deputy Commissioner or Assistant Commissioner to the effect that the said amount has been duly returned to the buyer;

5. The respondent assessee filed Claim Petitions before the Assistant Commissioner of Central Excise, Chengalpattu Division, in terms of Notification No.3/2001 dated 01.03.2001, for refund of the excess duty paid on cars, cleared and subsequently registered as taxis. In response to the refund of claim petitions, the appellant department issued show cause notice in C. Nos. V/87/18/222/01-RF dated 14.03.2002 stating as to why the refund claims mentioned in the notice, should not be rejected on the ground that the claims of refund of duty, paid in excess of that specified under Rule 1735 of Central Excise Rules 1944, have been filed to the Assistant Commissioner of Central Excise, after an expiry of six months from the date of payment of duty of the said motor vehicles and thereby all the claims are squarely hit by time bar. Further, the assessee was directed to produce all the evidence upon which they intend to rely in support of their defence. Again, on 07.05.2002 and 11.06.2002, two show cause notices in V/87/18/260/02-RF and V/87/18/303/ 02-RF, were issued to the respondent assessee informing as to why the refund claims mentioned in the notices should not be rejected, on the ground that claims of refund of duty paid in excess have been filed beyond the period of six months from the date of receipt of payment of duty of the said motor vehicles and thereby all the claims are time barred.

6. In reply to the three show cause notices, the respondent assessee by their letters dated 04.06.2002 and 14.06.2002 have interalia submitted that they sell the cars to their dealers on payment of applicable excise duty of 32% advalorem and the dealers in turn sell the cars to various customers. Some of the cars sold to the customers are subsequently registered as Taxis and hence are eligible for concessional rate of duty @ 16% vide Notification No.3/2001-CE dated 01.03.2001 under Sl. No.225 read with condition No.40 of the said notification. As required under the notification, for the cars registered as Taxis, necessary documents are being submitted by the respective customers and then the claims are

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filed by the assessee, as required under the notification, with all the supporting documents. With regard to the refund claims referred to, in the said show cause notices, they have submitted all the documents required as per the notification, viz., copy of RC book, RTO's certificate in original, copy of invoices, and copy of payment receipt for money paid by the customers. In all the cases, the cars have been registered within the stipulated time of 90 days from the date of clearance from the factory, as required under the notification. It is further stated that all the requirements of the notification have been satisfied except a slight delay in submission of the refund claim. It is evident from the documents that the cars for which the refund claims were submitted are registered as taxis and are thus eligible for refund of duty, as specified under the notification. It has been further requested that the referred claims should not be denied on the ground of delayed submission, while all other requirements of the notification have been fully met with. Further, under Section 11B of the Central Excise Act, 1944, they can make an application for refund of duty, before expiry of one year from the relevant date and that the claims have been filed much within the time limit provided under Section 11B. Hence, the assessee has requested to condone the delay in filing the claims and ignore it as a procedural lapse and to consider the same. The assessee has also requested to provide an opportunity of personal hearing before the matter is decided. Upon hearing the assessee, the Assistant Commissioner of Central Excise, rejected the refund claims, on the ground that the claims are time barred as per the condition No.40(b) stipulated in Notification No.3/2001-CE, as amended, dated 01.03.2001.

7. While the appeal filed by the respondent assessee in No.36/2003 (M-III) before the Commissioner of Central Excise (Appeals), was dismissed on 11.06.2003, on the ground that he is not vested with any powers to relax limitation of time prescribed with respect to filing of refund claims, the Tribunal allowed the appeal filed by them, in Final Order No.408/10 dated 07.04.2010, relying upon the decisions rendered in the case of CCE vs. Mahindra and Mahindra reported in 2007 (214) ELT 234 and another decision in 2007 (216) ELT 256, wherein it has been held that since the statutory period as provided under Section 11B is one year, the refund claims made by the assessee cannot be held to be time barred, for the only reason that they were filed beyond the period prescribed under the notification. Challenging the same, the instant appeal has been preferred by the Revenue, before this Court.

8. Heard Mr. A.P. Srinivas, Senior Standing Counsel and Mr. Raghavan Ramabadran for Mr. Lakshmikumaran, learned counsel for the respondent.

9. The following substantial questions of law were

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framed by this Court, at the time of admission of this Appeal :

1. Whether Notification No.3/2001 dated 01.03.2001 (Sl.No.225 read with condition 40) is a special provision for a specific purpose comprising a self contained code governing the procedure and conditions for grant of refund in respect of vehicles registered as taxis and ambulances ?
2. Whether the Tribunal was correct in applying the time limit specified in the general provision of Section 11B of the Central Excise Act, 1944 in preference to the time limit contained in the special provision contained in Notification 3/2001 particularly in view of the observation of the Hon'ble Supreme Court in the case of Raghuvar (India) Ltd. reported in 2000 (118) ELT 311 (SC) that the provisions of the special scheme alone will govern such a situation and there is no scope for reading the stipulations contained in a general provision ?
3. When an assessee has accepted an exemption notification and claimed refund under the same, is he entitled to say that the conditions stipulated therein, including the time of limitation, are not applicable to him and would take shelter under general provisions of law ?

10. The first issue to be decided is with regard to eligibility of an exemption notification, a question relating to rate of duty and that the remedy lies only before the Hon'ble Supreme Court under Section 35G of the Central Excise Act. Therefore, we have to consider the maintainability of the appeal raised by the respondent assessee. The refund claim should have been made within six months, by the respondent assessee, under Condition No.40 (b) of the Notification No.3/2001-CE dated 01.03.2001. The period prescribed to submit the claim for refund of duty paid in excess is, before expiry of six months from the date of payment of duty on the said motor vehicle. It is an admitted fact that the respondent assessee paid 16% excise duty and another 16% as Special excise duty, at the time of clearance of motor vehicle (total duty 32% advalorem duty). Therefore, the respondent assessee had paid the duty as per the Central Excise Tariff Act 1985. The notification No.3/2001 issued by the Central Government in the public interest, exempts excisable goods of the description specified for motor vehicles. The said notification was issued in exercise of the powers conferred by sub-section (1) of Section 5A of the Central Excise Act, 1944. The refund claim was made under the said notification by the respondent assessee to the assessing officer. As per Condition No. 40(a) of the Notification, the manufacturer pays duty of excise at the rate of 16% ad valorem under the First Schedule and 16% ad valorem under the Second

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Schedule, in the case of motor vehicle falling under sub-heading No.8702.10 and sub-heading No.8703.90, at the time of clearance of the vehicle. Therefore, the claim of refund only comes under the notification No.3/2001 for the purpose of refund of the excise duty paid by the respondent assessee and it has to fulfil the conditions stipulated in the notification, failing which they are not entitled to the benefit of exemption, under such notification. Therefore, the contention of the respondent assessee that the instant case relates to the determination of rate of duty of excise and so the appeal will not lie within the jurisdiction of this court, cannot be accepted. The respondent assessee has claimed refund of excise duty by accepting the conditions prescribed in the notification No.3/2001 dated 01.03.2001. Without challenging the said notification, the respondent assessee cannot have any right to claim the refund under Section 11B of the Act.

11. Therefore, we are now considering the other issues involved in the appeal, as to whether the time limit of six months under the notification is only a procedural condition or is it mandatory? All the conditions in the notification have been complied with, by the respondent assessee, except Clause 40 (b). Therefore, non compliance of the same, is only a procedural lapse and it can be relaxed. In this regard the decisions, in the case of Indian Farmers Fertilizers Co-operative Ltd. vs. Union of India [1995 (75) ELT 218 (Gujarat)] and Commissioner of Central Excise vs. Exide Industries Ltd. [2009 (247) ELT 87 (Calcutta)], are relied. In the aforesaid decisions, which are strongly relied upon by the respondent assessee, the courts have held that when the substantive conditions have been fulfilled, the procedural conditions can be relaxed. Further, the refund claims filed by the respondent assessee, are within the time limit specified under Section 11B of the Central Excise Act, 1944. It is useful to extract below, Section 11B of the Act :-

> SECTION 11B. Claim for refund of duty. —
> (1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] before the expiry of [one year] [from the relevant date] [[in such form and manner] as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty had not been passed on by him to any other person :

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Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act :] [Provided further that] the limitation of [one year] shall not apply where any duty has been paid under protest.

(2) If, on receipt of any such application, the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] is satisfied that the whole or any part of the duty of excise paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

Provided that the amount of duty of excise as determined by the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -

(a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(b) unspent advance deposits lying in balance in the applicant's account current maintained with the [Commissioner of Central Excise];

(c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;

(d) the duty of excise paid by the manufacturer, if he had not passed on the incidence of such duty to any other person;

(e) the duty of excise borne by the buyer, if he had not passed on the incidence of such duty to any other person;

(f) the duty of excise borne by any other such class of applicants as the Central Government may, by notification

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in the Official Gazette, specify :

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything any judgment, decree, order or direction of the to the contrary contained in Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

(4) Every notification under proviso to sub-section (2) shall be laid before each clause (f) of the first House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and, if it is not sitting, within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

(5) For the removal of any notification issued under clause (f) of doubts, it is hereby declared that the first proviso to sub-section (2), including any such notification approved or modified under sub-section (4), may be rescinded by the Central Government at any time by notification in the Official Gazette.]

Explanation. — For the purposes of this section, -

(A) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

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(B) "relevant date" means, -

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

(ii) if the goods are exported by land, the date on which such goods pass the frontier, or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;

(c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;

(d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;

(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;] in the case of goods which are exempt from payment of duty

(eb) this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;

(ec) in case where the duty becomes

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refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction;]

(f) in any other case, the date of payment duty.]

In the case of Mafatlal Industries Ltd. vs. Union of India [1997 (89) ELT 247 (SC), the Hon'ble Supreme Court has held that all refunds are governed by the provisions of Section 11B. As per the above provision, the period prescribed under Section 11B is one year, from the date of payment of duty and so the refund claimed by the respondent assessee within a period of one year, is valid. The decision in two cases of Commissioner of Central Excise vs. Mahindra & Mahindra Ltd. [2007 (214) ELT 234] and [2007 (216) ELT 256] are also relied upon by the respondent assessee. Relying the aforesaid decisions, the Tribunal had held that for refund of claims time can be extended, as per Section 11B of Central Excise Act 1944. When the said orders have been accepted by the appellant department, now they cannot contest in the instant appeal. The decision of the Division Bench of this Court in the case of Commissioner of Central Excise, Chennai II vs. Vadapalani Press, reported in 2015 (320) ELT 238 (Madras), is also relied on by the respondent assessee.

12. Learned counsel for the appellant department has relied upon the decision of the Hon'ble Supreme Court in the case of Raghuvar (India) Ltd., reported in 2000 (118) ELT 311, wherein it is observed that the provisions of the special scheme alone will govern such a situation and there is no scope for reading the stipulations contained in a general provision. The Notification No.3/2001 has been issued by the Central Government, in exercise of the powers conferred under Section 5A (1) of the Central Excise Act, 1944. Section 5A-1, reads as follows :

SECTION 5A. Power to grant exemption from duty of excise. —

(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette exempt generally either absolutely or subject to such conditions (to be fulfilled before or after removal) as may be specified in the notification, excisable goods of any specified description from the whole or any part of the duty of excise leviable thereon :

Provided that, unless specifically provided in such notification, no exemption therein shall apply to excisable goods which are

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produced or manufactured — in a free trade zone or a special (i) brought to any other place in India; or economic zone] and by a hundred per cent export-oriented (ii) [brought to any place in India. undertaking and

Explanation. — In this proviso, "free trade zone", "special economic zone" and "hundred per cent export-oriented undertaking" shall have the same meanings as in Explanation 2 to sub-section (1) of section 3.

Therefore, the notification under dispute provides partial exemption of excise duty, on fulfilment of conditions. Condition No.40(b) of the notification provides that the claim for refund of duty has to be filed before the expiry of six months, from the date of payment of excise duty on the said motor vehicle. Condition 40(c) states that the certificate issued by the State Transport Authority has to be filed within three months or in the extended period of further three months, from the date of clearance of the said motor vehicle from the factory. Condition 40(d) provides that when the excise duty has been collected from the customers in excess, of the exemption notification then the same has to be returned to the customers and the evidence has to be submitted to the Deputy Commissioner or Assistant Commissioner of Central Excise, to the effect that the said amount has been duly returned to the buyer.

13. Therefore, the above procedure clearly shows that the notification is a complete code by itself and operates on its own. Section 5A authorises the issuance of such notification with such conditions and the source of granting absolute or partial exemption and the way of giving the exemption, by way of refund on fulfilment of post condition of removal and subject to the proof that excess excise duty is returned to the customer makes the notification as a complete code, by the powers exercised under Section 5A of the Act. The concept of unjust enrichment is also taken care in this notification and on fulfilment of return of excess excise duty only, the benefit is given to the manufacturers. Therefore, Section 11B of the Act would have no role to play in the instant case.

14. In the case of Union of India & Ors. vs. Ganesh Metal Processors Inds., reported in (2003) 11 SCC 346, the Hon'ble Supreme Court has observed in paragraph 5 of the order, as follows :-

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"5. ... Once it is admitted that credit has been taken, it is not for the High Court to decide whether credit could have been taken or not. The notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification."

In the case of HLG Trading & Ors. vs. Union of India & Ors., reported in MANU/TN/3485/2015, Division Bench of this Court, in paragraphs 35 and 36, had observed as follows :-

" 35. In Ashok Traders Vs. Union of India [MANU/MH/0180/1987 : (1987) 32 ELT 262 (Bombay)], a Division Bench of the Bombay High Court was concerned with a claim made by an importer of High Density Polyethylene Moulding Powder for exemption from payment of countervailing duty. The exemption Notification was actually a partial exemption and the Notification stipulated two conditions namely, (a) that the product should have been manufactured from raw naptha or any chemical derived there from and (ii) that on such raw material, the appropriate amount of duty of excise should have already been paid. In other words, the benefit of exemption was available under the Notification only to a manufacturer, who used a particular raw material, on which, an appropriate amount of duty of excise had already been paid. Therefore, rejecting the claim of the importer for exemption, the Division Bench of the Bombay High Court held that "a tax payer, who desires to take advantage of an exemption, must bring his case within the four corners of the exemption Notification." An argument was advanced in that case that a condition, which could not be fulfilled by an importer, cannot be put against the importer and could be taken only to be directory in nature. But, the said contention was repelled by the Bombay High Court.

36. In Thermax Private Limited Vs. the Collector of Customs [MANU/SC/ 0209 /1993 : 1992 (4) SCC 440], the assessee, who imported certain goods from Japan for the purpose of using the same for refrigeration/air conditioning of two factories, claimed the benefit of two exemption Notifications bearing Nos. 93/76 and 63/85, which provided concession of 25% ad valorem. The Notifications stipulated two conditions to be

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fulfilled namely, (a) that the parts indicated therein should be used for refrigeration and air conditioning appliances in any one of the places set out in the Table and (b) that the procedure specified in Chapter X of the Central Excise Rules, 1944 had been followed. The importer, admittedly, fulfilled one of the conditions. The importer used the parts indicated in the Notification for setting up refrigeration or air conditioning appliances or machinery in one of the places set out in the Notification itself. But, the assessee obviously could not specify the second of the conditions, as the same was attracted only when the Central Excise Rules are applied. Therefore, the assessee paid the CVD and then made a claim for refund. But, the claim was rejected."

In the case of Commissioner of Customs, Chennai vs. Ashok Enterprises, reported in 2014 (302) ELT 191 (Madras), a Division Bench of this Court had observed as follows, in paragraphs 13 & 14 :-

"13. The learned senior Counsel for the assessee placed reliance on the judgment of the Supreme Court in Navin Chemicals Manufacturing and Trading Co. Ltd. v. Collector of Customs MANU/SC/0571/ 1993 : (1993 (68) E.L.T. 3 (S.C)) and the subsequent judgment of the Karnataka High court in C.C.E., Mangalore v. Mangalore Refineries & Petrochemicals Ltd. MANU/KA/1361/2010 : (2011 (270) E.L.T. 49 (Kar.)), in support of his contention that a dispute as to the classification of goods and whether they are not covered by the exemption notification relates directly and proximately to rate of duty applicable for assessment and therefore, the appeal is incompetent before this Court.

14. The question that falls for our consideration in this appeal is as to whether, the assessee is entitled to the benefits of Customs Notifications. The Rate of duty is not in dispute. The entitlement of the assessee to the benefits of the customs notification alone is the issue. Therefore, the appeal is clearly maintainable before this Court. We, therefore, reject the contention raised by the learned senior counsel for the assessee with regard to maintainability. "

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In the case of State of Jharkhand vs. Ambay Cements, reported in 2004 (178) ELT 55 (SC), the Hon'ble Supreme Court has observed as follows, in paragraphs 23, 24, 25, & 26, which is in favour of the appellant department :-

> "23. Mr. Bharukha further submitted that in taxing statutes, provision of concessional rate of tax should be liberally construed and in respect of the above submission, he cited the judgment of this Court in Commissioner of Sales Tax v. Industrial Coal Enterprises (Supra) and in the case of Bajaj Tempo Ltd., Bombay v. Commissioner of Income Tax, Bombay City-III, Bombay (Supra). We are unable to countenance the above submission. In our view, the provisions of exemption clause should be strictly construed and if the condition under which the exemption was granted stood change on account of any subsequent event the exemption would not operate.
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> 24. In our view, an exception or an exempting provision in a taxing statute should be construed strictly and it is not open to the Court to ignore the conditions prescribed in the Industrial Policy and the exemption Notifications.
>
> 25. In our view, the failure to comply with the requirements renders the writ petition filed by the respondent liable to be dismissed. While mandatory rule must be strictly observed, substantial compliance might suffice in the case of a directory rule.
>
> 26. Whenever the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. It is the cardinal rule of the interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is also settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed. Since the requirement, in the instant case, of obtaining prior permission is mandatory, therefore, non-compliance of the same must result

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in cancelling the concession made in favour of the grantee-the respondent herein."

In the case of B.P.L. Limited Vs. Commissioner of Central Excise reported in 2015 (319) ELT 556 (SC) , paragraphs 16, 18 & 19, it is observed as follows :

"16. It is not disputed by the Appellant that their Defibrillators are primarily meant for external use. It is, however, contended that this can be used internally as well. It is also admitted case that the defibrillator manufactured by the Appellant is not implantable internally in the human body. The only justification given by the Appellant is that at the time of carrying out the open heart surgery same device can be used to deliver electrical shock. However, it is accepted that to give the electrical shock paddles are needed, which is sold by the Appellant only as an accessory. Not only this, while selling the defibrillators said paddlers are not sold as an integral component/ accessory of the main equipment. To the contrary, their purchase is optional, meaning thereby the choice is that the buyer to purchase paddle or not. During the arguments it was conceded that 99 per cent sale of these defibrillators were without paddles which means that predominantly the goods are sold for external use only. We would also like to reproduce, at this stage the description of the goods in question as given by the Appellant itself in the operating and service manual of the product in question. It reads as follows:

DESCRIPTION :

BPL's Portable Defibrillator/Monitor is designed to provide external counter shocks and to display hear rate and ECO wave forms on the scope screen.

...Delivery of the monophasic countershock pulse (Lown/Edmark Waveform) is triggered by depressing the discharge buttons on both of the anterior paddles, or if internal paddles are used, by depressing the INT., PADDLE DISCHARGE button located on the control panel Optional anterior paddles are equipped with a CHARGE push button that functions the same way as the SET CHARGE MANUAL push button does.

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17. ...

18. We approve the aforesaid reasoning and rational given by the Tribunal in coming to the conclusion that the goods of the Appellant would not qualify the description contained in Notification Nos. 8/96 : MANU/EXCT/0010/1996 and 4/97. It is trite that strict interpretation is to be given to the exemption notifications and it is upon the Assessee to approve that he fulfils all the conditions of eligibility under such Notifications. This is so held by this Court in Rajasthan Spinning and Weaving Mills, Bhilwara, Rajasthan v. Collector of Central Excise, Jaipur, Rajasthan MANU/SC/0729/1995 : (1995) 4 SCC 473, wherein this principle was stated in the following manner:

> 16. Lastly, it is for the Assessee to establish that the goods manufactured by him come within the ambit of the exemption notification. Since, it is a case of exemption from duty, there is no question of any liberal construction to extent the term and the scope of the exemption notification. Such exemption notification must be strictly construed and the Assessee should bring himself squarely within the ambit of the notification. No extended meaning can be given to the exempted item to enlarge the scope of exemption granted by the notification.

19. This principle has been reiterated time and again. It is not necessary to take note of all such cases. We would however like to reproduce the restatement of this member by the Constitutional bench of this Court in Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal and Ors. (2001) 1 SCC 236, as follows:

> 29. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions

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depending upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption.

30. In Novopan India Ltd. (Novopan India Ltd. v. CCE and Customs MANU/SC/1216/ 1994 : 1994 Supp (3) SCC 606) this Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in Hansraj Gordhandas v. CCE and Customs (MANU/SC/0265/1968 : AIR 1970 SC 755 : (1969) 2 SCR 253) held that 21-10-2016 (Page 8 of 9) www.manupatra.com Judges Library (Novopan India Ltd. Case, SCC p. 614, para 16):

16...such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification i.e. by the plain terms of the exemption."

15. Section 11B would not govern the provisions of a Special Scheme and therefore there is no scope for invoking Section 11B of the Central Excise Act. The Hon'ble Supreme

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Court in the case of Sarabhai M.Chemicals reported in 2005 (179) ELT 3, has held that the conditions prescribed in the exemption notification have to be strictly construed. Therefore, the notified time limit has to be strictly construed and there is no scope for liberty in implementation of the condition. In the light of the decisions of this Court and the Honble Apex Court cited supra, the respondent assessee, claiming refund under Section 11B for the limitation period, could not be accepted. In the instant case, the condition prescribed in the Notification No.3/2001 dated 01.03.2001 has been strictly complied with and the respondent assessee has claimed for exemption of excise duty. The said notification is issued by exercising the powers under Section 5A of the Central Excise Act, 1944. Therefore, the said provision is an independent one and Section 11B of the said Act would not apply to the notification issued under the powers vested.

16. In view of the aforesaid decisions and submissions, we are inclined to interfere with the final order No.408/2010 dated 07.04.2010 on the file E/706/2003 passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) South Zonal Bench, Chennai and so the substantial questions of law is answered in favour of the appellant Revenue.

17. Therefore, the Civil Miscellaneous Appeal is allowed. No order as to costs.

-s/d-
Assistant Registrar(CSIII)

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Sub-Assistant Registrar

avr

To

1.Customs, Excise & Service Tax Appellate Tribunal
South Zonal Bench, Chennai.

2.The Commissioner of Central Excise and Service Tax,
Large Taxpayer Unit,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension, Chennai-101

3.The Section Officer
VR Section
High Court Chennai

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+1 cc to M/s.A.P.Srinivas Advocate sr 24001
+1 cc to M/s.Lakshmikumaran Advocate sr 23214

C.M.A. No.3282 of 2010

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