IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.377 OF 2019

M/s. Opera Clothing (now known as
Opera Clothing P. Ltd. ... Appellant
versus
Assistant Commissioner of Income Tax-18(1) ... Respondent

Mr. Bharat L. Gandhi with Ms. Poonam Kotkar I/by Mr. Swapnil Newaskar, for Appellant.
Mr. Sham V. Walve, for Respondent.

CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE: 22nd JULY, 2019

P.C.:

1. Not on board. Upon mentioning, taken on board.

2. This Appeal is filed by the Assessee to challenge the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short). The following question is presented for our consideration :

> "Whether the duty drawback of Appellant which is included in the purchase of the appellant which forms the part of expenses of the eligible unit relying upon the subsequent event judgments reported in Citation 383 ITR 217 SC CIT V/s. Meghalaya distinguish liberty India reported in 317 ITR 218, which is nothing but deemed to have been paid" ?

3. The case of the assessee seeking exemption of the income arising out of its export business, is squarely covered by the Judgment of the Supreme Court in the case of Liberty India reported in 317 ITR 200 since the receipts in question arise out of the duty draw back payment of the Government of India. In Liberty India, as is well known, the Supreme Court had held that the DEPB benefits (similar to the duty draw back payments) would not qualify for exemption from tax since the same are not directly connected to the assessee's export business.

4. Learned Counsel for the assessee however, placed reliance on the subsequent decision of the Supreme Court in the case of *Commissioner of Income Tax V/s. Meghalaya Steels Ltd.*[1] We are conscious that in such decision, the Supreme Court had granted the benefit of exemption in respect of a subsidy received from the Government. In the process, the Supreme Court had held that the ratio laid down by the Supreme Court in the case of Liberty India (supra) would not apply in such a case. However, we cannot apply the decision of the Supreme Court in the case of Meghalaya Steels Ltd. (Supra) since the case of the present assessee is squarely covered by the decision in the case of Liberty India (Supra). No question of law arises. The Income Tax Appeal is dismissed.

(S.J.KATHAWALLA, J.) **(AKIL KURESHI, J.)**

1 [2016] 383 ITR 217 (SC)