

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.341 OF 2006

1.Fomento Resorts & Hotels Ltd.,
a company incorporated under the
Companies Act, having its registered
office at Cidade de Goa,
Vanguinim Beach, Tiswadi Goa
Represented by its
Company Secretary,
Shri I. B. Muchandi.

2.Shri Dilip A. Verlekar,
son of Shri Anant Verlekar,
49 years of age, resident of G-4,
Fatima Apartments, Bardez Goa.

... Petitioners

Versus

1.State of Goa,
through its Chief Secretary,
having his office at Secretariat,
Legislative Assembly Complex,
Porvorim, Bardez Goa.

2. The Commissioner of Commercial
Taxes, Commissionerate of
Commercial Taxes, M. G. Road,
Panaji Goa.

3.The Additional Commissioner of
Commercial Taxes,
Commissionerate of Commercial
Taxes, M. G. Road, Panaji Goa.

... Respondents

Mr Sudesh Usgaonkar with Ms Rosette Pereira, Advocates for the Petitioners.

Mr D. Pangam, Advocate General, with Mr Deep Shirodkar, Additional Government Advocate for the Respondents.

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

DATED: 5th SEPTEMBER 2022

ORAL JUDGMENT (Per M. S. Sonak, J)

1. Heard Mr Sudesh Usgaonkar with Ms R. Pereira, learned counsel for the Petitioners and Mr D. Pangam learned Advocate General, along with Mr Deep Shirodkar, learned Additional Government Advocate for the Respondents.

2. The Petitioners, by instituting the present petition, challenge the order dated 05.01.2006 made by the Commissioner of Commercial Taxes (R-2) confirming the communication/decision dated 11.08.2005 made by R-3, declining the tax concession for imported goods under item 9 of exemption notification No.5/11/2002 dated 19.05.2003 issued under Section 25(1) of the Goa Tax on Entry of Goods Act, 2000 (Entry Tax Act).

3. The Petitioners amended this petition, *among other things* seeking a declaration that the State and its authorities were not

competent to levy entry tax on imported goods. The Petitioners also sought a refund of entry tax paid by them under protest regarding imported goods under item 9 of the notification dated 19.05.2003 referred above.

4. Mr Usgaonkar, however, made it clear that the Petitioners were not pressing the contention about the competence of the State and its authorities to levy entry tax on imported goods given the decision of the Hon'ble Supreme Court in the *State of Kerala and others Vs Fr. William Fernandez and others (2021) 11 SCC 705*. In this case, the Hon'ble Supreme Court has held that the import of goods from any territory outside India ends when the goods enter the customs frontiers of India and are released for home consumption. After the import of goods ends, the State Legislature has complete legislative competence to levy entry tax under Entry 52, the Seventh Schedule to the Constitution of India. The Court held that the original package theory developed by the American Supreme Court in *Brown Vs Marylandis* [6 L Ed 678] is not applicable in India, and the imported goods are not exempted from entry tax until they reach factory premises/destination for their consumption, use or sale.

5. Accordingly, the only issue which arises for consideration in this petition is the legality and validity of the impugned orders dated 11.08.2005 and 05.01.2006, by which the R-2 declined to extend the benefit of exemption/concession notification dated 19.05.2003 on the

vehicles imported by the Petitioners. The Petitioners paid entry tax of Rs.3,02,201/- and Rs.8,89,074/- under protest and, therefore, have sought a refund of these amounts. Such an issue arises in the facts referred to hereafter.

6. The Petitioners imported two Honda cars and one Toyota Camry car in 2005 under the Export Promotion Capital Goods (EPCG) Scheme. This scheme, formulated by the Central Government, allowed the import of capital goods at 5% customs duty subject to the export obligation equivalent to 8 times the duty saved on capital goods imported under the said scheme to be fulfilled over a period of 8 years. This scheme was amended vide notification No.28(IE-2003)/2002-07 dated 28.01.2004 by the Central Government permitting the import of motor cars, sports utility vehicles/all-purpose vehicles for hotels, travel agents, tour operators whose foreign exchange earning in the current licencing year or preceding 1/2/3 licencing years was Rs.1.5 crores.

7. In terms of the Entry Tax Act, 2000, which entered into force from 01.09.2000, there shall be a levy of tax to regulate the use of facilities, infrastructure etc., provided in the State of Goa on entry of goods into its local areas for consumption, use or sale therein. Accordingly, the entry tax payable for motor vehicles was 12%.

8. The Petitioners have pleaded that under the mistake of law that the motor vehicles imported by it were chargeable to entry tax, the Petitioners on 20.07.2005 informed the Respondent No.3 about import and requested tax assessment in terms of the notification dated 19.05.2003 issued by the State Government under Section 25(1) of the Entry Tax Act.

9. Respondent No.3 vide impugned order dated 11.08.2005 declined the benefit of the concessional rate as prescribed in item 9 of the notification dated 19.05.2003. The Petitioners, therefore, wrote to Respondent No.2 seeking such benefit. However, even Respondent No.2 vide impugned order dated 05.01.2006 only endorsed the order dated 11.08.2005. Hence, the present petition.

10. Mr Usgaonkar submitted that item 9 of the notification dated 19.05.2003 refers to the Export Promotion Capital Goods (EPCG) Scheme in express terms. This scheme refers explicitly to the import of motor cars by hotels. Based on this, he submits that the Petitioners are entitled to the benefit of concessional rates under notification dated 19.05.2003.

11. Mr Usgaonkar submits that the Respondents exceeded their jurisdiction by referring to the definition of "*capital goods*" under Section 2(f) of the Goa Value Added Tax Act, 2005. He submits that the provisions of the 2005 Act were not at all applicable. In any case,

the definition clause specifies that the definition would apply "*unless the context otherwise requires*". He relied on the *Vanguard Fire and General Insurance Co. Ltd., Madras Vs M/s Fraser and Ross and another* [AIR 1960 SC 971] to explain the meaning of italicized portion.

12. Mr Usgaonkar submitted that the exemption/concession notification dated 19.05.2003, referring to the EPCG scheme makes it clear that the benefit of the concessional rate was intended for all the capital goods referred to under the scheme. He emphasized that the scheme had explicitly referred to capital goods like imported motor cars for hotels whose foreign exchange earnings in the current licencing year or preceding 1/2/3 licencing years was Rs.1.5 crores. He submitted that any other interpretation would amount to State authorities frustrating beneficial provisions of the Central scheme.

13. Mr Usgaonkar finally submitted that though the State had the choice or discretion in terms of Section 25(1) of the Entry Tax Act to exempt or reduce tax, once such choice or discretion was exercised by issuing a notification under Section 25(1), the same, could not have been restricted only to some of the capital goods referred to in the EPCG scheme and not otherwise. Mr Usgaonkar maintains that such a restriction would amount to discrimination and, consequently, a violation of Article 14 of the Constitution of India.

14. For all the above reasons, Mr Usgaonkar submitted that rule may be made absolute in this petition.

15. The learned Advocate General submitted that there was no bar to the Government exempting or reducing tax only upon some of the goods or capital goods referred to in the EPCG scheme. He submitted that Section 25 of the Entry Tax Act imposes no obligation on the State Government to exempt or reduce tax. Therefore, in the public interest, the State Government was entitled to exempt or reduce tax only on a portion of goods or any specified classes of persons under the EPCG scheme. He submitted that there was no question of discrimination involved in such matters.

16. The learned Advocate General submitted that provisions of exemption notification dated 19.05.2003 were quite clear. In the absence of ambiguity, there was no question of relying upon any alleged intention. He submitted that when the notification dated 19.05.2003 was issued, the EPCG scheme did not even contemplate importing motor cars. He submitted that notification has to be entirely read, not piecemeal. He submitted that the exemption notification should not be liberally construed even otherwise. He relied on *Krishi Upaj Mandi Samiti, New Mandi Yard, Alwar Vs Commissioner of Central Excise and Service Tax, Alwar (2022) 5 SCC 62*, to support this contention.

17. The learned Advocate General finally submitted that the authorities were entitled to refer to the definition of '*capital goods*' in Section 2(f) of the VAT Act, 2005, given the provisions in Section 2(B) of the Entry Tax Act. He also referred to the requirements of the Goa, Daman and Diu General Clauses Act, 1965, read with Section 8 of the General Clauses Act, 1897, in support of this contention.

18. Based on the above contention, the learned Advocate General submitted that this petition may be dismissed with costs.

19. The rival contentions now fall for our determination.

20. The primary issue in this petition is the interpretation of the exemption notification dated 19.05.2003, which entitles an importer to pay entry tax at reduced rates prescribed therein. The State Government has issued this notification under Section 25(1) of the Entry Tax Act, which empowers exemption or tax reduction in circumstances to be specified.

21. There is no dispute that the notification dated 19.05.2003 is an exemption notification exempting tax payments at full rates. Therefore, at the very outset, it is necessary to advert to some precedents on the interpretation of exemption notifications under a taxing statute.

22. In *State of Maharashtra v. Shri Vile Parle Kelvani Mandal & Ors.* - (2022) 2 SCC 725, the Hon'ble Supreme Court, by reference to several earlier precedents, has explained the law on the interpretation of exemption notification under a taxing statute.

23. The Hon'ble Supreme Court, by reference to *Commissioner of Customs v. Dilip Kumar & Co.* - (2018) 9 SCC 1, has held that in every taxing statute – the charging, the computation and exemption provisions at the threshold stage should be interpreted strictly. In case of exemption notification or clause, same is to be allowed based wholly on the language of the notification, and exemption cannot be granted by necessary implication or on a construction different from the words used by reference to the object and purpose of giving an exemption. Further, the assessee must show by the construction of the exemption clause/ notification that it comes within the purview of exemption. The assessee cannot rely on ambiguity or doubt to claim the benefit of exemption. The rationale is not to widen the ambit at the stage of applicability.

24. By reference to *Essar Steel (India) Ltd. v. State of Gujarat* – (2017) 8 SCC 357, the Hon'ble Supreme Court held that the statutory conditions for grant of exemption could neither be tinkered with nor diluted. The exemption notifications must be interpreted by their own wordings, and where the wordings of notification with regard to the construction are clear, it has to be given effect to. If the

benefit is unavailable on the notification wording, then the Court would not grant benefit by stretching the words of the notification or by adding words to the notification. One should go by the clear, unambiguous wording to interpret the exemption notification.

25. In *Star Industries v. Commissioner of Customs – (2016) 2 SCC 362*, the Hon'ble Supreme Court held that the eligibility criteria for exemption notification must be construed strictly. Once the applicant satisfies the same, the exemption notification should be construed liberally. Therefore, in the context of exemption notification, there is no new room for intendment. Regard must be to the clear meaning of the words. Claim to exemption is governed wholly by the notification's language, which means by plain terms of the exemption clause. An assessee cannot claim the benefit of the exemption on the principle that in case of ambiguity, a taxing statute must be construed in his favour, for an exception or exemption provision must be construed strictly.

26. In *Giridhar G. Yadalam v. CWT – (2015) 17 SCC 664*, the Hon'ble Supreme Court has held that in a taxing statute, it is the plain language of the provision that has to be preferred where language is plain and is capable of one definite meaning. It is further held that the strict interpretation of the exemption provision is to be accorded. The purposive interpretation can be given only when there is some

ambiguity in the language of the statutory provision, or if it leads to absurd results.

27. In *Krishi Upaj Mandi Samiti* (supra), the Hon'ble Supreme Court has held that it is settled law that 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. An exception and/or an exempting provision in a taxing statute should be construed strictly. It is not open to the Court to ignore the conditions prescribed in the relevant policy and the exemption notifications issued. The exemption notification should be strictly construed and defined according to legislative intendment. The statutory provisions providing exemption must be interpreted in light of the words employed. There cannot be any addition or subtraction from the statutory provisions.

28. The Petitioners' entire case is based on the interplay between exemption notification dated 19.05.2003 and clause 5.1 of the EPCG scheme. The Petitioners contend that since item 9 of the exemption notification dated 19.05.2003 makes express reference to the EPCG scheme, all the goods covered or even referred to in clause 5.1 of the EPCG scheme must be extended benefit of reduced tax rates under the exemption notification dated 19.05.2003. This contention will have to be evaluated by applying the principles explained by the Hon'ble Supreme Court about the interpretation of exemption notification in a

taxing statute. Further, we will have to focus on wordings in the exemption notification to consider the interplay between such wordings and clause 5.1 of the EPCG scheme.

29. Accordingly, the relevant extract from the exemption notification dated 19.05.2003 is transcribed below for the convenience of reference.

Notification

No.5/11/2002-Fin(R&C)

In exercise of the powers conferred by sub-section (1) of section 25 of the Goa Tax on Entry of Goods Act, 2000 (Goa Act 14 of 2000) (hereinafter referred to as the "said Act"), the Government of Goa, being of the opinion that it is necessary in the public interest so to do hereby exempts the tax, payable under the said Act, on the class of goods as specified in column (2) of the Schedule hereto, to the extent as specified in corresponding entry in column (3) of the said Schedule, subject to the conditions as specified in the corresponding entries in column (4) of the said Schedule, with effect from the first day of August, 2002.

SCHEDULE

<i>Sl. No.</i>	<i>Description of items</i>	<i>Extent of exemption</i>	<i>Conditions subject to which exemption is applicable</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>1</i>	<i>.....</i>	<i>.....</i>	<i>.....</i>
<i>2</i>	<i>.....</i>	<i>.....</i>	<i>.....</i>
<i>3</i>	<i>.....</i>	<i>.....</i>	<i>.....</i>

4	.....	.....	.....
5	.....	.....	.....
6	.....	.....	.....
7	.....	.....	.....
8	.....	.....	.....
9	<i>The capital goods brought or caused to be brought or delivered into a local area by (to) units covered under Export Promotion Capital Goods Scheme.</i>	<i>In excess of one paisa in every ten rupees.</i>	(i) The claiming unit should produce a certificate from the competent authority stating that it is covered under Export Promotion Capital Goods Scheme. (ii) The goods imported should be actually installed within the State of Goa.
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30. Similarly, clause 5.1 of the EPCG scheme is also transcribed below for the convenience of reference.

"5.1 EPCG Scheme.

The scheme allows import of capital goods for pre production, production and post production (including CKD/SKD thereof as well as computer software systems) at 5% Customs duty subject to an export obligation equivalent to 8 times of duty saved on capital goods imported under EPCG scheme to be fulfilled over a period of 8 years reckoned from the date of issuance of licence.

¹[However, in respect of EPCG licences with a duty saved value of Rs.100 crore or more the same export obligation shall be required to be fulfilled over a period of 12 years]

The capital goods shall include spares, jigs, fixtures, dies and moulds EPCG licence may also be issued for import of components of such capital goods required for assembly or manufacturer of capital goods by the licence holder.

Second hand capital goods upto 10 years old may also be imported under the EPCG scheme.

²[Spare refractories, catalyst and consumable for the existing plant and machinery may also be imported under the EPCG scheme. However, import of motor cars, sports utility vehicles/all purpose vehicles shall be allowed only to hotels, travel agents, tour operators or tour transport operators whose foreign exchange earning in current licencing year or preceding 1/ 2/3 licencing years is Rs.1.5 crores]

5.1A ³[Spares, spare refractories, catalyst & consumable for the existing plant and machinery may also be imported under the EPCG Scheme subject to an export obligation equivalent to 8 times of duty saved to be fulfilled over a period of 8 years reckoned from the date of issuance of licence.]"

31. Item 9 in the notification dated 19.05.2003 refers to the capital goods brought or caused to be brought or delivered into a local area by (to) units covered under EPCG Scheme. The concessional rate of entry tax applies subject to conditions prescribed in column 4, i.e. production of a certificate from the competent authority under the

1 Corrected by Ministry of Commerce & Industry (Department of Commerce) Notification No.7 (RE-2003)/2002-07, dated 22-4-2003.

2 Inserted by Ministry of Commerce & Industry (Department of Commerce) Notification No.28 (RE-2003)/2002-07, dated 28-1-2004.

3 Amended by Ministry of Commerce & Industry (Department of Commerce) Notification No.28 (RE-2003)/2002-07, dated 28-1-2004.

EPCG scheme; and actual installation of imported goods within the State of Goa.

32. Item 9 of the notification dated 19.05.2003 significantly does not refer to all the goods or all the capital goods mentioned in clause 5.1 of the EPCG scheme. Item 9 refers to capital goods brought or caused to be brought or delivered into a local area by or (to) "*units covered under Export Promotion Capital Goods Scheme*". Therefore, it would not be appropriate to read into item 9 any coverage to all the goods or capital goods referred to or mentioned in clause 5.1 of the EPCG scheme. Furthermore, considering the provisions of Section 25(1) of the Entry Tax Act, we agree with the learned Advocate General that the State was competent, in public interest to decide which of the capital goods deserve a concession or reduced rate of entry tax. There is no question of any discrimination involved in such matters.

33. The expression "*capital goods*" referred to in item 9 of the notification dated 19.05.2003 has neither been defined under the said notification nor the Entry Tax Act, 2000. However, Section 2(B) of the Entry Tax Act, before its amendment in 2013, provides that the words and expressions used in the said Act but not defined shall have the meaning as assigned to in the Goa Sales Tax Act, 1963. After that, in the year 2013, for the expression "*Goa Sales Tax Act, 1964 (Act 4*

of 1964)", the expression "*the Goa Value Added Tax Act, 2005 (Goa Act 9 of 2005)*" was substituted.

34. Now even if we were to ignore the amendment of 2013, there was nothing wrong with the Respondents referring to the definition of "*capital goods*" in Section 2(f) of the Goa Value Added Tax Act, 2005. At the stage when the Petitioners insisted upon the benefit under the notification dated 19.05.2003, the Goa Sales Tax Act, 1964, was already repealed and replaced with the Goa Value Added Tax Act, 2005. In this regard, we can usefully be referred to the provisions of the Goa, Daman and Diu General Clauses Act, 1965, in terms of which provisions of Section 8 of the General Clauses Act, 1897, will apply to the interpretation of the Entry Tax Act.

35. Section 8 of the General Clauses Act, *among other things*, provides that where this Act or any Central Act or Regulation made after the commencement of this Act repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

36. Based on the provisions of the Goa Act and the Central Act, therefore, there was nothing wrong with the Respondents referring to the definition of '*capital goods*' in Section 2(f) of the Goa Value

Added Tax Act, 2005, given explicit provision in Section 2(B) of the Entry Tax Act, 2000. Moreover, such reference was justified because authorities interpreted the notification dated 19.05.2003, which was issued under Section 25(1) of the Entry Tax Act, 2000. Now if the definition of "*capital goods*" under Section 2(f) of the Goa Value Added Tax Act, 2005 is perused, then it is quite clear that the same will not include imported cars for which the Petitioners seek to pay reduced tax.

37. *In Vanguard Fire and General Insurance Co. Ltd* (supra), undoubtedly an authority for the proposition that the Courts must look not only to the statute's words but also the context in which such words appear. However, even upon considering the context, collocation and object of the words used in exemption notification and provisions of the Goa Value Added Tax Act, 2005, it is quite clear that the expression "*capital goods*" cannot be stretched to include all the goods mentioned or referred to in the EPCG scheme irrespective of whether they are capital goods or not. Therefore, even applying the principle explained by the Hon'ble Supreme Court in *Vanguard Fire and General Insurance Co. Ltd.* (supra), there is no scope for expanding the definition of "*capital goods*" in the present case.

38. As explained by the Hon'ble Supreme Court, when interpreting an exemption notification whose wordings are clear and unambiguous, there is no scope for stretching the words of the notification or adding

some words to such notification. The exemption notification, particularly when determining eligibility, must be strictly construed. Even the issue of purposive interpretation will arise only when there is some ambiguity or where there is a possibility of a particular interpretation leading to absurd results. No such issue arises in the present case.

39. Thus, there is no illegality in the impugned orders dated 11.08.2005 and 05.01.2006 by which the Petitioners were denied the benefit of the exemption notification. Mr Usgaonkar's contention about discrimination and consequent violation of Article 14 of the Constitution is quite misconceived. In terms of Section 25 of the Entry Tax Act, it is for the State Government to determine any specified class or persons or class of dealers or any goods or class of goods that can be exempted from payment of entry tax or qualify to pay reduced entry tax. Section 25 of the Entry Tax Act is only an enabling provision.

40. There is no mandate to provide for an exemption or to reduce tax. Thus, if the State Government believed that it was necessary in the public interest to grant exemption or decrease the rate of entry tax only to capital goods brought or caused to be brought or delivered into a local area by or to units covered under the EPCG scheme, there is no question of any unreasonable classification or discrimination involved. As noted earlier, the exemption notification applies only to

capital goods brought by or to units covered under the EPCG scheme. Nothing in the exemption notification refers to the coverage of all goods that might be referred to in clause 5.1 of the EPCG scheme.

41. Incidentally, on the date of issue of exemption notification on 19.05.2003, the EPCG scheme did not even refer to the import of motor cars. The motor cars were referred to only in the amendment of 28.01.2004. Therefore, it is challenging to accept Mr Usgaonkar's contention that the exemption notification dated 19.05.2003 was always intended to apply to motor cars imported by units covered under the EPCG scheme irrespective of whether or not such motor cars constituted "*capital goods*". Therefore, this is not a case of Respondents attempting to frustrate the provisions of the Central EPCG scheme. The Petitioners have already obtained the benefit of the EPCG scheme by importing cars against payment of only 5% customs duty. The exemption notification dated 19.05.2003 nowhere commits to reduced entry tax rates for all goods referred to in the EPCG scheme.

42. For all the above reasons, we dismiss this petition. Accordingly, there shall be no order for costs.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.