A.F.R.

ORDER OD-98

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (CENTRAL EXCISE)
ORIGINAL SIDE

CEXA/2/2007
COMMISSIONERATE OF CENTRAL EXCISE, HALDIA COMMISSIONERATE
VERSUS
M/S. TAMRALIPTA CO-OPERATIVE SPINNING MILLS LIMITED

BEFORE :

THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
And
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

Date : 15th December, 2023

Appearance:
Mr. Bhaskar Prasad Banerjee, Adv.
Mr. Tapan Bhanja, Adv.
…for the appellant.

Mr. Sagar Bandopadhyay, Adv.
Mr. Arijit Chakraborty, Adv.
Mr. S. Nandy, Adv.
...for the respondent.

1. Heard Mr. Bhaskar Prasad Banerjee, learned standing counsel assisted by Mr. Tapan Bhanja, learned Advocate for the appellant/department and Mr. Sagar Bandopadhyay, learned counsel assisted by Mr. Arijit Chakraborty and Mr. S. Nandy, learned Advocates for the respondent/assessee.

2. This appeal was admitted on 2.7.2007 on the following substantial questions of law:

> *"(a) Whether the learned Tribunal had failed to appreciate that onus lay on the respondent to prove that the conditions imposed in Notification Nos. 4/97-CE, 5/98-CE, 5/99-CE, 6/00-CE were satisfied in the instant case ?*
>
> *(b) Whether in the facts and circumstances of the case, the Tribunal should have held that the Respondent had failed to discharge the onus of proving that the two conditions mentioned in the said Notifications, namely, that the goods in question had to be sold to the apex bodies by the respondent and that a certificate should be issued from the said apex bodies to the respondent at the time of the clearance of goods that the said goods were going to be used only on handloom had been satisfied ?*
>
> *(c) Whether the learned Tribunal should have inferred from the facts on record that the role of the apex bodies was in the nature of selling or commission agents and not that of direct purchasers of the said goods from the Respondent ?"*

<u>Facts</u>:-

3. Briefly stated facts of the present case are that the respondent/assessee M/s. Tamralipta Co-operative Spinning Mills Limited is engaged manufacturing of cotton yarn in both plain reel hank form as well as cross-reel hank form and also in cones falling under Chapter Sub-heading 5205.11, 5206.19, 5206.11 and 5206.12 of the Schedule to the Central

Excise Tariff Act, 1985 (hereinafter referred as the Tariff Act) having registration No.2/R-VI/MID/92 dated 13.6.1992.

4. The respondent availed benefit of exemption from payment of central excise duty in terms of Exemption Notification No.4/97/CE dated 1.3.1997 (serial No.78), No.5/98-CE dated 2.6.1998 (serial No.96) and 6/2000-CE dated 1.3.2000 (serial No.4). The aforesaid notifications require conditions for availing exemption which is reproduced below (as reproduced in paragraph 2 of the impugned order of the Tribunal):

> *"If the manufacturer* ***produces at the time of clearance a certificate from an authorised officer of the Handloom Co-Operative Society****, National Handloom Development Corporation (NHDC) or State Government Handloom Development Corporation, as the case may be* ***that the yarn is going to be used only on handloom****.*
>
> *The goods so purchased by aforesaid agencies, the payment for which is to be made by cheque drawn by such Co-Operative Society or Corporation, as the case may be, on its own Bank Account."*

5. However, a show cause notice was issued by the Director General of Central Excise, Intelligence, Kolkata Zonal Unit dated 27.12.2002 requiring the respondent/assessee to show cause to the Commissioner of Central Excise, Kolkata-II, Commissionerate as to why:-

i) Central Excise duties amounting to Rs.2,31,81,177/- (Rupees Two Crores thirty one lacs eighty one thousand one hundred seventy seven only) should not be demanded and recovered from them in terms of the first proviso to Section 11A(1) of the Act;

ii) Interest at appropriate rate should not be charged from them in terms of Section 11AB of the Act;

iii) Penalty in terms of Rule 173Q of the erstwhile Rules (Rule 25 of Central Excise No.2, Rules 2001) read with Section 11AC of the Act should not be imposed on them.

6. By the aforesaid show cause notice, two other noticees i.e. noticee no.2, West Bengal State Handloom Weavers' Co-Operative Society Limited (Tantuja) and noticee No.3, West Bengal Handloom and Powerloom Development Corporation Limited (Tantusree) were also required to show cause to the Commissioner of Central Excise as to why penalty under Rule 209A of the erstwhile Central Excise Rules, 1944 read with Rule 26 of the Central Excise (No.2) Rules, 2001 may not be imposed. The aforesaid show cause notice was issued to the respondent/assessee for the period from December, 1997 to March, 2002. The Commissioner of Central Excise, Haldia Commissionerate adjudicated the show cause notice by Adjudication Order dated 29.12.2003, whereby he denied exemption to the respondent/assessee and imposed central excise duty amounting to Rs.2,31,81,177/- under Section 11A of the Central Excise Act, 1944 (hereinafter referred to as the Act, 1944) and also imposed interest under Section 11AB and penalty equal to the amount of duty under Section 11AC

of the Act. Penalty of Rs.10,00,000/- on each of the two other assessees were also imposed under Rule 209A of the Rules, 1944.

7. Aggrieved with the adjudication order, the respondent/assessee preferred an appeal before the Customs, Excise and Service Tax Appellate Tribunal, East Zone Bench at Kolkata. The other noticees have also challenged the levy of penalty by filing separate appeals. The Tribunal, by the impugned order dated 14.7.2006 allowed the appeal of the respondent/assessee recording a finding of fact that the respondent/assessee has complied with aforequoted conditions of the relevant exemption notification issued under Section 5A of the Act, 1944. Paragraphs 3 to 10 of the impugned order of the Tribunal are reproduced below:

> *"3. As is apparent from the above condition annexed to the Notification, the yarn* ***manufactured by the Spinning Mills*** *is exempted from the payment of duty, if the same is sold to Apex bodies specified in the Notification and such apex bodies make payment for the value of the yarn so purchased, by cheque, drawn on its own bank account.* ***Admittedly, the yarn manufactured by the spinning mills was being sold by them to Tantuja and Tantusree, at the price fixed at the Yarn Committee Meeting. Admittedly, Tantuja and Tantusree are Apex bodies established by the State Government as West Bengal Handloom & Powerloom Development Corporation Ltd. The spinning mills (the appellants herein), are undertakings of***

Government of West Bengal and come under the Administrative control of the Cotton and Small Scale Industry Department*, Government of West Bengal. As per the norms fixed by the Government, it is obligatory on the part of the spinning mill to produce at least 50% hank yarn of the total production of the spinning mill so as to save the handloom industry.* ***Such hank yarns are suitable for use of the handloom sector****, the Government of West Bengal Cotton and small scale Industry department, vide Notification dated 25/02/94, laid down the procedure for selling of yarn as also the process of fixation of price to ensure proper distribution of the same, with an objective to ensure the distribution of such yarn to the million handloom weavers in the unorganized sector mostly located in Rural areas and at remote places.* ***The Apex bodies Tantuja and Tantusree were established with the sole objective to cater the raw material requirements of rural handloom weavers.***

4. There ***is no dispute in the present appeal that the yarn in question has been sold to Tantuja and Tantusree, who have taken deliveries and have made payments within seven days from the date of receipt of the goods by way of cheques drawn on the said Apex bodies accounts. The requisite certificates have also been produced to the effect that such yarn would be used in the handloom industry.***

5. The Commissioner in his impugned order held that though the payment of the yarn in question has been made by Tantuja and Tantusree by way of cheque but the investigation conducted by the revenue revealed that the appellants were holding sale meeting with the Tantuja and Tantusree officers and traders were also *invited. Traders were directed to make payment to Tantuja and Tantusree by way of pay order or bank draft and the said Tantuja and Tantusree, after receiving payment from the traders, deduct 1.5% Commission for their services and would make payments to the yarn manufacturers by way of cheque.* ***The Commissioner has concluded that though the sales were being shown as having been made to Tantuja or Tantusree, the same were in fact being made to traders, with the connivance of Tantuja and Tantusree.***

As regards ***second condition*** *of the Notification requiring* ***production of a certificate from an authorised officer of National or State Handloom Development Corporation*** *at the time of clearance from the factory to the effect that such cleared yarn was going to be used in handloom,* ***the Commissioner has observed that the appellants have not taken sufficient care to see that the traders*** *are selling the yarn to handloom weavers only. The spinning mill have only produced certificate without ensuring that such yarn is actually being used in the handloom and no steps have been taken by them to the above effect. As such, he has concluded that the second condition is also not satisfied.*

6. After hearing both sides, we find that admittedly ***Tantuja and Tantusree are Apex Handloom Co-operative Societies and as per Notification issued by the State Government were required to purchase the yarn from the appellants to ensure their proper distribution. Two conditions of the Notification as regards purchase of goods by the Apex Body and payment by cheque from their own accounts stands satisfied in the present case.*** *Admittedly, there is no direct sale by the spinning* *mills to the traders, as recorded in the impugned order. The presence of traders in the meeting held for fixation of prices and payment by such traders to the Apex bodies, who in turn made payments to the appellants does not establish that the goods were sold directly to the traders. On the other hand* ***it establishes that the goods were purchased by the Apex body in question, for further distribution to the traders, who further sold the same to the ultimate Handloom weavers, who might be located in the interior of the country having no access to the Apex Body for direct purchase of the goods.*** *In any case, there being* ***no further condition as regards the disposal of the purchased yarn by the Apex body,*** *revenue's anxiety to reach the purchaser of the Apex body and the ultimate purchaser of the yarn is beyond the scope of the notification. The Commissioner has also referred to the fact that the yarn was being lifted from the mill premises even after the sale to the Apex Body was completed. This has been explained to us in terms of the Notification issued by the State Government on 25/02/94. The spinning mills are required to provide services of their godown and storing places so as to avoid extra financial burden on the Apex Body to look for the storage of the purchased yarn somewhere else. This fact, by itself and in the light of the State Government Notification leaves no scope for any adverse inference against the appellants that the goods were being sold by them to other buyers and not to Tantuja and Tantusree.*

7. As regards the ***second condition*** *of the Notification, we find that the Appellants have admittedly* ***produced the certificate from*** *the relevant authorities to show that the goods are to be used in the handloom industry.* ***There is no evidence on records to show that the same have been used elsewhere.*** *In fact the*

Commissioner has observed in his impugned order that it was not possible for the local jurisdictional Central Excise authorities to ascertain the authenticity of such certificate. If that be so, then the certificates are required to be accepted by the revenue. ***Failure on the part of the revenue to produce any evidence contrary to the*** *certificates cannot be made a ground to hold the certificate to be incorrect.*

8. On the contrary the appellants have produced on record the ***experts opinion in the shape of letters from the members, College of Textile Technology stating that Cotton yarn in cross reel hanks are suitable for handloom industry due to two advantages viz.,*** *it can be bleached or dyed in hank form and due to less chance of entanglement during the process. The letter further states that in powerlooms industry the packages normally used are cone and cheese, which are directly wound from the ring bobbins. The quality should be good with adequate strength for use in powerloom industry, for use in powerloom industry.* ***The said certificate has been discarded by the Commissioner on the ground that the same does not specifically say that hank yarn cannot be used in powerloom****. We find that it is the revenue, who is alleging the use of yarn in powerloom industry and as such, it is for them to prove so. They have failed to produce any evidence to show that the said yarn has been used in powerloom.*

9. The applicants have also strongly contended that ***having produced the certificate to that effect, no further onus is cast upon them by the notification conditions to ensure that the same are*** *actually used in the handloom industry. The appellants having produced certificates issued by the Tantuja and*

Tantusree for each and every clearance, there was full and complete compliance of the condition. ***Notification did not require any end use certificate from actual users of the goods.*** *The yarn having been purchased by Tantuja and Tantusree, it was their duty to see the fair distribution of the same to the handloom sector. It is well established by various decisions of the Tribunal that no end use certificate is required to be furnished in the absence of any such requirements built in the notification. Further, the expression "for use" has been interpreted as "intended to be used". In as much the certificate for intended use were issued, and further use of the same being in the hands of Apex body, who are held responsible for distribution, the fact of actual use of the yarn will not effect the appellant's claim to the benefit of the notification. Wherever the legislation intended to impose actual use condition, the same has been specifically introduced in the notification. Such an extraneous condition cannot be imposed by the adjudicating authority.*

10. In view of the foregoing, we do not find any reasons to deny the benefit of exemption notification in question to the various manufacturing unit or to impose penalties, either upon them or on Tantuja and Tantusree. The impugned orders are set aside ***and all the appeals are allowed with consequential*** *relief to the appellants."*

8. Aggrieved with the impugned order of the Tribunal, the revenue has filed the present appeal.

9. It is also relevant to mention that the appellants herein had also filed appeal against the impugned order of the Tribunal with respect to the co-

noticees raising limited question of penalty imposed upon them under Rule 209A of the Rules, 1944. The appeal filed by the Appellant Department was allowed by a co-ordinate Bench of this Court being Central Excise Appeal No.3 of 2007 decided on 24.2.2023. Against the aforesaid judgment and order passed by a co-ordinate Bench, the concerned noticee filed a **Special Leave Petition (Civil), Diary No.29915/2023 (M/s. The West Bengal State Handloom Weavers Co-operative Society Ltd. (Tantuja) vs. Commissioner of Central Excise, Haldia Commissionerate.** Hon'ble Supreme Court by an order dated 11.8.2023 stayed the above-referred judgment and order dated 24.2.2023 in Central Excise Appeal No.3 of 2007 passed by the Co-ordinate Bench of this Court.

Submissions:-

10. Learned counsel for the appellant submits that it is not in dispute that the respondent is a manufacturing co-operative spinning mill of the State Government which manufactured the goods in question and showed its sales to other co-noticees namely, West Bengal State Handloom Weavers' Co-operative Society Limited (Tantuja) (for short 'Tantuja') and West Bengal Handloom and Powerloom Development Corporation Limited (Tantusree) (for short 'Tantusree') which are apex handloom co-operative societies and payments were received by the respondent/assessee from the aforesaid two co-noticees by account payee cheques. However, the real transaction was

that the goods were not sold directly to the aforesaid two apex handloom co-operative societies but, in fact, these were delivered to some traders for sale to weavers. Therefore, the condition specified in the relevant notification that the yarns are purchased by an apex handloom co-operative society, has not been satisfied. Therefore, the adjudicating authority has correctly held that the respondent/assessee is not entitled for exemption under the relevant notification, aforementioned.

11.Learned counsel for the respondent/assessee submits that the respondent/assessee is a co-operative spinning mill of State of West Bengal. The other two co-noticees namely Tantuja and Tantusree are also apex handloom co-operative societies of the State Government. The respondent/assessee provided a godown storage facility to the apex handloom co-operative societies including the aforementioned two co-noticees to whom the respondent/assessee sold and received payment through account payee cheques. The aforesaid two apex handloom co-operative societies have also issued certificates of sale of yarn to them by the respondent, at the time of clearance, certifying that the yarn is going to be used only on handlooms. Under the mechanism developed by the State Government and the aforesaid two apex handloom co-operative societies, for the purposes of distribution to handlooms, the aforesaid two apex handloom cooperative societies made subsequent sales to handlooms either directly or through some hands. Since the essential conditions of the exemption notification have been fully satisfied by the respondent, therefore, the adjudicating authority had committed manifest error of fact and law to impose Central Excise Duty upon the respondent, which has been rectified by the Tribunal by the impugned order. The findings recorded by the Tribunal in the impugned order are findings of fact based on consideration of relevant evidences on record and, therefore, these findings of fact cannot be interfered with in appeal under Section 35G of the Central Excise Act, 1944. In support of his submissions, learned counsel for the respondent has relied upon the judgments of Hon'ble Supreme Court in Hansraj Gordhandas v. H.H. Dave, Assistant Collector of Central Excise, Customs, Surat & Ors. reported in 1968 SCC OnLine SC 50 (paragraphs 4 and 5), Union of India & Others v. Wood Papers Limited and Another reported in (1990) 4 SCC 256 (paragraph 4), Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company reported in 2018 (361) ELT 577 (SC) (paragraphs 24, 25 and 44), Shriram Vinyl & Chemical Industries v. Commissioner of Customs, Mumbai reported in 2001 (129) ELT 278 (SC) (paragraph 3), Commissioner of Central Excise, Hyderabad v. Sunder Steels Limited (paragraph 5) reported in 2005 (181) ELT 154 (SC) and a judgment of the High Court of Karnataka in Taghar Vasudeva Ambrish v. Appellate Authority for Advance Ruling, Karnataka reported in 2022 (63) GSTL 445 (Karnataka) (paragraph 15).

<u>Discussion and Finding</u>:-

12. We have heard learned counsel for the parties and carefully considered their submissions and perused the record of this appeal.

13. It is undisputed that the respondent/assessee is a co-operative spinning mill which manufactured the yarn in question. The two co-noticees namely Tantuja and Tantusree are also apex handloom co-operative societies of the State Government who purchased yarn and also gave certificate that the yarn is going to be used only on handlooms. The respondent/assessee received payments from the aforesaid two purchasers namely Tantuja and Tantusree, by account payee cheques. The inference drawn by the adjudicating authority to deny exemption under the relevant exemption notification, that delivery of yarn was given by the respondent/assessee to persons other than Tantuja and Tantusree, is neither based on any material or evidence nor the inference so drawn can be said to be a valid exercise of power by the adjudicating authority. The Tribunal has correctly appreciated the evidence on record and recorded the findings of fact in paragraphs 3 to 9 of the impugned order which have been reproduced above. The findings recorded by the Tribunal are findings of fact based on consideration of relevant evidences on record. It is neither the case of the appellant that the findings of fact recorded by the Tribunal are perverse nor the appellants could point out any evidence to show any perversity in the findings of fact recorded by the Tribunal.

14. Thus, on admitted facts of the case, we find that the respondent/assessee has fully complied with the conditions of the relevant exemption notification. Therefore, the Tribunal has correctly and lawfully set aside the adjudication order and allowed the appeal of the respondent/assessee.

15. The notification in question exempts excisable goods of the description specified in column 3 of the Table appended to the notification, subject to the relevant conditions specified in the annexure to the notification and referred to in corresponding entry in column 5 of the said Table. In column 3 of the notification, it is provided that "The following goods purchased by a registered Apex Handloom Co-operative Society, the National Handloom Development Corporation or a State Government Handloom Development Corporation shall be exempt, provided the payment against such purchases are made by cheque drawn by such Co-operative Society or Corporation, as the case may be, on its own bank account." The additional condition being Condition No.17 attached to the aforesaid exemption provides that "**if the manufacturer produces at the time of clearance a certificate from an authorised officer of the Handloom Co-operative Society, National Handloom Development Corporation or State Government Handloom Development Corporation, as the case may be, that the yarn is going to be used only on handlooms".** Undisputedly, the yarn in question has been purchased by the co-noticees namely Tantuja and Tantusree, which both are

registered apex handloom co-operative societies, who made payment to the respondent/assessee (yarn manufacturing co-operative society) through cheque drawn by them on their own bank accounts. They have also issued a certificate to the effect that the yarn is going to be used only on handlooms. Thus, all the conditions of the exemption notification in question were satisfied by the respondent/assessee. Therefore, the respondent/assessee was entitled for exemption and the Tribunal has lawfully and correctly allowed the appeal of the respondent/assessee holding the transactions in question to be exempt from Central Excise Duty.

16. The law of exemption in indirect taxes is well settled. Literally, exemption is freedom from liability to tax or duty. Fiscally, it may assume varying shapes, especially in growing economy. An exemption provision is like an exception. On normal principle of construction or interpretation of statutes, it is to be construed strictly either because of legislative intention or on economic justification of inequitable burden of progressive approach on fiscal provision intended to augment State revenue. **Once exception or exemption becomes applicable, no rule or principle requires it to be construed strictly. When the question is whether a subject falls in the notification or in the exemption clause, then, it being in the nature of exception is to be construed strictly and against the subject, but once ambiguity or doubt about applicability is lifted and the subject falls in the notification, then full play should be given to it and it calls for a**

wider and liberal construction. These principles are well applicable on facts of the present case, inasmuch as on strict interpretation of the exemption notification in question, we find that the assessee falls under the exemption notification and, therefore, the exemption is liable to be granted and has been lawfully extended by the Tribunal as claimed by the assessee.

17. The adjudicating authority had proceeded to deny exemption to the respondent/assessee merely on the basis of surmises and presumptions and alleged intendment. In our view and as per well-settled principles in a taxation statute, there is no room for any intendment and 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. Equity has no place in interpretation of a taxation statute. Strictly one has to look to the language used; there is no room for searching indentment nor drawing any presumption. Nothing is required to be read into nor should anything be implied other than essential inference while considering a taxation statute or exemption notification. Reference in this regard may be had to the judgment of the Hon'ble Supreme Court in the case of Union of India & Others v. Wood Papers Limited and Another reported in (1990) 4 SCC 256 and Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company reported in 2018 (361) ELT 577 (SC).

18. What the adjudicating authority attempted to do is that it attempted to read something which was either factually not existing or which was not provided by the exemption notification. It attempted to add words by drawing its own inference on the basis of presumption that the yarn in question could have been sold by the respondent/assessee not to the aforesaid apex handloom co-operative societies but to some other persons. Therefore, such an inference, which has no basis, could neither be accepted nor could be given any weight. Therefore, the Tribunal has not committed any error of law to set aside the order of the adjudicating authority and to extend the benefit of exemption notification to the respondent/assessee. It is settled law that the notification has to be interpreted on its own wordings. No words, not used in the notification, can be added. Since the respondent/assessee has fulfilled all the conditions, therefore, it became entitled for exemption and the exemption could not have been denied. Reference in this regard may be had to the judgment of Hon'ble Supreme Court in the case of Commissioner of Central Excise, Hyderabad v. Sunder Steels Limited (paragraph 5) reported in 2005 (181) ELT 154 (SC).

19. The principle of law on the question of exemption notification as discussed above is also supported by the law laid down by Hon'ble Supreme Court in Orient Traders v. CTO reported in (2008) 12 SCC 440 [Paragraph 20], Union of India v. Wood Papers Ltd. reported in [1990] 47 ELT 500 SC [paragraph 2], Parle Biscuits P. Ltd. vs. State, reported in [2005] 192 ELT 23

SC [paragraph 21] and Sanghavi Reconditioners Pvt. Ltd. vs. Union of India and Ors., reported in JT [2010] 2 SC 61 [paragraph 17].

20. For all the reasons afore-stated, we do not find any manifest error of law in the impugned order of the tribunal. The appellant has completely failed to make out any case for interference with the impugned order. The substantial questions of law framed and afore-quoted are answered in favour of the assessee and against the respondent.

21. In result, we do not find any merit in this appeal. Consequently, the appeal is dismissed. All pending applications, if any, stand disposed of.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

S.Kumar