IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2026

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.33773 of 2018

M/s.L.G.Balakrishnan & Bros. Limited
Represented by its Chief Financial Officer,
SF No.195, Kondayampalayam Village, Vaiyampalayam,
Coimbatore-642110. : Petitioner

Vs.

1.Commisioner of GST & Central Excise,
Coimbatore Division,
No.6/7, A.T.D Street, Race Course Road,
Coimbatore -641 018.

2.Principal Commissioner (RA),
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai-400 005. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, calling for records relating to impugned Revision Order No.202/2018-CX(SZ)/ASRA/MUMBAI dated 24.07.2018 passed by second respondent and quash the same and pass orders.

For Petitioner : Mr.R.Parthasarathy

For Respondents : Mr.K.S.Ramasamy
Central Government Standing Counsel

ORDER

The present writ petition has been filed challenging impugned Revision Order No.202/2018-CX(SZ)/ASRA/MUMBAI dated 24.07.2018 passed by second respondent.

2. The question that arises for consideration in this writ petition is as to whether exemption granted vide Notification No.24 of 2003-CE dated 31.03.2003 is conditional or absolute for the purposes of Section 5A(1A) of the Central Excise Act.

3. Brief facts:

3.1. Petitioner was 100% Export Oriented Unit, (hereinafter referred to as EOU), manufacturing parts of motor vehicles classified under Tariff sub-heading number 8708. Petitioner was granted Letter of Permission (LoP) to operate as an EOU vide Development Commissioner's letter dated 12.04.2006 subject to terms and conditions, which *inter alia* includes:

> *a) The unit shall export its entire production for a period of 5 years from the date of commencement of production. The unit would have the option to renew its EOU status or opt out of the scheme as per the Industrial Policy in force (Clause i);*

b) The unit shall achieve positive Net Foreign Exchange Earning as prescribed in the EOU scheme for a period of 5 years (Clause ii);

c) The LoP shall be valid for 3 years from its date of issue within which the petitioner shall implement the project. The LoP shall automatically lapse if application for extension of validity is not made before the end of the said period (Clause vi).

3.2. At the end of 5 year period i.e. 11.04.2011, petitioner opted to withdraw from EOU Scheme and submitted a letter dated 12.04.2011 to Development Commissioner requesting de-bonding of EOU. An "in-principle" approval for de-bonding was granted by Development Commissioner vide letter dated 21.07.2011. Petitioner paid an amount of Rs.33,27,725/- on 31.05.2011 towards excise duty pertaining to goods lying in stock as on 31.05.2011 and received no due certificate from Excise Department on 23.11.2011. A Final Exit Order dated 16.12.2011 came to be issued by Assistant Development Commissioner of MEPZ.

3.3. It is submitted by petitioner that in the meanwhile on 03.06.2011, petitioner intimated Assistant Commissioner of Central Excise, Coimbatore that excise duty on goods manufactured for export will henceforth be cleared on payment of excise duty under claim for rebate. Exports were then made on payment of duty under claim of rebate by utilizing Cenvat credit. After final exit order, petitioner filed their claim for rebate sometime in April 2012. Show cause notice came to be issued proposing to deny rebate claim filed by petitioner *inter alia* on the following grounds.

a) Final exit order, effecting de-bonding was only issued on 16.12.2011, till which date petitioner would continue to be 100% EOU, despite the fact that an in-principle approval was granted sometime in July 2011.

b) Importantly, in terms of Notification No.24/2003-CE dated 31.03.2003, all excisable goods manufactured in a 100% EOU are exempt from the whole of excise duty. The exemption in terms of the above notification is absolute thus in terms of Section 5A(1A) of the Central Excise Act, 1944, manufacturer of such excisable goods shall not pay duty on such goods and option is not available to such manufacturers to remit the duty and claim the benefit of rebate/refund.

3.4. Petitioner submitted its reply on various dates including 31.08.2012, 18.01.2013 and 08.03.2013 *inter alia* submitting that 100% EOU license expired on 11.04.2011 and petitioner ceased to be a 100% EOU since 11.04.2011, thus exemption vide Notification No.24/2003-CE dated 31.03.2003 is inapplicable in respect of goods cleared with effect from 12.04.2011. However, Order in Original came to be passed confirming the proposal vide order dated 26.04.2013 denying rebate claimed by petitioner. Aggrieved, petitioner preferred an appeal in Appeal No.35 of 2013-CEX before the Commissioner of Central Excise (Appeals), who, in turn confirmed the order of the adjudicating authority denying rebate.

3.5. Petitioner, thereafter, preferred a revision application No.195/999/2013-RA-CEX before second respondent. Revision also came to be rejected vide order dated 24.07.2018 confirming the order in original *inter alia* on the premise that a unit goes out of EOU scheme only when the Final Exit Order is given by the Development Commissioner after obtaining a no-objection certificate from the jurisdictional Customs and Central Excise authorities. Resultantly, goods manufactured and cleared by a 100% EOU till date of final exit order is unconditionally exempt under Notification No.24/2003-CE dated 31.03.2003.

3.6. It is against the above order of revision, present writ petition has been filed.

4. Learned counsel for the respondent would reiterate that orders of authorities below are in accordance with law and does not warrant interference and would also submit that the exemption granted vide Notification No.24/2003 is

absolute exemption as would be evident from the fact that there are no conditions attached except that it must be produced or manufactured by an EOU.

5. Against the above background the primary question that arise for consideration is whether exemption granted vide Notification No.24/2003 from excise duty on goods manufactured in 100% EOU is conditional or absolute exemption;

6. Thus if exemption granted vide Notification No.24/2003 is conditional and not absolute, then Section 5A(1A) of the Central Excise Act, 1944, may not get attracted. To understand the scope of the exemption granted vide Notification No. 24 of 2003, it may be necessary to understand the scope of Section 5A(1A) of the Act and Notification No.24/2003-CE dated 31.03.2003, which read as under:

> *"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 produced or manufactured—*

(i) in a [free trade zone [or a special economic zone] and brought to any other place in India; or

(ii) by a hundred per cent export-oriented undertaking and 3 [brought to any other place in India].

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.

[(1A) For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods.]"

7. On a reading of the above provision following position appears to emerge:

a) Central Government is conferred with power to issue notification in public interest to exempt generally either absolutely or subject to such conditions to be fulfilled before or after removal as may be specified in the notification from the whole or any part of the duty of excise leviable thereon.

b) Proviso to Section 5A of the Act provides that unless the notification made thereunder, specifically provides, no exemption shall apply to excisable goods manufactured or produced in 100% EOU and brought to any other place in India.

c) Power to grant exemption under Section 5A of the Act, includes the power to grant exemption either absolutely or subject to conditions. This would be evident from the use of the expressions either absolutely or subject to such conditions in Section 5A of the Act.

d) Sub-section (1A) to Section 5A of the Act, provides that if exemption granted under Sub Section (1) to Section 5A in respect of any excisable goods is absolute, then the manufacturer shall not pay duty of excise of such goods. This provision was inserted with effect from 13.05.2005 vide Section 75 of the Finance Act, 2005 (18 of 2005) to get over judgments including that of the Supreme Court, wherein it has been held that assessee can forgo the benefit under an exemption notifications, some of them being:

i) Narayan Polyplast vs Commissioner of C.Ex. Ahmedabad reported in 2003 (153) E.L.T.160 (Tri.-Mumbai)

ii) Commission of Cental Excise & Customs (Appeals), Ahmedabad vs arayan Polyplast and others reported in (2005) 10 SCC 121.

8. While examining whether an exemption is absolute or conditional for the purpose of Section 5A(1A) of the Act, the expression in respect of “any excisable goods” employed therein assumes relevance. This would indicate that exemption

ought to be qua the "goods" and not with reference to a particular class of manufacture or with reference to circumstance. The nature of exemption ought to be with reference to "goods", to qualify as being absolute for the purposes of Section 5A(1A) of the Act. Secondly, the expression 'in respect of' employed in Section 5A(1A) of the Act, would mean, "in connection with or related to with a subject which follows"[1], in the present case, the expression *"in respect of"* is followed by the expression "excisable goods", thereby making it clear that the exemption ought to be with reference to "goods". The other crucial expression is "absolute" which would mean free from conditions, restrictions or qualifications, not dependent or modified or affected by circumstances.[2] Therefore, to fall within Section 5A(1A), it may be necessary for the revenue to demonstrate that exemption is absolute in respect of a particular class of goods and not a class of manufacturer/circumstance.

9. Keeping the above aspects in view, let us examine the subject notification, which reads as under :

Notification No.24/2003-CE dated 31.03.2003:

> "*In exercise of the power conferred by sub-section (1) of section 5A of Central Excise Act, 1944, (1 of 1944), read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957)*

1. P Ramanatha Aiyar's Advanced Law Lexicon, 5th Edition; Union of India and Another vs Vijay Chand Jain, (1977) 2 SCC 405
2. Black Law Dictionary, Sixth Edition.

and sub-section (3) of section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby,-

(a) exempts all excisable goods produced or manufactured in an export oriented undertaking from whole of duty of excise leviable thereon under section 3 of Central Excise Act, 1944 (1 of 1944) and additional duty of excise leviable thereon under section 3 of Additional Duty of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and additional duty of excise leviable thereon under the section 3 of Additional duty of Excise (Textiles and Textile Articles)Act, 1978 (40 of 1978): Provided that the exemption contained in this notification in respect of duty of excise leviable under section 3 of said Central Excise Act shall not apply to such goods if brought to any other place in India;

(b) rescinds the notification Nos. 125/84- Central Excise, dated the 26th May 1984 (G.S.R. 403(E), dated the 26th May, 1984), 127/84 Central Excise dated the 26th May 1984 (G.S.R. 405(E), dated the 26th May, 1984) and 55/91- Central Excise, dated the 25th July, 91 (G.S.R. 389 (E), dated the 25th July, 1991). 2. This notification shall come into force on the 1st day of April, 2003. The principal notification No. 55/91 Central Excise dated the 25th July 1991 was issued vide GSR 389, dated the 25th July, 1991.

2.This notification shall come into force on the 1st day of April, 2003.

[Notification No.24/2003-C.E., dated 31.03.2003]"

10. A reading of Notification No.24/2003, would show that exemption is with reference to export oriented undertaking, it exempts all excisable goods, manufactured therein. The exemption is qua the manufacturer by virtue of his status as an EOU and not with reference to goods. This in my view, cannot but be a

conditional notification, the condition being that it must be manufactured or produced by a particular class of manufacturers viz., EOU. Once it is conditional, then sub-section (1A) to Section 5A of the Act, would not get attracted and it may be open for petitioner to avail benefit of exemption or opt out of exemption and pay duty and thereafter, claim rebate.

11. To understand different kinds of exemptions/concession that has been granted/extended in exercise of the power under Section 5A of the Act, it may be relevant to contrast the subject notification with a few other notifications, some exemption being absolute and others conditional.

a) Notification No.03/2006-CE dated 01.03.2026:

S.No.	*Chapter or heading or sub-hearing or tariff item*	*Description of excisable goods*	*Rate*	*Condition No.*
1.	*0402 91 10 0402 99 20*	*Condensed milk*	*Nil*	-
2.	*0902*	*Tea, including tea waste*	*Nil*	-
.....				
36.	*[2403 19 21]*	*Biris, other than paper rolled biris, manufactured without the aid of machines, by a manufacturer by whom or on whose behalf no biris are sold under a brand name, in respect of first clearances of such biris for home consumption by or on*	*Nil*	2

		behalf of such manufacturer from one or more factories upto a quantity not exceeding 20 lakhs cleared on or after the 1st day of April in any financial year		
.....				
41.	*1901*	*Food preparations put up in unit containers and intended for free distribution to economically weaker sections of the society under a programme duly approved by the Central Government or any State Government.*	*Nil*	*1*

Annexure

Condition No.	*Conditions*
1.	*If the manufacturer of the food preparations produces a certificate from an officer not below the rank of the Deputy Secretary to the Government of India or not below the rank of the Deputy Secretary to the State Government concerned to the effect that such food preparations have been distributed free to the economically weaker sections of the society under a programme duly approved by the Central Government or the State Government concerned, within five months from the date of clearance of such goods or within such further period as the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction may allow in this regard.*
2.	*The exemption contained in this notification shall apply subject to the condition that the manufacturer of biris, files a declaration in the format given below before the 30th day of April in each financial year with the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be.*

	Provided that the declaration for the financial year 2006-2007 shall be filed on or before the 31st day of March, 2007.

11.1. While the 1st two exemptions vide Notification No.3/2006-CE dated 01.03.2006 are absolute, the 3rd and 4th exemptions of the said notification are subject to complying with the conditions set out in 5th Column to the Table of the above notification thus exemption is conditional. The above exemptions through notifications issued in exercise of power under Section 5A of the Act is referred to for the purpose of contrasting the same with the subject notification to find if the subject notification granting exemption is conditional or absolute. Going back to the subject Notification No.24/2003-CE dated 31.03.2003 it would be clear that it grants exemption from excise duty on *"all goods manufactured in a EOU",* thus conditional inasmuch as exemption is with reference to a class of manufacturer viz., EOU.

12. In the light of the above discussion, this Court is of the view that exemption granted vide Notification No.24/2003 in question is not absolute but conditional. The condition being that manufacture ought to enjoy the status of EOU. In view thereof, the impugned order dated 24.07.2018 stands set aside.

13. Accordingly, writ petition stands disposed of. No costs.

23.03.2026

Speaking (or) Non Speaking Order
Neutral Citation: Yes/No
Mrn

To
1.Commisioner of GST & Central Excise,
Coimbatore Division,
No.6/7, A.T.D Street, Race Course Road,
Coimbatore -641 018.

2.Principal Commissioner (RA),
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai-400 005.

MOHAMMED SHAFFIQ, J.

(mrn)

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