Liberty Oil Mills (P) Ltd vs C.C.E on 13 December, 1994

Equivalent citations: 1995 SCC (1) 451, 1994 SCALE (5)224

Author: K.S. Paripoornan

Bench: K.S. Paripoornan, R.M. Sahai

PETITIONER:
LIBERTY OIL MILLS (P) LTD.

Vs.

RESPONDENT:
C.C.E.

DATE OF JUDGMENT13/12/1994

BENCH:
PARIPOORNAN, K.S.(J)
BENCH:
PARIPOORNAN, K.S.(J)
SAHAI, R.M. (J)

CITATION:
1995 SCC (1) 451 1994 SCALE (5)224

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by PARIPOORNAN, J.- This batch of 4 connected appeals under the Central Excises and Salt Act, 1944, is filed by the assessee by special leave granted by this Court. The Revenue issued six demand notices against the assessee for recovery of differential duty involved in the clearances for different periods. The first batch of demand notices (Item Nos. 1 to

3), dated 18-6-1983, 20-7-1983 and 28-2-1984 involved a duty total amounting to Rs 13,45,851.76, as evidenced by the order of the Assistant Collector, Central Excise, dated 11-6-1984. The second batch of demand notices (Item Nos. 4 to 6) involved a duty amounting to a total of Rs 4,99,874.85 as evidenced by the order of the Assistant Collector, Central Excise, dated' 17-6-1984.

2.The assessee (the appellant herein) preferred appeals before the Appellate Collector against the aforesaid orders of the Assistant Collector. By a consolidated order in Appeals Nos. M-1231-1232/TH-788-789/85, dated 6-8-1985 the Appellate Collector set aside the demands and allowed the appeals filed by the assessee. Thereupon, the Revenue filed two appeals before the Customs, Excise and Gold (Control) Appellate Tribunal, hereinafter referred to as "the Tribunal" or 'CEGAT', as evidenced by E/A2563/85-C and A No. 448/86-C. The sole question that arose before the Appellate Tribunal was regarding the interpretation of Notification No. 61/71 dated 29-5-1971 as amended by Notification No. 40/72 dated 17-3-1972 Before the Appellate Tribunal the Revenue conceded that the demand issued against the appellant-Company would be enforceable only for a period of 6 months from the date of demand-cum-show-cause notices and not with reference to the extended time limit laid down in the Central Excise Law. This is seen recorded in paragraph 3 of the order of the Appellate Tribunal dated 21-5-1986. The Appellate Tribunal reversed the decision of the Collector, Central Excise (Appeals) and directed revision of the demands for duty within a period of six months from the date of the show- cause notice. The appellant filed a petition for referring certain questions of law to this Court against the common order of the Appellate Tribunal passed in the above two appeals dated 21-5-1986. The Tribunal dismissed the said petition holding that the questions formulated by the appellant related, among other things, to the determination of questions having relation to the rate of duty of excise and value of goods for the purpose of assessment and hence a reference application on that score does not lie. Against the order so passed by the Tribunal dated 30-1-1987, the appellant filed special leave petitions in this Court and leave having been granted by this Court, were registered as Civil Appeals Nos. 1308-09 of 1987. Against the common order passed in the appeals dated 21-5-1986, two appeals have been filed evidenced by CA Nos. 2221-2222 of 1987. In all the four appeals, the only question involved is interpretation of Notification No. 61/71 dated 29-5-1971 as amended by Notification No. 40/72 dated 17-3-1972. In the light of our decision in Civil Appeals Nos. 2221-22 of 1987, on the merits of the case, it is unnecessary to consider the questions posed in CA Nos. 1308-09 of 1987, which will be only academic. We hold so.

3.We heard counsel for the appellant (assessee) Shri M.S. Ganesh and counsel for the respondent (Revenue) Shri Joseph Vellapally. The facts of this case are in a narrow compass. The appellants are manufacturers of a vegetable product falling under Item No. 13 of the Central Excises and Salt Act, 1944. At the relevant time it carried a rate of duty of 10% ad valorem. By Notification No. 61/71 dated 29-5- 1971 as amended by Notification No. 40/72 dated 17-3-1972, exemption was granted to vegetable products produced out of indigenous rice bran oil. The appellants cleared their said vegetable products at concessional rate of Rs 10 per quintal under the said notification. The Revenue took the view that the appellants were not entitled to the benefit of the exemption under the said notification. It was in these circumstances that 6 demand notices for the recovery of the differential duty involved in the clearances for different periods were issued in two sets, amounting to Rs 13,45,851.76 and Rs 4,99,874.85. The demands were annulled by the Appellate Collector but restored by the Appellate Tribunal for a period of six months from the date of the show-cause notices issued to the appellants.

4.It is only appropriate to quote the relevant item of tariff under which the duty is levied and the relevant exemption notification on the basis of which only a lesser duty is leviable.

"Tariff Item No. 13 of the First Schedule to the Central Excises and Salt Act, 1944, which is as under:

Item No. Tariff description Rate of duty Ten per cent ad valorem

13. 'Vegetable product' means any vegetable oil or fat which, whether by itself or in admixture with any other substances has, by hydrogenation or by any other process been hardened for human consumption Exemption Notification No. 61/71 dated 29-5-1971 as amended by Notification No. 40/72 dated 17-3-1972, is to the following effect:

"Exemption to vegetable product produced out of indigenous rice bran oil:- In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempt such vegetable product as is made from indigenous rice bran oil from the duty of excise leviable thereon to the extent of rupees ten per quintal, subject to the following conditions, namely:

(i) the said vegetable product is issued out from a factory in admixture with til oil, or with vegetable product from other oils, or with both; and

(ii)that the proportion of the said vegetable product is in excess of one per cent of the total vegetable product in a particular consignment."

The appellants cleared their vegetable products at the concessional rate of Rs 10 per quintal as per the aforesaid Notification No. 61/71 dated 29-5-1971, as amended by Notification No. 40/72 dated 17-3-1972.

5. The short question that arises for consideration is whether the appellants are entitled to the benefit of the exemption afforded by the aforesaid notification? Counsel for the appellants reiterated the pleas advanced before the Tribunal and contended that the exemption is applicable with reference to the entire quantity of admixture containing the vegetable products produced out of rice bran oil, the only other condition being that the vegetable products made from rice bran oil in the admixture should be more than 1% of the total in any consignment. In effect, the submission was that the entire quantity should be taken into account for such calculation. On the other hand, counsel for the Revenue contended that the exemption of Rs 10 per quintal afforded by the notification should be computed with reference to the vegetable product made from the rice bran oil and not with reference to the entire quantity of admixture of vegetable product cleared from the factory. According to the counsel for the appellants the exemption is for the entire quantity of vegetable product whereas according to the counsel for the Revenue, the notification has not exempted the vegetable products but only exempted indigenous rice bran oil to the extent it is represented in the vegetable product. After adverting to the rival pleas advanced by the parties the Appellate Tribunal concluded thus, in paragraphs 9 and 10 of its order dated 21-5-1986:

"Under the notification benefit of exemption is available in respect of vegetable product produced out of rice bran oil when, according to condition (i) of the notification it is in admixture with til oil or with other vegetable product produced from other oils, or with both. It is, therefore, not essential that the vegetable product out of rice bran oil must come into existence independently to be eligible for the benefit of the said notification. What is required to be proved is that there is a component of the vegetable product attributable to the rice bran oil and so long as it can be proved to be there in the final product and so long as other conditions are satisfied, benefit of exemption is available in respect of this vegetable product.

Reading the notification as a whole, therefore, the expression ,vegetable' product as is made from indigenous rice bran oil (which is exempted under the notification) has to be read as 'vegetable product as is made from indigenous rice bran oil' only; otherwise condition (i) would have read 'the said vegetable product is issued out from a factory in admixture with til oil' thereby making the words 'or with vegetable product from other oils or with both' as redundant. Such an interpretation would be against the normal principles of construction because no words can be read as being superfluous in a statutory provision. The demands of duty within a period of six months from the dates of show-cause notice should be revised accordingly."

6. On an anxious consideration of the matter we are of the view that the language in the notification is fairly clear. The Central Government has exempted 'such' "vegetable product" "as is made from indigenous rice bran oil" from the duty of excise leviable thereon to the extent of Rs 1 0 per quintal subject to the conditions following. The crucial words in the notification "such vegetable product" "as is made from indigenous rice bran oil" from the "duty of excise leviable thereon" are important. The words " as is made from the indigenous rice bran oil" should be understood in a meaningful manner. The related or synonymous words for "as is" are many. Keeping the related words of "as is" in mind, it appears to us that the natural and proper meaning to be given to the enacting or main clause of the notification is, that the Central Government exempts such vegetable product, to the extent "it is made" or "as shown to be made" or "as represented to be made" or "as seen made", from indigenous rice bran oil. The title itself is "exemption to vegetable product produced out of indigenous rice bran oil". It can only mean that the quantity of rice bran oil contained in the vegetable product is exempt. The Appellate Tribunal has considered the matter at great length in paragraphs 9 and 10 of its order placing emphasis on notification as a whole and the two conditions following the enacting or main clause. We are of the view that the conclusion arrived at by the Tribunal is valid and tenable. The conclusion follows either by construing the plain language of the main clause alone or by construing the entire notification along with the conditions. No interference is called for with the decision rendered by the Appellate Tribunal.

7.Appellant's counsel submitted that if due stress is given to the conditions, what the notification means is that exemption is available to the entire quantity of admixture of the vegetable product produced out of rice bran oil, the only condition being that the content of rice bran oil should be more than 1 % of the total, in any consignment, and such interpretation of the notification is equally possible. We are of the view that such a construction is not possible. Even assuming that it is so, in

the case of an ambiguity or doubt regarding an exemption provision in a fiscal statute, the ambiguity or doubt will be resolved in favour of the Revenue and not in favour of the assessee. The matter is concluded by a recent decision of a three- member Bench of this Court in Novopan India Ltd. v. Collector of Central Excise and Customs1. On this ground as well, the appellant is not entitled to any relief. The appeals are dismissed with costs.