J.K.Lakshmi Cement Ltd vs Commercial Tax Officer,Pali on 16 September, 2016

Equivalent citations: AIR 2016 SUPREME COURT 5571, 2016 (16) SCC 213, AIR 2017 SC (CIVIL) 2262, (2016) 8 SCALE 809, 2017 (174) AIC (SOC) 24 (SC)

Author: Dipak Misra

Bench: C. Nagappan, Dipak Misra

THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.102 OF 2010

J.K. Lakshmi Cement Ltd. ... Appellant

Versus

Commercial Tax Officer, Pali ...Respondent

WITH
CIVIL APPEAL NO. 6136 OF 2013

J U D G M E N T

Dipak Misra, J.

Civil Appeal No. 102 of 2010 The appellant is a Public Limited Company incorporated under the Companies Act, 1956 and engaged in the business of manufacturing and selling Grey Portland Cement. In exercise of powers conferred by Section 8(5) of the Central Sales Tax Act, 1956 (for short, "CST Act"), the Government of Rajasthan had issued a Notification No. F4(72)FD/Gr.IV/81-18 dated 06.05.1986 allowing partial exemptions from the sales tax payable in respect of inter-State sales in the manner and subject to the conditions mentioned therein. Partial exemption was granted under the said notification at the rate of 50%/75% on the basis of increase in the percentage of the entire inter-State sales and decrease in percentage of stock transfers but the benefit under the said notification was not available on levy cement. From the assessment year 1989-90 to 1997-98 the appellant had been granted benefit of partial exemption under the notification dated 06.05.1986 except for the assessment year 1995-96 and 1996-97 as no claims were made by the appellants being not eligible.

2. It is necessary to state here that the State, in exercise of powers conferred by Section 8(5) of the CST Act, issued Notification No. F4(8)FD/GR.IV/94-70 dated 07.03.1994 superseding the notification dated 09.01.1990 and directing that in respect of inter-State sales of cement, tax payable under sub-sections (1) and (2) of the said Section shall be calculated at the rate of 4% without furnishing declaration in Form 'C', inter alia, subject to the condition that the dealer making inter-State sales under this notification shall not be eligible to claim benefit provided by partial exemption notification dated 06.05.1986. This notification remained in force from 01.04.1994 to 31.03.1997.

3. The CCT vide Circular No. 2/94-95 dated 15.04.1994 clarified that inter-State sales of cement duly supported by 'C' and 'D' forms shall be eligible for benefit of partial exemption notification dated 06.05.1986 and that such benefit would not apply to inter-State sales which are not supported by declarations in declarations in Forms 'C'/'D'.

4. By Notification No. 97-122 dated 12.03.1997 issued under Section 8(5) of the CST Act, the State Government rescinded the Notification No. 94- 70 dated 07.03.1994 and directed that CST on inter-State sales of cement shall be calculated at the rate of 4% inter alia subject to fulfilment of the condition that the dealer making inter-State sales under this notification shall not be eligible to claim benefit provided by partial exemption notification dated 06.05.1986. This notification remained in force upto 31.03.1998.

5. As the factual score has been depicted, for the assessment year 1997- 98, dispute arose whether the sale of levy cement in the base year, i.e., 1984-85, can be included and taken into consideration for calculating the base year's figure for the purpose of calculating the benefits under the notification dated 06.05.1986. A re-assessment notice was issued to the appellant for disallowing the said partial exemption on the ground that while calculating the benefits under notification dated 06.05.1986 the appellant-company had not included the figure of sale of levy cement made in the base year, that is, 1984-85. The said re-assessment notice was challenged by the appellant which formed the subject matter of Writ Petition No. 1790 of 2001 which was dismissed by the Rajasthan High Court vide order dated 24.07.2002. A Special Appeal bearing No. 497 of 2002 was filed against the order dated 24.07.2002 before the Division Bench and on a reference being made by the Division Bench, the matter was referred to a larger Bench and the same is pending consideration. A similar dispute about inclusion of levy cement had also arisen for the assessment year 1991-92 which had been decided by the Tax Board, Rajasthan vide order dated 16.01.2003 in favour of the appellant which attained finality since no revision petition was filed by the State against the said decision. For the assessment year 1999-2000, the appellant was asked vide show cause notice dated 16.10.2001 to explain why the benefit of partial exemption under notification dated 06.05.1986 should not be disallowed on the ground that while calculating the benefits under notification dated 06.05.1986 the appellant had not included the figure of sale of levy cement made in the base year, that is, 1984-85. Against the said show cause notice writ petition bearing No. 4300 of 2001 was filed and vide order dated 14.08.2002 the High Court disposed of the said writ petition in light of the order dated 24.07.2002 passed in Writ Petition No. 1790 of 2001. Being aggrieved by the said order, the appellant had filed a DB Special Appeal No. 539 of 2002 which is pending consideration. We may immediately clarify that we are not concerned with the said assessment years.

6. For the assessment year 2000-2001, a Show Cause Notice dated 11.01.2001 was issued to the appellant seeking to disallow the benefit under notification dated 06.05.1986 on the ground that the appellant had not calculated the benefits under notification dated 06.05.1986 after including the figure of sale of levy cement in the base year, that is, 1984-

85. Against the said show cause notice Writ Petition bearing No. 551 of 2002 was filed which is pending before the High Court.

7. In exercise of power under Section 8(5) of the CST Act the State Government vide Notification No. 97-266 dated 21.1.2000 directed that tax payable under sub-sections (1) and (2) of the said Section on the inter- State sales of cement shall be calculated at the rate of 6% inter alia subject to the condition that the dealer making inter-State sales under this notification shall not be eligible to claim benefit provided under partial exemption notification dated 06.05.1986.

8. After a lapse of seven years from the previous circular dated 15.04.1994, the CCT issued another Circular No. 94-95/119 dated 16.04.2001 purporting to clarify the applicability of partial exemption notification dated 06.05.1986 vis-a-vis notification dated 07.03.1994 and subsequent notifications dated 12.03.1997 and 21.01.2000. By the said circular the competent authority purported to state that the dealer can avail of the benefit of either of these two notifications in any financial year meaning thereby that if he opts for the benefit under notification dated 06.05.1986 for the year 2000-2001, he would not be entitled to claim simultaneous benefit in respect of the same year under the notification dated 21.01.2000.

9. For the assessment year 2000-2001, a show cause notice dated 19.08.2003 was issued by the Commercial Taxes Officer to the appellant seeking to disallow the benefits under notification dated 06.05.1986 on a purported retrospective application of the Circular dated 16.04.2001. Appellant challenged the said show cause notice before the High Court by way of a Writ Petition bearing No. 6192 of 2003. The High Court vide order dated 18.11.2003 held that the said show cause notice dated 19.08.2003 was not justified as Circular dated 16.04.2001 could apply only prospectively and not retrospectively.

10. While finalizing the assessment for the assessment year 2001-2002, a show cause notice dated 19.08.2003 was issued purportedly based on Circular dated 16.04.2001 requiring the appellant to show cause why the partial exemption claimed under State Government's notification No. F4(72)FD/Gr.IV/81-18 dated 06.05.1986 should not be disallowed. The appellant submitted its reply but the assessing authority vide order dated 26.08.2003 rejected the claim of partial exemption only on the basis of Circular dated 16.04.2001 and imposed additional tax on the assessee for the assessment year 2001-2002.

11. The appellant filed an appeal before the Deputy Commissioner (Appeals), who allowed the appeal on 03.01.2004 holding that the appellant would be entitled to avail such partial exemption in respect of inter-State sales made on which concessional rate of 6% was not availed of by it under notification dated 21.01.2000.

12. Being aggrieved by the order of the appellate authority, the revenue approached the Rajasthan Tax Board in appeal contending, inter alia, that as per circular dated 16.04.2001 the benefit could not be claimed under notification dated 06.05.1986 if the unit had made sales under notification dated 21.01.2000. In essence, it was urged that benefit of both the notifications could not be availed of in the same financial year. The Tax Board allowed the appeal filed by the revenue. Against the order of the Tax Board, the appellant filed revision petition before the High Court and the learned Single Judge vide order dated 17.04.2009 considering the submissions put forth by the parties and upon analysing the principle stated in Tata Cummins Ltd. v. State of Jharkhand[1], M/s Vividh Marbles Pvt. Ltd. v. Commercial Tax Officer[2], State of Rajasthan v. J.K. Udaipur Udyog Ltd. and another[3], MRF Ltd. Kottayam v. Asstt. Commissioner (Assessment) Sales Tax and ors.[4] and other authorities came to hold that condition no. 3 of Notification No. 21.01.2000 has to be given its plain and clear meaning and cannot be restricted only to the specific transaction of sale covered by notification dated 21.01.2000 itself and when the condition no. 3 unequivocally states that once the assessee avails of the benefit of concessional rate of tax under notification dated 21.01.2000, he cannot get the partial benefit as envisaged in the Notification dated 06.05.1986 and accordingly repelled the stand of the assessee.

13. We have heard Mr. S. Ganesh, learned senior counsel for the appellant and Mr. Jatinder Kumar Bhatia, learned counsel for the respondent.

14. The seminal issue that arises for consideration, succinctly put, is whether the appellant is entitled to dual benefit of partial exemption under the notification dated 06.05.1986 and also the lower rate of tax @ 6% under notification dated 21.01.2000. To answer the issue raised, it is necessary to refer to the notifications and the language employed therein to ascertain the fundamental intention therein and to appreciate whether grant of simultaneous exemptions and benefits would be contrary to the said notifications. The first notification dated 06.05.1986 reads as under:-

> "Notification No.F.4(72)FD/Gr.IV/81-18, S.O. 23, May 6, 1986.
>
> In exercise of the powers conferred by sub-section (5) of section 8 of the Central Sales Tax Act, 1956(Central Act 74 of 1956), the State Government, on being satisfied that it is necessary so to do in the public interest, in supersession of the Finance Department Notification No. F.4 (72) FD/Gr. IV/81-36, dated December 3, 1985, hereby directs that, with immediate effect, any dealer, having his place of business and manufacturing goods in the State of Rajasthan, may claim partial exemption from the tax payable in respect of the sales by him of such goods in the course of inter-State trade or commerce by way of reduction at the rate of 50% of the tax so payable on increased sales upto 50% and at the rate of 75% of the tax so payable on increased sales made over and above the aforesaid 50%, in the manner and subject to the conditions as follows:-
>
> (1) Such reduction of tax shall be allowed to a dealer only after and in respect of the increase which is effected in the percentage of the quantum of goods sold in the

> course of inter-State trade or commerce out of the total quantum of goods sold within the State and in the course of inter-

State trade or commerce and dispatched to Head Office, Branch Office, Depot or agent outside the State for sale outside the State, during any accounting year as against such percentage during the accounting year 1984-

85. (2)In the case of a dealer who commenced the manufacture of goods in the State of Rajasthan "on or after 1.1.1985", the average of the aforesaid percentages in respect of the other manufacturers in the State in the relevant industry during the accounting year 1984-85, calculated and determined by the assessing authority with the approval of the Commissioner, shall be deemed to be the percentage in respect of such dealer for the accounting year 1984-85;

(3) This increase effected in the percentage, as referred to in clause (1) above in respect of the sales in the course of inter-State trade or commerce, to be considered shall be limited to the extent of the decrease in the percentage in respect of the despatch of goods to Head Office, Branch Office, Depot or agent outside the State for sale outside the State, during the relevant accounting year as against such percentage during the accounting year 1984-85; and (4) No claim for such reduction of tax shall be allowed in respect of levy- cement."

15. The notification dated 21.01.2000 is as under:-

> "[No.F.4(1) FD/Tax Div. 97-266] Jaipur, 21st January, 2000 In exercise of the powers conferred by sub-section (5) of section 8 of the Central Sales Tax Act, 1956 the State Government being satisfied that it is necessary in the public interest so to do, hereby directs that the tax payable under sub-sections (1) and (2) of the said section, by any dealer having his place of business in the State, in respect of sale of cement made by him from any such place of business in the State, in the course of inter-state trade or commerce, shall be calculated at the rate of 6% on the following conditions, namely:-
>
> 1. That the dealer shall record the correct name with full and complete address of the purchaser in the bill or cash memorandum for such inter-

State sale to be issued by him;

2. That the burden of proof that the transaction was in the nature of inter- State sale shall be on the dealer; and

3. That the dealer making inter-State sales under this notification shall not be eligible to claim benefits provided by notification No.F.4(72) FD/GR.IV/81-18 dated 6.5.1986 as amended from time to time."

16. On a careful scanning of the notification dated 06.05.1986, it is evident that it allows partial exemption from sales-tax on inter-State sales, subject to and in the manner stipulated therein. The exemption of 75% or 50% is granted with reference to the quantum of goods sold in the course of inter-State trade or commerce out of the total quantum of goods sold within the State, as against such percentage during the accounting year 1984-85, which is treated as the base year. As per the notification, it is applicable to a dealer who has his place of business; and he must be manufacturing goods inside the State. The intention is to encourage inter- State sale of goods manufactured and sold by a dealer in the State of Rajasthan. It has a purpose. The increase in quantum of goods sold in inter-State trade or commerce with reduction in quantum of stock transfers by way of branch or depot transfers on which NIL or no Central Sales tax is applicable would increase the revenue of the State. Clause 4 of the notification envisages that no reduction of tax is to be allowed in respect of levy cement. Computation of the total quantum of goods with reference to the exclusion of levy cement is not a subject matter of the present appeal and that is pending for consideration before the Appellate Bench and Single Judge of the High Court. Nevertheless, it is apparent that changes in figures of the quantum of goods, whether with reference to inter-State sales and intra-State sales in the base year and in the year in which benefit is claimed, would impact the determination and quantification of the benefit. Therefore, the exclusion or inclusion in the quantum or turnover is critical and significant.

17. The 21.01.2000 notification applies to a dealer having a place of business in the State and is in respect of sale of cement made by him from any place of business within the State in the course of inter-State trade or commerce. Apart from the above, certain other conditions are to be satisfied. They are (a) sales-tax in respect of inter-State sales as per the notification would be calculated at the rate of 6% and (b) the dealer making inter-State sales under notification dated 21.01.2000 would not be eligible to claim benefit provided in the notification dated 06.05.1986. Clause 3 of the notification lays down that if a dealer claims benefit under notification dated 21.01.2000, he is not eligible to claim the benefit under notification dated 06.05.1986. Benefit under the two notifications cannot be claimed at the same time. It is simple and clear.

18. A dealer making inter-State sales under the notification dated 21.01.2000 is disqualified and not eligible to claim benefit under the notification dated 06.05.1986. The reason is to deny dual benefit and also the notification dated 06.05.1986 computes the benefit on the basis of turnover. Bifurcation and division of turnover would lead to distortion and cause anomalies.

19. To get over the aforesaid impasse, the learned counsel for the appellant has raised three contentions. The two notifications being beneficial should be liberally construed, for it cannot be assumed that the intendment was that if an assessee claims and was entitled to a relatively small or partial exemption under notification dated 06.05.1986, he would be deprived of the exemption even if he meets the conditions in paragraphs 1 and 2 of the notification dated 21.01.2000. The submission is that the assessee can get benefit of both the notifications but not the dual benefit in the sense that inter-State sales on which benefit of concessional rate of tax of 6% is not availed of could be granted partial exemption under notification dated 06.05.1986. Quite apart from the aforesaid argument, it is urged that partial exemption could be granted under the notification dated 06.05.1986 in respect of such intra- State sales not covered by the notification dated 21.01.2000;

and benefit of partial exemption under notification dated 06.05.1986 would co-exist with the notification dated 21.01.2000, though in respect of different and distinct transactions. The second limb of argument is that this interpretation was the understanding of the respondents, as they had issued circular dated 15.04.1994 and pursuant to the said circular, the appellant and the other assessees were extended benefit of the notification dated 06.05.1986 and also the notification dated 07.03.1994, which has now been replaced and re- introduced in the form of notification dated 21.01.2000. The plea of consistency especially when the revenue in earlier years had accepted the said interpretation is highlighted. The last plank of argument is the circular dated 15.04.1994 was clarificatory and had rightly interpreted and expounded the interplay between the two notifications. Therefore, the circular dated 15.04.1994 under the notification dated 07.03.1994 would equally apply and would guide the interpretation of the notification dated 21.01.2000.

20. In order to appreciate the contentions raised, it is imperative to reproduce notification dated 07.03.1994 and the circular dated 15.04.1994, and the circular dated 16.04.2001 by which circular dated 15.04.1994 was withdrawn. The notification dated 07.03.1994 reads as under:-

> "Notification No.F.4 (8) FD/Gr.IV/94-70 S.O. No. 200, Jaipur, dated March 7, 1994.
>
> In exercise of the powers conferred by sub-section (5) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), and in supersession of this Department Notification No.F.4 (72) FD/Gr.IV/82-34, dated 27.06.1990, the State Government being satisfied that it is necessary in the public interest so to do, hereby directs that the tax payable under sub-

sections (1) and (2) of the said section, by any dealer having his place of business in the State, in respect of the sales of cement made by him from any such place of business in the course of inter-State trade or commerce shall be calculated at the rate of 4 percent without furnishing of declaration in form "C" or certification in form "D" on the following conditions, namely:-

> (i) that the dealer shall record the name and full and complete address of the purchaser in the bill or cash memorandum for such inter-State sale to be issued by him;
>
> (ii) that the burden to prove that the transaction was in the nature of inter-State sale, shall be on the dealer; and
>
> (iii) that the dealer making inter-State sales under this notification shall not be eligible to claim benefit provided for by the notification No.F.4. (72) FD/Gr.IV/81-18, dated 6.5.1986, as amended from time to time.

This notification shall come into force from 1st April, 1994 and shall remain in force upto 31st March, 1997."

21. The circular dated 15.4.1994 is reproduced below:-

"Tax Policy circular No.2/94-95 State of Rajasthan Commercial Tax Department No. Pa. 16/Budget/Tax/Commissioner/94-95/108 Dated 15/4/1994 To, All Deputy Commissioners, Commercial Tax All Assistant Commissioners, Commercial Tax All Commercial/Assistant Commercial Tax Officers Circular The notification No. Pa. 4 (8) FD/Group-4/94-70 dated 7/3/1994 was issued by the State Government and the rate of central tax on the inter-State sale of cement is fixed unconditionally at 4 percent in case the declaration form-'C' or form-'D' is not submitted between 1/4/1994 to 31/3/1997. Under the said notification the trader doing the inter-State sale shall not be entitled to claim for the benefit made available through the notification No. F4 (72) FD/Group-4/61-18 dated 6/5/1986 amended from time to time.

It is made clear in this respect that the benefits made available through the notification No. F 4 (72) FDR-Group-4/81-18 dated 6/5/1986 as amended from time to time with respect to the inter-State sale of the cement done with the form-'C' or form-'D', but aforesaid benefit shall not be available in case the inter-State sale is done without the form-'C' or form-'D'."

22. The circular dated 16.04.2001 withdrawing the circular dated 15.04.1994 is as follows:-

"GOVERNMENT OF RAJASTHAN COMMERCIAL TAXES DEPARTMENT No.F-16 (Budget) Tax/CCT/94-95/119 Dated April 16th, 2001 All Dy. Commissioners All Assistant Commissioners All Commercial Taxes Officers.

All Assistant Commercial Taxes Officers.

CIRCULAR A question has been raised as to the applicability of Finance Department notification No.F.4(72)FD/Br.IV/ 81-18 dated 06.05.1986 vis-a-vis notification No.F/(8) FD/Gr.IV/94-70 dated 07.03.1994 and similar subsequent notification dated 12.03.1997 and the existing notification dated 21.01.2000. The issue has been examined and it is clarified that a dealer can avail the benefit of either of these two notifications in any financial year. For instance, if he opts for benefit under notification dated 06.05.1986 for the financial year 2000-2001, he would not be entitled to claim simultaneous benefit in the same year under the notification providing for reduce rate of tax on cement in course of inter-state trade or commerce without any supportive Form C or D. Consequently, if the benefit of notification dated 21.01.2000 is being availed in any financial year, the dealer shall be debarred from claiming any benefit under notification dated 6.5.1986 for the same assessment year.

Keeping in view the above status, the Circular No.F.16 (Budget)Tax/CCT/94- 95/108 dated 15.04.1994 is hereby withdrawn and the dealers will be entitled to claim benefit of either of the two notifications in any financial year. Action may be taken accordingly.

Sd/-

(P.K.Deb) Commissioner"

23. As the factual score would depict, Notification dated 07.03.1994 was applicable from 1st April, 1994 to 31st March, 1997. It was not applicable with effect from 1st April, 1997. In such a situation, the plea of the appellant that dual benefits were availed of under notification dated 07.03.1994 post 1st April, 1997 is unacceptable and has to be rejected. Be it noted, by another notification No. 97-122 dated 12.03.1997, the State Government had rescinded notification dated 07.03.1994 and directed that the Central Sales Tax shall be calculated @ 4%, subject to the condition that the dealer making inter State sales in this notification would not be eligible to claim benefit of partial exemption under the notification dated 06.05.1986. The notification dated 12.03.1997 had remained in force upto 31st March, 1998. The circular dated 15.04.1994 in express words was not applicable to the notification dated 21.01.2000.

24. It is limpid that the circular dated 15.04.1994, when in force, had referred to the notifications dated 07.03.1994 as well as 06.05.1986. Under the notification dated 07.03.1994, the rate of central tax on inter-State sale of cement was unconditionally fixed at 4%, even when there was no declaration in Form C and Form D. The notification dated 06.05.1986 relating to inter-State sale required Form C and Form D, for availing the benefit. The circular did not in clear and categorical terms lay down that dual or multiple benefits under the two notifications could be availed of by the same dealer. It, however, appears that both the assessee and the Revenue had understood the circular dated 15.04.1994 to mean that inter-

State transactions would qualify and would be entitled to partial exemption under the notification dated 06.05.1986, when accompanied with Form C and D and for inter-State sale transactions without Form C and D, benefit of notification dated 07.03.1994 would apply.

25. The understanding by the assessee and the Revenue, in the obtaining factual matrix, has its own limitation. It is because the principle of res judicata would have no application in spite of the understanding by the assessee and the Revenue, for the circular dated 15.04.1994, is not to the specific effect as suggested and, further notification dated 07.03.1994 was valid between 1st April, 1994 up to 31st March, 1997 (upto 31st March, 1997 vide notification dated 12.03.1997) and not thereafter. The Commercial Tax Department, by a circular, could have extended the benefit under a notification and, therefore, principle of estoppel would apply, though there are authorities which opine that a circular could not have altered and restricted the notification to the determent of the assessee. Circulars issued under tax enactments can tone down the rigour of law, for an authority which wields power for its own advantage is given right to forego advantage when required and considered necessary. This power to issue circulars is for just, proper and efficient management of the work and in public interest. It is a beneficial power for proper administration of fiscal law, so that undue hardship may not be caused. Circulars are binding on the authorities administering the

enactment but cannot alter the provision of the enactment, etc. to the detriment of the assessee. Needless to emphasise that a circular should not be adverse and cause prejudice to the assessee. (See : UCO Bank, Calcutta v. Commissioner of Income Tax, West Bengal[5]).

26. In Commissioner of Central Excise, Bolpur v. Ratan Melting and Wire Industries[6], it has been held that circulars and instructions issued by the Board are binding on the authorities under respective statute, but when this Court or High Court lays down a principle, it would be appropriate for the Court to direct that the circular should not be given effect to, for the circulars are not binding on the Court. In the case at hand, once circular dated 15.04.1994 stands withdrawn vide circular dated 16.04.2001, the appellant-assessee cannot claim the benefit of the withdrawn circular.

27. The controversy herein centres round the period from 1st April, 2001 to 31st March, 2002. The period in question is mostly post the circular dated 16.04.2001. As we find, the appellant-assessee has pleaded to take benefit of the circular dated 15.04.1994, which stands withdrawn and was only applicable to the notification dated 07.03.1994. It was not specifically applicable to the notification dated 21.01.2000. The fact that the third paragraph of the notification dated 21.01.2000 is identically worded to the third paragraph of the notification dated 07.03.1994 but that would not by itself justify the applicability of circular dated 15.04.1994.

28. In this context, we may note another contention that has been advanced before us. It is based upon the doctrine of contemporanea exposition. In our considered opinion, the said doctrine would not be applicable and cannot be pressed into service. Usage or practice developed under a statute is indicative of the meaning prescribed to its words by contemporary opinion. In case of an ancient statute, doctrine of contemporanea exposition is applied as an admissible aid to its construction. The doctrine is based upon the precept that the words used in a statutory provision must be understood in the same way in which they are usually understood in ordinary common parlance by the people in the area and business. (See : G.P. Singh's Principles of Statutory Interpretation, 13th Edition-2012 at page 344). It has been held in Rohitash Kumar and others v. Om Prakash Sharma and others[7] that the said doctrine has to be applied with caution and the Rule must give way when the language of the statute is plain and unambiguous. On a careful scrutiny of the language employed in paragraph 3 of the notification dated 21.01.2000, it is difficult to hold that the said notification is ambiguous or susceptible to two views of interpretations. The language being plain and clear, it does not admit of two different interpretations.

29. In this regard, we may state that the circular dated 15.04.1994 was ambiguous and, therefore, as long as it was in operation and applicable possibly doctrine of contemporanea exposition could be taken aid of for its applicability. It is absolutely clear that the benefit and advantage was given under the circular and not under the notification dated 07.03.1994, which was lucid and couched in different terms. The circular having been withdrawn, the contention of contemporanea exposition does not commend acceptation and has to be repelled and we do so. We hold that it would certainly not apply to the notification dated 21.01.2000.

30. In view of the aforesaid analysis, we do not find any merit in the instant appeal and the same is, accordingly, dismissed. There shall be no order as to costs.

31. In view of the judgment passed in Civil Appeal No. 102 of 2010, this appeal also stands dismissed. There shall be no order as to costs.

.....J. [Dipak Misra] .....J. [C. Nagappan] New Delhi;

September 16, 2016

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[1] 2006 (16) Tax update 199
[2] 2007 (17) Tax update 307
[3] (2004) 137 STC 438
[4] (2006) 8 SCC 702
[5] (1999) 4 SCC 599
[6] (2008) 13 SCC 1
[7] (2013) 11 SCC 451