Commnr. Of Central Excise, New Delhi vs M/S. Hari Chand Shri Gopal & Ors on 18 November, 2010

Equivalent citations: 2011 AIR SCW 1119, 2011 (1) SCC 236, AIR 2012 SC (SUPP) 743, (2010) 12 SCALE 122, (2011) 3 KCCR 192

Bench: Swatanter Kumar, Surinder Singh Nijjar, K. S. Panicker Radhakrishnan, B. Sudershan Reddy, S. H. Kapadia

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1878-1880 OF 2004

Commissioner of Central Excise, New Delhi .... Appellant(s)

Versus

M/s Hari Chand Shri Gopal & Others etc. etc. .... Respondent(s)
[with CIVIL APPEAL NO. 1631 of 2001 and CIVIL APPEAL NOS.
568-569 of 2009]

JUDGMENT

K. S. Panicker Radhakrishnan, J.

1. The question that falls for consideration in these appeals is whether a manufacturer of a specified final product falling under the schedule of the Central Excise Tariff Act, 1985 (in short "the Tariff Act") is eligible to get the benefit of exemption from remission of excise duty on specified intermediate goods as per Notification no. 121/94-CE dated 11.8.1994, if captively consumed for the manufacture of final products on the ground that the records kept by it at the recipient end would indicate its "intended use" and "substantial compliance" of the procedure set out in Chapter X of the Central Excise Rules, 1944 (in short 'the Excise Rules").

2. The above question was decided by the Customs, Excise and Service Tax Appellate Tribunal (in short `the Tribunal") in favour of the respondents-assessees, relying upon the judgments of this

Court in Thermax Private Ltd. v. Collector of Customs (Bombay) New Custom House (1992) 4 SCC 440 and Collector of Central Excise, Jaipur v. J.K. Synthetics (2000) 10 SCC 393 on the ground of "intended use" and the principle of "substantial compliance". The matter came up before the three Judge Bench of this Court which doubted the correctness and the applicability of the above mentioned judgments and took the view that the exemption notification called for strict interpretation so far as the eligibility is concerned especially when an assessee seeks exemption of duty under a notification issued by the Central Government in exercise of the powers conferred by Sub-section (1) of Section 5A of the Central Excise and Salt Act 1944, read with Sub-section(3) of Section 3 of the Additional Duties of Excise (Goods of Specified Importance) Act 1957, which called for compliance of the procedure set out in Chapter X of the Central Excise Rules 1944. Further, it was also observed that in Thermax Private Ltd. (supra) and J.K. Synthetics (supra), this Court was dealt with a situation where goods were imported, from outside the country, unlike the present case where specified intermediate goods were locally manufactured, in some other units of the respondents. The Court ordered that the matter required reconsideration and referred the matter to a Larger Bench. The order of reference is reported in The Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal etc. (2005) 8 SCC 164.

3. We may first refer to the facts in Civil Appeal Nos. 1878-1880 of 2004, which is taken as the leading case.

FACTS:

4. The respondents herein M/s Gopal Industries, M/s Hari Chand Shri Gopal and M/s Gopal Zarda Udyog were engaged in the manufacture of excisable goods viz. preparation containing chewing tobacco falling under Chapter Heading no. 2404.40 of the Tariff Act, then chargeable to nil rate of duty, which was made leviable to central excise duty with effect from 1.3.1994. The Intelligence Wing of the Department came to know that the respondents had been manufacturing the said goods without applying/obtaining the certificate of registration as required under Rule 174 of the Excise Rules and had been removing the same clandestinely from their factories without payment of central excise duty leviable thereon and without following any of the prescribed procedures. It was noticed that a major portion of the above goods manufactured was consigned to M/s Gopal Zarda Udyog (Meerut), M/s Hari Chand Shri Gopal, Baddi District, Solan (H.P.) and M/s Gopal Industries, Baddi (H.P.) under the cover of `transfer challans' describing therein the said goods as "ADDICTIVE MIXTURES" or "KIMAM/K". On 28.9.1996, the factories of the respondents at Delhi were inspected by the Central Excise (Preventive) Officer of MOD IV, Delhi and took the samples of the finished products and detailed statements were also recorded from the partners of the firms. The Central Excise Officers also visited the various factories of the respondents at Solan and Baddi on 3.10.1996 and it was noticed that the addictive Mixture (Kimam) manufactured at the factories at Delhi was being clandestinely removed for the manufacturing of chewing tobacco. The Officers noticed that the respondents were manufacturing the excisable goods Kimam falling under the Tariff Act under Chapter Sub-heading no. 2404.49 (up to 22.7.1996) and, with effect from 23.7.1996, covered under Chapter Sub-heading no. 2404.40, packed the same in the containers of different capacities as per the requirement of buyer/consumer without obtaining Central Excise Registration Certificate in contravention of the provisions of Section 8 of the Tariff Act read with

Rule 174 of the Excise Rules up till 14.10.1996 and removed the same from their factories clandestinely without payment of central excise duty in contravention of the provisions of Rules 9(1), 52A, 53, 54, 173B, 173C, 173F and 226 of the Excise Rules.

5. The Central Excise Officers noticed that, during the period from 18.3.1994 to 15.4.1995, M/s Gopal Zarda Udyog had manufactured and removed from their factory a total quantity of 1,52,226.150 Kgs. of preparation containing Kimam, collectively valued at Rs.15,27,90,675.00 and the amount of duty involved was fixed at Rs.6,14,17,770.00.

6. M/s Gopal Industries, during the period from 16.6.1995 to 26.9.1996, had manufactured and removed from their factory a total quantity of 2,66,648.800 kgs. of preparation containing Kimam collectively valued at Rs.16,26,68,569.00 and the amount of duty involved was fixed at Rs.8,13,34,285.00.

7. M/s Hari Chand Shri Gopal also, during the period from 14.6.1995 to 24.9.1996 had manufactured and removed from their factory a total quantity of 1,51,054.900 kgs. of preparation containing Kimam collectively valued at Rs.15,86,77,319.00 and the amount of duty involved was fixed at Rs.7,93,38.660.00.

8. Consequently, on 25.3.1997, notices were issued to the respondents and their partners to show cause why the amounts of duty involved should not be demanded from them jointly and severally under Rule 9(2) of the Excise Rules read with the proviso to Section 11A(1) of the Tariff Act and interest thereon under Section 11AB of the Tariff Act, be not demanded from them. Penalty under Rule 173Q of the Excise Rules read with Section 11AC of the Tariff Act and Rule 209A of the Excise Rules was also demanded. In addition to above, the respondents were also asked to show cause why the land, building, plant and machinery used in their respective factories for the manufacture of Kimam should not be confiscated under Rule 173Q(2) of the Excise Rules.

9. The respondents filed detailed objections to the show cause notices and disputed their liability and also claimed exemption under the Notification no. 121/94-CE. The Commissioner (Excise) by his order dated 20.5.1998 rejected the objections filed by the respondents against the show cause notices and determined that M/s Gopal Zarda Udyog, M/s Gopal Industries and M/s Hari Chand Shri Gopal were liable to pay central excise duty of Rs.6,14,17,770/-, Rs.8,13,34,285/- and Rs.7,93,38,660/- respectively and also imposed the penalty of Rs.16,00,000/-, Rs.18,00,000/- and Rs.17,00,000/- on them under Rule 173Q of the Excise Rules and ordered confiscation of the goods seized from the premises of M/s Gopal Industries and M/s Hari Chand Shri Gopal respectively, with permission to redeem the confiscated goods on redemption of fines of Rs. 5,00,000/- and Rs.3,20,000/- respectively.

10. Aggrieved by the above mentioned orders, appeals were preferred before the Tribunal and the Tribunal vide order dated 01.10.1999 concurred with the findings of the Adjudicating Commissioner on duty liability on the goods in question and also on the issue of limitation as well as the claim for proforma credit/modvat credit, but ordered re-examination of the limited question of the applicability of Notification 121/94-CE dated 11.8.1994 since the respondents had raised the

contention that they had substantially complied with the procedures laid down in Chapter X. The matter was then reconsidered by the Commissioner as directed by the Tribunal. The respondents contended before the Commissioner that they had despatched the goods to their final manufacturing units though transferring challans and the receipts were recorded in Form-IV Register/Stock Register and the utilization of the goods was recorded in RG-12 Register. Further, it was also stated that the final products manufactured by the respondents could be ascertained from RG-1 Register maintained at the recipient end and those records would be sufficient to establish use of the goods and establish the plea of substantial compliance of the procedure set out in Chapter X for duty exemption.

11. The Commissioner rejected all the contentions vide his order dated 16.07.2002 and held that the benefit of the exemption notification would be available only if the procedures laid down in Chapter X were complied with and that the records produced by the respondents would not substantiate a plea of substantial compliance of the procedure laid down in the above mentioned Chapter. The imposition of the duty liability, interest and penalty was therefore confirmed.

12. The respondents, carried the matter in appeal before the Tribunal. The Tribunal, we have already indicated, placed reliance on the judgments of this Court in Thermax Private Ltd. (supra) and J.K. Synthetics (supra) and took the view that the benefit of the exemption notification should not be denied if "intended use" of the goods was established, though there was non-compliance of the procedural conditions of Chapter X. Appeals were accordingly allowed and the order of the Commissioner was set aside. Aggrieved by the said order of the Tribunal, these appeals have been preferred by the Commissioner of Central Excise, New Delhi.

13. Mr. Vivek Tankha, learned Additional Solicitor General of India appearing for the Revenue, submitted that the benefit of the Notification no. 121/94-CE dated 11.8.94 would be available to the respondents only if the procedures prescribed under Chapter X are strictly complied with. Learned ASG submitted that the duty liability was confirmed by the Tribunal which would indicate that the respondents at the suppliers' end did contravene the provisions of Rules 9(1), 52A, 53, 54, 173B, 173C, 173F and 226 of the Excise Rules and it is, due to that reason, that show cause notices dated 25.03.1997 were served on the respondents. Learned ASG submitted that the mere fact that the respondents had maintained some records at the recipient end would not be sufficient to satisfy the "intended use" or the plea of "substantial compliance" of the procedure laid down in Chapter X of the Excise Rules. Learned counsel submitted that an exemption notification must be strictly complied with and the assessee should bring himself within the ambit of the notification. Reference was made to the decisions of this Court reported in Novopan India Ltd., Hyderabad v. Collector of Central Excise & Customs, Hyderabad (1994) Supp. 3 SCC 606, Rajasthan Spinning and Weaving Mills Limited, Bhilwara, Rajasthan v. Collector of Central Excise, Jaipur, Rajasthan (1995) 4 SCC 473, Commissioner of Central Excise v. M.P.V. & Engineering Industries (2003) 5 SCC 333, Commissioner of Central Excise, Trichy v. Rukmani Pakkwell Traders (2004) 11 SCC 801, Commissioner of Central Excise, Chandigarh-I v. Mahaan Dairies (2004) 11 SCC 798, Commissioner of Central Excise, Allahabad v. Ginni Filaments Ltd. (2005) 3 SCC 378, Commissioner of Customs (Imports), Mumbai v. Tullow India Operations Ltd. (2005) 13 SCC 789, Tata Iron & Steel Co. Ltd. v. State of Jharkhand and Ors. (2005) 4 SCC 272, Sarabhai M. Chemicals v. Commissioner of Central

Excise, Vadodara (2005) 2 SCC 168, State of Jharkhand and Others v. Tata Cummins Ltd. and Another (2006) 4 SCC 57, A.P. Steel Re-Rolling Mill Ltd. etc. v. State of Kerala & Ors. (2007) 2 SCC 725, State of Orissa and others v. Tata Sponge Iron Ltd. (2007) 8 SCC 189, Commissioner of Central Excise, Jaipur v. Mewar Bartan Nirmal Udyog 2008 (231) ELT 27 (SC), State of Haryana v. Samtel India Ltd. 2008 (15) VST 176 (SC) and G.P. Ceramics Pvt. Ltd. v. Commissioner, Trade Tax, Uttar Pradesh (2009) 2 SCC 90.

14. Shri Harish Salve, learned senior counsel appearing for the assessee-respondents, on the other hand, contended that the assessee had produced documentary evidence to prove that the entire quantity of kimam were transferred from their one unit to another and was utilized in the manufacture of branded chewing tobacco and cleared on payment of duty. Further, it was also stated that the assessee had produced the transfer challans under which the Kimam was transferred to the other unit. Learned senior counsel also made reference to Form IV Register/Stock Register regarding receipt of the Kimam and also to Form RG-12, kept for the manufacture of excisable tobacco products. Reference was made to RG-1 Register, maintained under Rules 47, 53 and 173G. Learned senior counsel contended that the details furnished in those records would be sufficient to establish the intended use (the actual use) of Kimam for the manufacture of final products. Learned senior counsel submitted that, as per the decisions of Thermax Private Ltd. (supra) and J. K. Synthetics (supra), the benefit of exemption notification cannot be denied if there has been a substantial compliance of the procedure laid down in Chapter X and intended use of the goods for the manufacture of final product has been established. Learned senior counsel submitted that the conditions stipulated in Chapter X are only procedural in nature and hence directory, warranting liberal construction, and if so construed, the benefit of the exemption notification cannot be denied. Learned senior counsel submitted that the Tribunals and some of the High Courts are following the above principle, uniformly applying the principles laid down in Thermax Private Ltd. (supra) and J.K. Synthetics Ltd. (supra)

15. We may, before examining various contentions raised by the respective parties, point out that the Respondents had earlier approached this Court by filing C.A. Nos. 5747-5749 of 2000, challenging the order of the Tribunal stating that Kimam was excisable and that the department was right in invoking the extended period of limitation under the proviso to Section 11(A)(1) of the Excise Act. This Court partly allowed the appeals holding that the department was not entitled to invoke the extended period of limitation under the proviso to Section 11(A)(1) of the Excise Act, but held that the addictive mixture Kimam was excisable and classifiable under Sub-heading 2404.49/2404.40. This Court also recorded a finding that although there was contravention of the provisions of Section 6 read with Rule 174 and that they had not observed regulations in the units at Delhi for the manufacture of excisable goods, there was no intend to evade payment of duty. The judgment is reported in Gopal Zarda Udyog v. Commissioner of Central Excise (2005) 8 SCC 157.

16. In this case, we are only concerned with the question whether the respondents are entitled to get the benefit of the exemption notification dated 11.8.1994 on the ground of "intended use" and "substantial compliance" of the procedure set out in Chapter X of the Excise Rules.

17. Notification no. 121/94-CE dated 11.8.1994 was issued by the Central Government in exercise of its powers conferred by sub- section (1) of Section 5A of the Central Excises and Salt Act, 1944 (1 of 1994) read with sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) in the public interest for exempting certain specified intermediate goods if those goods were captively consumed in the manufacture of specified final products, falling under heading numbers or sub-heading numbers of the Schedule to the Tariff Act. Notification also stipulated that where such use of inputs was in a factory of a manufacturer, different from his factory where the goods had been produced, the exemption contained in this notification would be allowable subject to the observance of the procedure set out in Chapter X of the Excise Rules. The table, with which we are concerned, is given below:

S. No Description of final Heading number Heading products or sub-heading number or sub-

		number of final products	heading number of inputs
(1)	(2)	(3)	(4)
1.	xxx xxx xxx	xxx xxx xxx	xxx xxx
2.	Chewing tobacco including preparations commonly known as "Khara Masala", "Kimam", "Dokta", "Zarda", "Sukha" and "Surti"	2401.41	2404.49
xxx	xxx xxx xxx	xxx xxx xxx	xxx xxx

18. The compliance of the provisions of Chapter X is a pre-

condition for claiming exemption from payment of excise duty on goods, which otherwise attracted duty. Show cause notices were issued to the respondents since they had manufactured the excisable goods (at the supplier end) without obtaining registration under Section 6 read with Rule 174 by contravening the provisions of Rules 9(1), 52A, 53, 54, 173B, 173C, 173F and 226 of the Rules for which duty liability, interest thereon and penalty were imposed. Even assuming that the respondents were eligible for exemption from duty, the respondents could not be absolved from the legal obligation to comply with the statutory requirements for the manufacture of excisable goods at the supplier end.

19. The purpose and object of the notification dated 11.8.1994 was to exempt those specified intermediate goods, which were otherwise excisable to duty, and not to exempt or absolve the respondents from following the statutory requirements for the manufacture of intermediate

excisable goods. The notification under Chapter X was designed in such a manner to ensure an inseparable link between the supplier and recipient of excisable goods for the manufacture of specified final products. Rule 192 of Chapter X states that a manufacturer intending to receive duty free goods under remission is required to make an application in Form R-1 for obtaining excisable goods to be used for special industrial purpose giving details of the estimated quantity of each class or variety of goods and the value of such goods likely to be used during the year, commodities to be manufactured and estimated output and clearance of each commodity during the year, manner of manufacture, purpose for which manufactured product is supplied and the source from which excisable goods will be obtained.

20. Based on the details furnished in Form R-1, the Registering Authority has to consider granting permission from remission of duty. For the said purpose, R-2 Certificate is required to be issued specifying that the registration certificate is meant for obtaining the excisable goods under Rule 192. On the basis of R-2 Certificate, the manufacturer become eligible for getting the excisable goods for which the remission of duty has been sought. Further, the applicant is also required to execute a bond with security in Form B-8, as required under Rule 192 and the Collector can put further conditions for filing the B-16 Bond or B-17 Bond during the permission granted for remission of duty. On such request and after complying with all the statutory formalities, the jurisdictional officer is required to issue C-2 Certificate and, on the strength of that certificate, the applicant can obtain duty free goods. The jurisdictional officer has also to certify that the said manufacturer is registered in their Range under Rule 192 and is authorized for obtaining excisable goods at NIL/concessional rate of duty for use in special industrial purpose for the manufacture of specified excisable goods at their factory. Further, on the strength of C-2 Certificate, the excisable goods can be removed from the factory of source manufacturer without payment of duty or concessional rate of duty, as the case may be. Further, as per sub-rule (1) of Rule 194, the applicant is required to maintain proper records of such goods indicating quantity, value, rate and amount of duty, marks and number/wastage etc. in Form R.G.16 register. Further, the applicant is also required to file quarterly return in the form of R.T.11 and in that return, the registered person had to make entries regarding details of receipt of goods, quantities issued for manufacturing, wastage or other losses, description of process in which excisable goods to be used etc. The supplier of goods is required to be registered with Central Excise under Rule 174 and is also required to mention in Column 10(i) or 10(ii) of RT-12 returns the details of goods despatched to the assessee availing facility under Chapter X. The supplier of goods can remove the goods only under proper gate pass GP-1 and is required to mention the details of CT-2 on the gate pass.

21. Rule 196 provides for payment of duty by the recipient if the goods obtained under Rule 192 are not accounted for or used in the manner prescribed under these rules. Similarly, Rule 196A stipulates that surplus goods so received under Rule 192 can be cleared on payment of duty. Rule 196AA provides for transfer of such goods received under Rule 192 to another manufacturer who has been granted registration under Rule 192 with the prior approval of the proper officer. Rule 196B provides for the manner in which goods received under Rule 192 may be disposed of if found defective or damaged, they can be returned to the original manufacturer and such returned goods shall be added to the original manufacturer and such returned goods shall be added to the non-duty paid stock of the original manufacturer. Finally, Rule 196BB provides for movement of goods

received under Rule 192 as such, or after partial processing outside the factory for repair and return. The applicant, though registered under Rule 174, can receive the remitted goods for use in special industrial purpose only if it gets an endorsement to that effect on the Registration Certificate, so given in Form R-2, in advance which in this case was obtained only on 22.10.1996, after the event. Further, Column 5 of Schedule of R-1 certificate clearly enjoins upon the recipient unit to furnish additional information viz. description of goods to be obtained for industrial purpose, estimate quantity in the year, details of the supplier of the goods etc. Further, it is on the basis of R-2 Certificate, the jurisdictional Range Officer issues a CT-2 certificate (Certificate for Transfer of Goods) under the cover of which the remitted goods have to move from the supplier unit to the recipient unit. CT-2 certificate is required to be shown to the supplier unit who shall mention the CT-2 number on the Gate Pass before delivering the goods without payment of duty on the strength of CT-2 certificate. Compliance of the above mentioned requirements, stipulated in Chapter X, is a pre-requisite for getting exemption from the remission of excise duty on the specified goods. Exemption Clause - Strict Construction

22. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption. In Novopan Indian Ltd. (supra), this Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave (1996) 2 SCR 253, held that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, 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, i.e., by the plain terms of the exemption.

23. Of course, some of the provisions of an exemption notification may be directory in nature and some are of mandatory in nature. A distinction between provisions of statute which are of substantive character and were built in with certain specific objectives of policy, on the one hand, and those which are merely procedural and technical in their nature, on the other, must be kept clearly distinguished. In Tata Iron and Steel Co. Ltd. (supra), this Court held that the principles as regard construction of an exemption notification are no longer res integra; whereas the eligibility clause in relation to an exemption notification is given strict meaning wherefor the notification has to be interpreted in terms of its language, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed literally. An eligibility criteria, therefore, deserves a strict construction, although construction of a condition thereof may be given a liberal meaning if the same is directory in nature.

DOCTRINE OF SUBSTANTIAL COMPLIANCE AND `INTENDED USE':

24. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed. Fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance of an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non- compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance of those factors which are considered as essential.

25. The details to be furnished in Form No. 1 as per Rule 192 and the declaration to be made, relate to the "substance" and "essence" of Chapter X. R-2 Registration Certificate is also pre-requisite to obtain CT2 Certificate. Further, the execution of bonds as provided in that chapter is also not an empty formality for obtaining the duty free excisable goods. Bonds also insist for a declaration. CT-2 Certificate will be issued only if a party gets registered under Form R-2 from the Registering Authority. Only if CT-2 Certificate is obtained, the excisable goods could be removed. Form RG16 Register and the details to be furnished in Form RT11 are also statutory in nature, which relate to the "substance" and "essence" of the requirements under Chapter X. Indisputedly, those requirements had not been complied with.

26. The respondents have laid great emphasis on maintenance of some statutory registers and filing of periodical returns at the recipient unit, so as to take the shelter under the doctrine of substantial compliance for remission of duty. Respondents pointed out that they had identical columns in the registers kept at the recipient end, hence, the requirement of maintaining separate register at the supplier end and the requirements of Chapter X was substantially complied with. It may be noted that RG-16 Register prescribed was specific to Chapter X with the sole intention of maintaining separate accounts for receipt, issue and usage of duty free remitted inputs received from the supplier unit. Similarity of columns and the details furnished therein cannot be considered as substitute for not maintaining of RG-16 Register or other registers for remission of duty under Chapter X.

27. We have already indicated that, at the supplier end, no registration under Rule 174 was obtained and no records were kept. The applicants, at the recipient end, were also legally obliged to give various declarations in the statutory forms so as to claim exemption and such declarations admittedly were not made. Non-compliance of those conditions enumerated under various rules in Chapter X of the Excise Rules and non-furnishing of various statutory forms prescribed under Chapter X, in our view, are fatal to a plea of substantial compliance and intended use. The respondents, therefore, on the facts of this case, have not succeeded in establishing the plea of "intended use" or "the substantial compliance" of the procedure set out in Chapter X so as to claim the benefit of the exemption notification dated 11.8.1994.

28. We will now examine whether the judgments in Thermax Private Ltd. (supra) and J.K. Synthetics (supra) require re- consideration. In Thermax Private Ltd. (supra), the assessee had cleared imported goods after paying the custom duty as well as the additional duty (CVD). Later, it was felt that it should have claimed the concession in respect of CVD on the strength of Notification nos. 63/85 and 93/76 issued under Section 8 of the Tariff Act. Therefore, an application for refund of CVD was submitted which was rejected by the Assistant Collector, but was allowed by the Collector in appeal. On appeal, the Tribunal took the view that the assessee had failed to satisfy the conditions laid down in Chapter X. On appeal by the assessee, this Court took the view that the Tribunal was in error in holding that the assessee could not get refund because the procedure of Chapter X of the Excise Rules was not complied with. This Court mainly relied on the letter of the Board dated 27.7.1987 wherein it was stated that whenever intended use of material could be established by the importer, the benefit of exemption notification should not be denied on the imported goods only because the procedural condition falling under Chapter X was not complied with. It is under such circumstances that this Court allowed the claim of the assessee and ordered refund. Reasoning of this Court in Thermax Private Ltd. (supra) is inapplicable to the facts of the present case. In the instant, case, we are not concerned with the goods imported from outside the country. Both the suppliers of specified intermediate goods as well as manufactures of specified final products are situated in India and are obliged to follow various statutory provisions, not only for the manufacture of excisable goods, but also for claiming exemption under the notification dated 11.8.1994. Consequently, the plea of intended use of the materials cannot be applied to the facts of the present case.

29. In J. K. Synthetics (supra), the assessee was the manufacturer of polyster chips, staple fibre and tow from Mono- Ethylene Glycol (MEG). On importing those goods, they claimed exemption from

payment of additional duty of customs thereon because MEG was exempted from the payment of excise duty by virtue of notification dated 4.5.1987 issued under Section 8 of the Tariff Act. In that case, the contention was raised by the Revenue that the assessee had not followed the conditions laid down in Chapter X of the Excise Rules. But the Tribunal, on facts, found that there had been substantial compliance of the procedure by the assessee, which was approved by this Court without laying down any principle as such which cannot be applied to the facts of the present case.

30. Consequently, the decisions of this Court in Thermax Private Ltd. (supra) and J. K. Synthetics (supra) cannot be applied in all facts situation and it is declared that the findings recorded in those decisions would be confined to the facts of those cases. CIVIL APPEAL NO. 1631 OF 2001

31. Civil Appeal No. 1631 of 2001 arises out of the Order dated 1.12.2000 passed by the Tribunal at New Delhi. The issue involved in that case is whether the exemption from the payment of central excise duty was available to the populated Printed Circuit Board (PCB), manufactured and cleared by the assessee under Notification no. 48/94-CE dated 1.3.1994. The Tribunal found that the assessee was not eligible for the benefit of the notification since the assessee had not followed the procedure set out in Chapter X of the Excise Rules by clearing PCB from their unit to the central store at A-11, Okhla Industrial Area, Phase 1, New Delhi. The Tribunal held that, under Chapter X, the assessee who wanted to avail of the benefit of exemption notification had to file application in Form AL- 6 to the jurisdictional Central Excise authorities and had to obtain L-6 licence and had to follow the other procedures laid down in that chapter which, in our view, are mandatory requirements for claiming the exemption from duty in the light of the principles discussed by us in the other appeals. On facts as well as on law, we fully endorse the view taken by the Tribunal and the appeal would stand dismissed.

CIVIL APPEAL NOS. 568-569 OF 2009

32. These appeals have been preferred by the Revenue against the order dated 6.5.2008 passed by Tribunal at New Delhi, holding that the assesses are entitled to the benefit of Notification no. 3/2001- CE and 6/2001-CE, irrespective of the fact that the procedures under Chapter X were followed or not. The Tribunal expressed the view that the procedure laid down in Chapter X is meant to be followed only to establish the receipt of goods by the recipient unit and their utilization.

33. The assessee in these appeals were engaged in the manufacture of pump parts and gun metal casting falling under Chapter 84 and Chapter 73 respectively of the First Schedule of the Tariff Act and claimed the benefit of above mentioned notifications. The Officers of the Central Excise Department carried out a search at the factory premises of the assessee on 25.8.2004. On the basis of that search, the Commission took the view that the assessee had contravened the procedure of the exemption notification and removed the excisable goods clandestinely. A notice was issued to show cause why the central excise duty and the penalty therein be not imposed on the assessee. The Commissioner, Central Excise, Ahmedabad vide order dated 31.5.2007 demanded central excise duty of Rs.15,14,966/- from M/s Neatwell Castings under proviso to Section 11-A of the Central Excise Act, 1944 by invoking extended period of five years along with the penalty thereon. In appeal filed by the assessee before the Commissioner (Appeals), it was held that the benefit of the

notification could not be denied only on the ground that the procedure laid down in Chapter X had not been followed. The decision of the Commissioner (Appeals) was upheld by the Tribunal in appeal.

34. We find it difficult to sustain the reasoning of the Tribunal that the procedure laid down in Chapter X, is meant only to establish the receipt of goods by the recipient unit and their utilization. The Tribunal completely overlooked the object and purpose of the procedure laid down in Chapter X. The goods manufactured at the supplier end were excisable goods and if a party wants remission of duty, he has to follow certain pre- requisities, the object of which is to see that the goods be not diverted or utilized for some other purpose, on the guise of the exemption notification. Detailed procedures have been laid down in Chapter X so as to curb the diversion and misutilization of goods which are otherwise excisable. The plea of "substantial compliance"

and "intended use" is, therefore, rejected for the reasons already stated.

35. Consequently, Civil Appeal Nos. 1878-1880 of 2004 and Civil Appeal Nos. 568-569 of 2009 preferred by the Revenue would stand allowed and Civil Appeal No. 1631 of 2001 shall stand dismissed. There will be no order as to costs.

.....CJI (S. H. KAPADIA) .....J. (B. SUDERSHAN REDDY) .....J. (K. S. PANICKER RADHAKRISHNAN) .....J. (SURINDER SINGH NIJJAR) .....J. (SWATANTER KUMAR) New Delhi;

November 18, 2010.