M/S. Spentex Industries Ltd vs Commissioner Of C.Excise & Ors on 9 October, 2015

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Bench: Rohinton Fali Nariman, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1978 OF 2007

M/S. SPENTEX INDUSTRIES LTD.	...APPELLANT	
VERSUS		
COMMISSIONER OF CENTRAL EXCISE & ORS.	...RESPONDENTS	

W I T H
CIVIL APPEAL NOS. 2025-2026 OF 2013
CIVIL APPEAL NO. 2027 OF 2013
AND
CIVIL APPEAL NO. 10534 OF 2013

J U D G M E N T

A.K. SIKRI, J.

In all these appeals, the basic question of law which arises for consideration is as to whether or not the manufacturer/exporter is entitled to rebate of the excise duty paid both on the inputs and on the manufactured product, when excise duty is paid on a manufactured product and also on the inputs which have gone into manufacturing the product and such manufactured product is exported?

We may point out at the outset that, as per the scheme provided by the relevant Rules framed under the Central Excise Act, 1944 (hereinafter referred to as the 'Act') two options are admissible in respect of exemption from excise duty which is to be given when the goods manufactured are meant for export and are actually exported. A manufacturer/exporter can either export the said goods without payment of duty by executing a bond to the effect that goods are meant for export and would be actually exported and also undertakes to satisfy other stipulated conditions, to earn the

exemption from payment on excise duty. Other option is to pay the duty on intermediate products and/or final products and thereafter claiming rebate from the Government once the goods are actually exported. When the manufacturer/exporter exercises first option, admittedly no duty is to be paid either on intermediate products or on final products. However, the dispute has arisen when second option is executed. In such a case, the Department has taken the stand that as per the relevant rules, the rebate is admissible in respect of one duty alone, i.e., either on the duty paid excisable goods or duty paid on materials used in the manufacture or processing of such goods but not on both the final as well as intermediate products. The authorities below, as would be noticed, in all these cases have accepted the version of the Revenue. Therefore, in these four appeals, assessees are the appellants.

After giving the aforesaid preliminary background thereby putting the issue in perspective, that has arisen for consideration we may take note of the factual background. For the purpose of convenience, it would be sufficient if we traverse through the facts that emerge from Civil Appeal No. 1978 of 2007.

The appellant/assessee, in this appeal, is engaged in the manufacturing of polyester cotton blended yarn and polyester viscose blended yarn and both these products fall under Chapter 55 of the Schedule to the Central Excise Tariff Act, 1985. For manufacture of the aforesaid product, the assessee had used the raw material which was an intermediate product and paid excise duty thereupon. The final products were also cleared on payment of excise duty on those finished products. The assessee had exported these goods on payment of central excise duty in the CENVAT account and, thereafter, filed as many as forty-five rebate claims amounting to ?1,46,90,995/- (?75,42,487/-+ ?71,48,508/-) in the months of November and December, 2004 respectively. These rebate claims were filed under the provisions of Rule 18 of the Central Excise Rules, 2002 (hereinafter referred to as the 'Rules').

On receipt of the aforesaid rebate claims, the Department issued show cause notice dated January 11, 2005 whereby the assessee was called upon to show cause as to why the rebate claimed by the assessee be not rejected as it was contrary to the provisions of Rule 18 of the Rules read with Section 11B of the Act and the Notification issued thereunder, i.e., Notification No. 19/2004-CE(NT) dated September 06, 2004. After considering the reply that was given by the assessee, the Deputy Commissioner of Central Excise, Division-II, Nagpur rejected the rebate of duty paid on the final product exported as well as the claim of rebate of duty paid on inputs contained therein by passing Order-in-original dated January 28, 2005. Aggrieved by this order, the assessee filed the appeal before the Commissioner of Central Excise (Appeals), Nagpur. This appeal was decided by orders dated March 15, 2005 holding that in terms of Rule 18 of the Rules, the assessee is entitled to one of the two claims for rebate, i.e., either rebate of duty paid on exported goods or the duty paid on inputs used in the exported goods, and not on both of them. He, thus, remitted the case back to the Deputy Commissioner to decide the claim of the assessee after granting personal hearing to the assessee and taking its option as to which of the two claims assessee wanted to prefer.

Still not satisfied with this partial relief given by the Commissioner (Appeals), as the assessee wanted rebate on both types of excise duties paid, the assessee challenged the order of the

Commissioner (Appeals) by filing Revision Application before the Joint Secretary to the Government of India under Section 35EE of the Act. This Revision Application of the assessee was decided in its favour as the Joint Secretary held that the assessee was entitled to rebate both on the exported goods as well as inputs used in the exported goods. It was now the turn of the Department to feel dissatisfied with the aforesaid outcome and, therefore, it challenged the aforesaid revisional order by filing the writ petition in the High Court of Bombay, Nagpur Bench. This writ petition has been decided in favour of the Revenue whereby the view taken by the Joint Secretary to the Government of India is reversed and that of Commissioner (Appeals) is upheld holding that out of the two excise duties, Rule 18 of the Rules permits rebate only qua one of them and not on the both duties. Special Leave Petition against this judgment of the Bombay High Court was preferred by the assessee in which leave was granted. That is how present appeal comes up for hearing to decide the question of law that has arisen for consideration.

Before embarking on the case that is pleaded by both sides on the interpretation of the relevant provisions of the Act and Rules, and in particular Rule 18 of the Rules, it is imperative to scan through those provisions. First of all, we take note of the relevant statutory provision in the Act which is Section 11B thereof. That portion of this long provision, which is relevant for us, is extracted below:

> "S. 11B. Claim for refund of duty and interest, if any, paid on such duty.— (1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence including the documents referred to in section 12A as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from or paid by him and the incidence of such duty and interest if, any, paid on such duty had not been passed on by him to any other person:" Thereafter, Central Excise Rules, 2002 were framed by the Central Government in exercise of powers contained in Section 37 of the Act. As mentioned above, the scheme of the relevant Rules or the subject matter of the issue at hand provides for two options insofar as payment of excise duty on the products meant for exports are concerned. Under Rule 18, an exporter has the option to pay the duty and then claim rebate thereof and under Rule 19, export can be made without payment of duty on execution of a bond. Both these rules are given below.
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> "Rule 18. Rebate of duty.— Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification.

> Rule 19. Export without payment of duty.— (1) Any excisable goods may be exported without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, as may be approved by the Commissioner.
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> (2) Any material may be removed without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, for use in the manufacture or processing of goods which are exported, as may be approved by the Commissioner.

xxx xxx xxx" Obviously, the controversy that arises is qua interpretation that is to be accorded to Rule 18. The Rule stipulates that the Central Government may, by notification, grant rebate of duty paid on such excisable goods OR duty paid on material used in the manufacturing or processing of such goods. The word 'OR' which is used in between the two kinds of duties in respect of which rebate can be granted is the bone of contention and it is to be interpreted whether it postulates grant of one of the two duties or both the duties can be claimed. It is also to be noted at this stage itself that Rule 18 is only an enabling provision which empowers the Central Government to issue a notification for grant of these rebates and prescribes the procedure for claiming such rebate(s).

As is clear from the bare reading of Rule 18, the manner of getting the rebate under the said Rule has to be as per the procedure that may be specified in the notification.

The Central Government has issued Notification No. 19/2004-CE(NT) dated September 06, 2004 which deals with grant of rebate of whole of duty on excisable goods exported. The opening portion of this Notification, which needs to be taken note of, is as under:

> "In exercise of the powers conferred by rule 18 of the Central Excise Rules, 2002 and in supersession of the Ministry of Finance, Department of Revenue, notification No. 40/2001-Central Excise (N.T.), dated the 26th June 2001, [G.S.R. 469(E), dated the 26th June, 2001] insofar as it relates to export to the countries other than Nepal and Bhutan, the Central Government hereby directs that there shall be granted rebate of the whole of the duty paid on all excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) exported to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified hereinafter-
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> xxx xxx xxx" It also lays down conditions and limitations for claiming such rebate as well as procedure which needs to be fulfilled. The provision, inter alia, prescribes the time limit within which claim for rebate to Central Excise is to be presented. What is relevant for the purposes of present case is the Form, as per which application for removal of excisable goods for export is to be made and the same is prescribed in Annexure 2 to the Rules. Column 3 thereof reads as under:
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> "xxx xxx xxx

3. I/We hereby certify that the above-mentioned goods have been manufactured.

(a) availing facility/without availing facility of Cenvat credit under Cenvat Credit Rules, 2002.

(b) availing facility/without availing facility under Notification No. 21/2004-Central Excise (N.T.), dated the 6th September, 2004 issued under rule 18 of Central Excise Rules, 2002.

(c) availing facility/without availing facility under Notification No. 43/2001-Central Excise (N.T.), dated the 26th June, 2001 issued under rule 19 of Central Excise (No. 2) Rules, 2001.

xxx xxx xxx" The aforesaid Notification, as is evident from the reading thereof, deals with grant of rebate of duty paid on the finished goods, that are ultimately exported. There is yet another Notification No. 21/2004- CE(N.T.); dated September 06, 2004 issued by the Government for claiming rebate of whole of the duty paid on excisable goods used in the manufacture or processing of exported goods, as is clear from the reading of the opening para thereof:

> "In exercise of the powers conferred by rule 18 of the Central Excise Rules, 2002 and in supersession of the Ministry of Finance, Department of Revenue, notification No. 41/2001-Central Excise (N.T.), dated the 26th June, 2001 [G.S.R. 470(E) dated the 26th June 2001], the Central Government hereby, directs that rebate of whole of the duty paid on excisable goods (hereinafter referred to as 'materials') used in the manufacture or processing of export goods shall, on their exportation out of India, to any country except Nepal and Bhutan, be paid subject to the conditions and the procedure specified hereinafter." This Notification also prescribes, inter alia, the procedure for export in the specified format which is Form ARE2 appended as Annexure 2B's Rules and envisages filing of combined application for removal of goods for export under the claim for rebate of duty paid on excisable material used in the manufacture and packing [i.e., intermediate product used as raw material] as well as duty paid on the final product for export. This form, thus, enables the manufacturer of the final product exported to claim rebate of both kinds of duties paid. That becomes evident from the following portion of the said form:
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> "Form A.R.E. 2 Combined application for removal of goods for export under claim for rebate of duty paid on excisable materials used in the manufacture and packing of such goods and removal of dutiable excisable goods for export under claim for rebate of finished stage Central Excise Duty or under bond without payment of finished stage Central Excise Duty leviable on export goods.
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> To The Superintendent of Central Excise, (Address) .....(full postal address)
>
> 1. Particulars of the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise from whom rebate shall be claimed/with whom bond is executed and his complete postal address_____

2. I/We_____of _____ propose to export the under mentioned goods (details of which are given in Table 1 below) to _____ (country of destination) by air/sea/land/post parcel under claim for rebate of duty paid on excisable materials used in the manufacture and packing of such goods.

3. *The finished goods being exported are not dutiable.

Or We intended to claim the rebate of Central Excise Duty paid on clearances of goods for export under notification No. 19/2004-Central Excise (N.T.), dated the 6th September, 2004 issued under Rule 18 of Central Excise Rules, 2002." The argument of learned counsel for the appellant is that it has always been the policy of the Central Government to exempt the goods from payment of excise duty both on the final excisable products as well as on material used in the manufacturing of goods for payment of duty if the goods are meant for export outside India. Moreover, Rule 18 is only an enabling provision and in exercise of powers contained in this Rule, the Central Government has also issued notification for grant of rebate or duty paid on excisable goods as well as duty paid on material used in the manufacture of goods. Even the notifications which prescribe the procedure contemplate a situation where duty may have been paid not only on the excisable goods but on the material used in the manufacture of goods and provide for claiming the rebate in respect of duty paid on both these goods. It was also argued that the order of the Joint Secretary, Government of India further shows the mind of the Government itself, disclosing that both the duties are eligible for grant of rebate. On that basis, it is argued that Rule 18 has to be interpreted keeping in view the overall scheme of the statute and the Rules and the manner in which the Government itself operated the said Rule. Learned counsel for the respondent, on the other hand, predicated his arguments on the plain and grammatical meaning that needs to be accorded to Rule 18 of the Rules by arguing that the word 'OR' used therein clearly signifies that it is one of the two duties to which the rebate can be granted and not both. For this purpose, reasoning given by the High Court was adopted with the submission that it was in accord with the cardinal principle of literal interpretation and, therefore, the view of the High Court was correct in law.

After giving due consideration to the respective submissions, in the light of statutory scheme envisaged for grant of rebate in the Act and Rules, we are constrained to hold that the High Court has not taken correct view, which we feel is a myopic view and ignores the overall scheme pertaining to grant of rebate in respect of goods exported out of India. There are multiple reasons for arriving at this conclusion which are discussed hereinafter.

(i) Historical perspective of the statutory scheme: Central Excise Rules under the Act were first framed in the year 1944. Rule 12 thereof provided for rebate of duty and Rule 13 enabled exporter to export the goods without payment of duty. Relevant portion of these Rules was as under:

"Rule 12. Rebate of duty.— The Central Government may, from time to time, by notification in the Official Gazette, grant rebate of -

(a) duty paid on the excisable goods;

(b) duty paid on materials used in the manufacture of goods; if such goods are exported outside India or shipped as provision or stores for use on board a ship proceeding to a foreign port, or supplied to a foreign going aircraft to such extent and subject to such safeguards, conditions and limitations as regards the class or description of goods, class or description of materials used for manufacture thereof, destination, mode of transport and other allied matters as may be specified in the notification.

xxx xxx xxx Rule 13. Export in bond of goods on which duty has not been paid.—(1) The Central Government may, from time to time, by notification in the Official Gazette -

(a) permit export of specified excisable goods in bond without payment of duty, in the like manner, as the goods regarding which the rebate is granted under sub-rule (i) of rule 12 from a factory of manufacture or warehouse or any other premises as may be approved by the Commissioner of Central Excise;

(b) specify materials, removal of which without payment of duty from the place of manufacture or storage for use in the manufacture in bond of export goods may be permitted by Commissioner of Central Excise;

(c) Allow removal of excisable material without payment of duty for the manufacture of export goods, as may be specified, to be exported in execution of one or more export orders; or for replenishment of duty paid materials used in the manufacture of such export goods already exported for the execution of such orders, or both;

subject to such safeguards, conditions and limitations as regards the class or description of goods, class or description of materials used for manufacture thereof, destination, mode of transport and other allied matters as may be specified in the notification which the exporter undertakes to abide by entering into a bond in the proper form with such surety or sufficient security, and under such conditions as the Commissioner approves.

xxx xxx xxx " It is manifest from the reading of the aforesaid Rules that from the very beginning, two alternative methods were provided enabling an exporter of goods to get rid of the burden of paying the excise duty; both on excisable goods as well as on materials used in the manufacture of goods. The exporter could either claim rebate when the duty was paid. Or else, he was free not to pay excise duty at all on both types of goods by executing a bond in the prescribed form and fulfilling the conditions prescribed in this behalf. The grant of rebate, in either of the options, has always been in respect of both kinds of excise duties, i.e. on the final product that is exported as well as on the intermediate product on which excise duty is paid/payable and the same is used as raw material in the manufacture of goods. Under these Rules also, Notification No. 41/94- CE(NT), dated September 12, 1994 and Notification No. 42/94-CE(NT), dated September 21, 1994 were issued for grant of rebate of duty on export of all excisable goods, except minerals oils and ship stores and rebate on materials used in manufacture of goods exported out of India, respectively.

The aforesaid Rules of 1944 were replaced by Central Excise Rules, 2001. In these rules, relevant provisions were Rules 18 and 19. It is not necessary to reproduce these Rules which are same as Rules 18 and 19 of the existing Rules. Under these Rules also similar Notifications were issued, i.e., Notification No. 40/2001-CE(NT) dated June 26, 2001 and Notification No. 41/2001-CE(NT) dated June 26, 2001 providing for rebate of whole of duty on excisable goods when exported as well as rebate of inputs used in manufacture/processing of export goods. Likewise, Notifications 40 and 41 dated June 26, 2001 were issued under Rule 19 of these Rules.

Central Excise Rules, 2001 were superseded by the present Rules, viz. Central Excise Rules, 2002 and the exact provisions thereof have already been quoted. The aforesaid historical narration of the relevant provisions from time to time depict one common theme, namely, to provide rebate of duty paid on the excisable goods as well as the duty paid on material used in the manufacture of goods.

(ii) Scheme of the Rules : A cumulative reading of the scheme enshrined in Rules 18 and 19 of the Rules, 2002 has already been pointed out above. These Rules provide two alternatives to the exporter enabling him to get the benefit of exemption from paying the excise duty. Under Rule 19, exporter is not required to pay any excise duty at all. At the time of removal of these goods from the factory gate of the producer or the manufacturer or the warehouse or any other premises, he is supposed to comply with the conditions, safeguards and procedure, as may be notified by the Board. Such a procedure provides for execution of a bond which, inter alia, lays down the condition that the goods which are cleared are actually meant for export and he is to furnish the proof that those goods are actually exported. What is important is that when the exporter opts for this method, with the approval of the Commissioner, he is not required to pay duty either on the final product, i.e., on excisable goods or on the material used in the manufacture of those goods. The intention is loud and clear, namely, the goods which are meant for exports are free from any excise duty. It extends not only to the material which is used in the manufacture of goods but also on the goods that are produced and ultimately exported. Once we keep in mind this scheme, it cannot be the intention of the Legislature to provide rebate only on one item in case a particular exporter/manufacturer opts for other alternative under Rule 18, namely, paying the duty in the first instance and then claiming the rebate. Giving such restrictive meaning to Rule 18 would not only be anomalous but would lead to absurdity as well. In fact, it would defeat the very purpose of grant of remission from payment of excise duty in respect of the goods which are exported out of India. It may also lead to invidious discrimination and arbitrary results.

Let us visualize another situation. A particular exporter may opt for scheme under Rule 18, i.e., for claim of rebate insofar as, say, excise duty on material used in manufacture of goods is concerned. He would pay that duty and claim rebate. When it comes to payment of duty of export of excisable goods, he exercises the option under Rule 19 and executes a bond which enables him not to pay any duty on excisable goods. In this scenario, the exporter will still be able to get the benefit of not paying any excise duty on both final product as well as intermediate product.

(iii) Government's own perception: As mentioned above, Rule 18 is enabling provision which authorises the Central Government to issue a notification for grant of these rebates. Exercising powers under this Rule, the Central Government has issued necessary notifications for rebate in

respect of both the duties, i.e., on intermediate product as well as on the final product. Further, and which is more significant, these notifications providing detailed procedure for claiming such rebates contemplate a situation where excise duty may have been paid both on the excisable goods and on material used in the manufacture of those goods and enables the exporter to claim rebate on both the duties. This kind of procedure and format of prescribed Forms, already described above, becomes a clincher insofar as understanding of the Government of Rule 18 of the Rules is concerned.

It is to be borne in mind that it is the Central Government which has framed the Rules as well as issued the notifications. If the Central Government itself is of the opinion that the rebate is to be allowed on both the forms of excise duties the government is bound thereby and the rule in-question has to interpreted in accord with this understanding of the rule maker itself. Law in this respect is well settled and, therefore, it is not necessary to burden this judgment by quoting from various decisions. Our purpose would be served by referring to one such decision in the case of R & B Falcon (A) Pty Ltd. v. Commissioner of Income Tax[1] wherein interpretation given by the Central Board of Direct Taxes (CBDT) to a particular provision was held binding on the tax authorities. The Court explained this principle in the following manner:

> "33. CBDT has the requisite jurisdiction to interpret the provisions of the Income Tax Act. The interpretation of the CBDT being in the realm of executive construction, should ordinarily be held to be binding, save and except where it violates any provisions of law or is contrary to any judgment rendered by the courts. The reason for giving effect to such executive construction is not only same as contemporaneous which would come within the purview of the maxim temporania caste pesto, even in certain situation a representation made by an authority like Minister presenting the Bill before Parliament may also be found bound thereby.
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> 34. Rules of executive construction in a situation of this nature may also be applied. Where a representation is made by the maker of legislation at the time of introduction of the Bill or construction thereupon is put by the executive upon its coming into force, the same carries a great weight.
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> 35. In this regard, we may refer to the decision of the House of Lords in R. (Westminster City Council) v. National Asylum Support Service (2002) 1 WLR 2956 : (2002) 4 All ER 654 (HL) and its interpretation of the decision in Pepper v. Hart 1993 AC 593 : (1992) 3 WLR 1032 : (1993) 1 All ER 42 (HL) on the question of "executive estoppel". In the former decision, Lord Steyn stated: (WLR p. 2959, para 6) "6. If exceptionally there is found in the Explanatory Notes a clear assurance by the executive to Parliament about the meaning of a clause, or the circumstances in which a power will or will not be used, that assurance may in principle be admitted against the executive in proceedings in which the executive places a contrary contention before a court."

36. A similar interpretation was rendered by Lord Hope of Craighead in Wilson v. First County Trust Ltd. (No. 2) (2004) 1 AC 816 : (2003) 3 WLR 568 : (2003) 4 All ER 97 (HL), wherein it was stated: (WLR p. 600, para

113) "113. ...As I understand it [Pepper v. Hart 1993 AC 593 : (1992) 3 WLR 1032 : (1993) 1 All ER 42 (HL), it recognised a limited exception to the general rule that resort to Hansard was inadmissible. Its purpose is to prevent the executive seeking to place a meaning on words used in legislation which is different from that which ministers attributed to those words when promoting the legislation in Parliament."

37. For a detailed analysis of the rule of executive estoppel useful reference may be to the article authored by Francis Bennion entitled "Executive Estoppel: Pepper v. Hart Revisited", published in Public Law, Spring 2007, p. 1 which throws a new light on the subject-matter." We are also of the opinion that another principle of interpretation of statutes, namely, principle of contemporanea expositio also becomes applicable which is manifest from the act of the Government in issuing two notifications giving effect to Rule 18. This principle was explained by the Court in Desh Bandhu Gupta and Co. and others v. Delhi Stock Exchange Association Ltd.[2] in the following manner:

"9. It may be stated that it was not disputed before us that these two documents which came into existence almost simultaneously with the issuance of the notification could be looked at for finding out the true intention of the Government in issuing the notification in question, particularly in regard to the manner in which outstanding transactions were to be closed or liquidated. The principle of contemporanea expositio (interpreting a statute or any other document by reference to the exposition it has received from contemporary authority) can be invoked though the same will not always be decisive of the question of construction. (Maxwell 12th Edn. p. 268). In Crawford on Statutory Construction (1940 Edn.) in para 219 (at pp. 393-395) it has been stated that administrative or executive officers charged with executing a statute) generally should be clearly wrong before it is overturned; such a construction commonly referred to as practical construction although not controlling, is nevertheless entitled to considerable weight it is highly persuasive. In Baleshwar Bagarti v. Bhagirathi Dass (1908) ILR 35 Cal 701 at 713 the principle which was reiterated in Mathura Mohan Saha v. Ram Kumar Saha, ILR 43 Cal. 790: (AIR 1916 Cal. 136) has been stated by Mukerjea J. thus:

"It is a well-settled principle of construction that courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it. I do not suggest for a moment that such interpretation has by any means a controlling effect upon the Courts; such interpretation may, if occasion arises have to be disregarded for cogent and persuasive reasons, and in a clear case of error, a Court would without hesitation refuse to follow such construction." Of course, even without the aid of

these two documents which contain a contemporaneous exposition of the Government's intention, we have come to the conclusion that on a plain construction of the notification the proviso permitted the closing out or liquidation of all outstanding transactions by entering into a forward contract in accordance with the rules, bye-laws and regulations of the respondent." In this hue, we may now advert to the reasoning given by the Joint Secretary itself in the order passed in Revision Petition wherein he has discussed the issue in the following perspective:

".....Govt. notes that as a principle and a policy measure, Govt. has accepted that export of goods from India should be relieved of domestic levies (both customs and Central Excise) in order to promote export of domestic products from India and to make then internationally competitive. In order to achieve this objective, two schemes operate, namely, export under bond and export under payment of duty and both are comparable, as objectives of both the schemes are same i.e. to neutralize the burden of internal levies on goods exported. In case of former, export goods are exempted from payment of duty, subject to conditions/restrictions etc. and in the case of latter export goods are cleared on payment of duty which is rebated subject to production of proof of export. For export under bond Rule 19 provides for excisable goods to be exported without payment of duty, subject to conditions etc. which are detailed in Notfn. No. 42/2001 – CE(NT) dt. 26.06.2001 and Notification No. 43/2001-CE(NT) dtd. 26.06.2001 further relieves the burden of duty on inputs used to manufacture such goods by obtaining them duty free under bond. Thus, export goods are relieved of the burden of excise duty both on finally exported goods as well the inputs used vide these legislative and machinery provisions. As both schemes are comparable as objective to serve the common goal of relieving the burden of domestic taxation, the other scheme provides for similar dispensation in case goods are exported on payment of duty by way of rebating central excise duty suffered on such export goods. Rule 18 provides for rebate of duty on such export goods or duty paid on material used in manufacture of such export goods. While Notification No. 40/2001 – Central Excise (NT) dtd. 26.6.2001 as amended deals with details provisions for rebate on finishing goods, Notfn. No. 41/201 C.E. (NT) as amended deals and provides the detailed procedural provisions for input stage rebate also. Similar provisions and export relief existed for export on payment of duty and under bond in the erstwhile Rule 12 and 13 of Central Excise Rules. The fundamental objective of existing rules and the earlier ones is the same i.e. to neutralise the duty element on the goods exported and hence no other interpretation denying the relief sought appears possible. Circular No. 129/40/95 dt. 29.09.95, para 1.5 of Chapter 8 of Part V of CBEC Manual further leaves no room for any other interpretation."

(iv) Interpretation of word 'OR' occurring in Rule 18: The aforesaid discussion leads us to the only inevitable consequence which is this : the word 'OR' occurring in Rule 18 cannot be given literal interpretation as that leads to various disastrous results pointed out in the preceding discussion and, therefore, this word has to be read as 'and' as that is what was intended by the rule maker in the scheme of things and to

carry out the objectives of the Rule 18 and also to bring it at par with Rule 19.

We are conscious of the principle that the word 'or' is normally disjunctive and 'and' is normally conjunctive (See Union of India v. Kamlabhai Harjiwandas Parekh and others[3]). However, there may be circumstances where these words are to be read as vice-versa to give effect to manifest intention of the Legislature as disclosed from the context.

Of course, these two words normally 'or' and 'and' are to be given their literal meaning in unless some other part of same Statute or the clear intention of it requires that to be done. However, wherever use of such a word, viz., 'and'/'or' produces unintelligible or absurd results, the Court has power to read the word 'or' as 'and' and vice-versa to give effect to the intention of the Legislature which is otherwise quite clear. This was so done in the case of State of Bombay v. R.M.D. Chamarbaugwala[4] and while doing so, the Court observed as under:

> "...Considering the nature, scope and effect of the impugned Act, we entertain no doubt whatever that the first category of prize competitions does not include any innocent prize competitions. Such is what we conceive to be the clear intention of the Legislature as expressed in the impugned Act read as a whole and to give effect to this obvious intention as we are bound to do, we have perforce to read the word "or" appearing in the qualifying clause after the word "promoter" and before the word "or" as "and". Well-known canons of construction of statutes permit us to do so. (See Maxwell on the Interpretation of Statutes, 10th edition, page 238)" In J. Jayalalitha v. Union of India[5], provisions of Section 3 of the Prevention of Corruption Act, 1988 empowers the Government to appoint as many special judges as may be necessary for such area or areas or for such case or group of case, as may be specified in the notification. Construing the italicised 'or' it was held that it would mean that the Government has the power to do either or both the things, i.e., the Government may, even for an area for which a special judge has been appointed, appoint a special judge for a case or group of cases.
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> Likewise, in Mazagaon Dock Ltd. v. The Commissioner of Income Tax and Excess Profits Tax[6], word 'or' occurring under Section 42(2) of the Income Tax Act, 1922 was construed as 'and' when the Court found that the Legislature 'could not have intended' use of the expression 'or' in that Section. We have already explained the statutory scheme contained in the Act and Rules which express manifest intention of the Legislature which provide for granting of both kinds of rebates to the assessee. In Mazagaon Dock Ltd. (supra), this aspect was explained in the following manner:
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> "10. The word "or" in the clause would appear to be rather inappropriate as it is susceptible of the interpretation that when some profits are made but they are less than the normal profits, tax could only be imposed either on the one or on the other, and that accordingly a tax on the actual profits earned would bar the imposition of tax on profits which might have been intended, and the word "or" would have to be read in the context as meaning "and". Vide Maxwell's Interpretation of Statutes,

Tenth Edition, pages 238-239. But that, however, does not affect the present question which is whether the word "derived" indubitably points to the business of the non-resident as the one taxable under S. 42(2) and for the reasons already given the answer must be in the negative." The aforesaid discussion leads us to inevitable conclusion, namely, that the exporters/appellants are entitled to both the rebates under Rule 18 and not one kind of rebate. The impugned judgments are, accordingly, set aside allowing these appeals.

.....J. (A.K. SIKRI) .....J. (ROHINTON FALI NARIMAN) NEW DELHI;

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(2008) 12 SCC 466 [2] (1979) 3 SCR 373 [3] (1968) 1 SCR 463 [4] (1957) 1 SCR 874 [5] (1999) 5 SCC 138 [6] (1959) 1 SCR 848