Collector Of Central Excise, Patna vs Usha Martin Industries on 28 August, 1997

Equivalent citations: AIR 1997 SUPREME COURT 3871, 1997 (7) SCC 47, 1997 AIR SCW 3795, (1997) 7 JT 557 (SC), 1997 (7) JT 557, 1997 (5) SCALE 600, (1997) 72 ECR 257, (1997) 94 ELT 460, (1997) 8 SUPREME 19, (1997) 5 SCALE 600, (1998) 111 STC 254

Bench: Suhas C. Sen, B. N. Kirpal, K. T. Thomas

PETITIONER:
COLLECTOR OF CENTRAL EXCISE, PATNA

Vs.

RESPONDENT:
USHA MARTIN INDUSTRIES

DATE OF JUDGMENT: 28/08/1997

BENCH:
SUHAS C. SEN, B. N. KIRPAL, K. T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

WITH [Civil Appeal Nos. 2080-2081 of 1996, 10440-10441 of 1995) J U D G M E N T THOMAS, J.

The common question involved in all these appeals is whether the benefit of excise duty exemption (granted by the Central Government as per certain notifications) can be claimed in respect of commodities made out of raw materials on which no excise duty was payable. The relevant notifications exempted such commodities from excise duty under the Central Excise and Salt Act, 1944 (for short "the Act'), if they were produced from materials on which the appropriate amount of duty of excise has already been paid. As the Central Excise and Gold (Control) Appellate Tribunal (for short the Tribunal) by different ordered upheld such claims made by certain manufacturers the Revenue has filed these appeals through the collectors of Central Excise concerned.

Avoiding proliferation with facts in Civil Appeal No.2319 of 1989 filed by Collector of excise, Patna against the respondent M/s Usha Martin Industries Ltd.

Respondent in that case manufacturers wire-rods(which fall under Tariff Item 26AA(1a) of the central Excise Tariff). For manufacturing such wire-rods the raw materials used were steel products including billets. Such steel products were procured from stockyards of manufacturers like TISCO etc. The Superintendent of Central Excise concerned, while making assessment of the duty payable by the respondent, demanded that excise duty should have been paid on ire rods since the billets used for its manufacture were totally exempted from duty. The Assistant Collector of central Excise upheld the aforesaid stand of the Superintendent and assessed excise duty on 1721.36 Mt. tones of such wire-rods. However, the said order was reversed by the Collector of Central Excise (Appeals) on the premise that the input goods cleared on nil payment of excise duty should be treated as goods cleared after payment of appropriate amount of duty. Revenue did not agree with that premise and hence they approached the Tribunal in second appeal and the Tribunal passed the impugned order confirming the view of the Collector of Appeals.

In the remaining appeals also the same position has been adopted by different benches of the Tribunal, though the notifications under which exemption was claimed were different, nevertheless closely similar. If the interpretation placed by the Tribunal on the expression in the notification i.e." on which appropriate amount of duty has been paid" is sustainable the result would be that all the impugned orders would deserve to be upheld.

The notification on which both sides placed reliance in the case against M/s Usha Martin Industries Ltd. was dated 30.11.63, but that was amended from time to time. As the assessment order related to a period in 1982 we would reproduce the notification as it stood buy the last amendment thereto dated 7.4.1981.

> "Exemption in goods falling under item 26AA (1a) made from duty paid material:
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> In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central excise rules, 1944 and in supersession of the Notification of the Government of India in the M.F. (D.R.) No. 131/62-CE., dated 13.6.1962, the Central Government hereby exempts Iron or Steel products falling under sub-item (1a) of Item No.26AA made from any of the following materials or a combination there of namely:-
>
> (i) fresh unused re-rollable scrap on which the appropriate amount of duty of excise has already been paid.
>
> (ii) semi-finished steel including blooms, billets. slabs, sheet bars tin bars and hoe bars, on which the appropriate amount of duty of excise has already been paid.
>
> (iii) old and used re-rollable scrap.

> (iv) other iron or steel products falling under sub-item (1a) of item No. 26AA of the said first schedule on which the appropriate duty of excise has already been paid from payment of the whole of the duty of excise leviable on such products."

(underlines supplied) There is no doubt that as per the above notification if any amount of duty has been paid on the raw material, the output product would escape from excise duty. The doubt arose was regarding the expression in the notification i.e." on which the appropriate amount of duty of excise has already been paid" as to whether it is capable of two interpretations, one as claimed by the assessee and the other as putforth by the revenue".

Much reliance was placed by the Revenue on the judgment of this Court in Ahura Chemical products Pvt Ltd. vs. Union of India (1981 ELT 613). The Tribunal found that the said decision was not relevant for the reason that the question before the Supreme Court was whether the goods were purchased from open market or from the manufacturer. A two judge Bench of this Court has considered the exemption clause in a similar notification involved in that case as per which certain "preparations intended for use in industrial process" were exempted from duty " if in respect of surface active agents used in the manufacture of such preparations the appropriate amount of the duty of excise or the additional duty has already been paid or where such surface active agents are purchased from the open market on or after 20th day of January, 1968." if the surface active agents were purchased from open market it was immaterial in that case whether the input commodity was exempted from duty or not. The assessee's stand in that case was that the raw material was purchased from open market. The said stand of the assessee was upheld and hence there was no need for this Court in that case to embark on the first limb of the exemption Clause. So the observations relating to that limb are only obiter.

Mr. M. Gaurishankar Murthy, learned counsel for the Revenue placed reliance on the following observations of this Court in Andhra Re-Rolling Works, Hyderabad vs. Union of India & Others [1986 Supple. SCC 263]:

> " It is only if the appropriate amount of duty had already been paid on the article which formed the raw material for manufacture of the product covered by item 26AA, that the manufacturer will be entitled to a proportionate remission of the duty on the latter product. Inasmuch as the untested rails were exempt from duty and hence no amount whatever had been paid by way of duty on the said article from out of which M.S Rounds were manufactured, it is obvious that the benefit of the notification cannot be claimed by the appellant."

The said observations were made by this court while interpreting a notification issued by the Central Government exempting iron and steel products under tariff Item 26AA "if made from another article falling under the said item and having already paid the appropriate amount of duty from so much of the duty of excise as is equivalent to the duty payable on the said article." (emphasis supplied) Even a glance through the said notification would show that the exemption envisaged therein was not total but only partial. What it clearly meant was deduction on duty from the amount of duty already paid and, therefore, that notification is different in content as well as intent and the ratio therein

cannot be taken as sufficient to fit in with the notification involved in the present appeals.

Learned counsel on both sides referred to the meaning of the words "paid" and 'already paid' etc. in the notification under consideration and they cited some decisions as to how those words were interpreted in other judgments. We must bear in mind that the meaning of a particular English would used in a particular collocation of words need not be the exact meaning when used in other permutations. Lord Green has observed in Bidie vs. General Accident, Fire and Life Assurance corporation Ltd. [1948 (2) all. E.R. 995] "Few words in the English language have a natural or ordinary meaning in the sense that they must be so read that their meaning is entirely independent of their context. The method of construing statutes that i prefer is not to take particular words and attribute to them a sort of prima facie meaning which you may have to displace or modify. it is to read the statute as a whole and ask one-elf the question in this state, in this context, relating to this subject-matter, what is the true meaning of that word."

In Bourne vs. Norwich Crematorium Ltd. [1967 (2) AER 576] Stamp J. has reminded that "English words derive colour from those which surround them and sentences are not mere collections of words to be taken out of the sentence, defined separately by reference of the dictionary or decided cases."

If we take the words "already paid" in the notification delinked from other words employed therein, they would, perhaps, land support to the contention of the Revenue as the said combination relates to an antecedent act of payment. But the word "already" is not the decisive term in the context because `he preceding word "appropriate", cannot be sidelined to piffle. The word "appropriate" is defined in Websters's New Dictionary and Thesaurus (Concise Edition) as " applicable, apposite, appurtenant, apropos, apt.." In the World book Dictionary it is defined as ' right for the occasion, suitable , proper, fitting...."

What is the idea behind granting exemption to the commodities indicated in the notification? One reason is that Central Government wanted to save certain raw materials and the end products made with them from double duty. Another idea, as could be discerned from it, is that the reason which prompted the Central Government to absolve one commodity from duty must as well be applicable to the other commodity which is made out of the former. Therefore, we are not disposed to afford a narrow interpretation to the expression (i.e. on which the appropriate amount of duty of excise has already been paid) as excluding all cases where nil duty was paid for the input materials.

Sri V. Sridharan, learned counsel for the respondent invited out attention to another notification issued by the central Government (No. 178/83 CE dated 1.7.83) by which the Government exempted" textured yarn" from excise duty subject to the condition that the appropriate duty of excise has already been paid in respect of the filament yarn used in the manufacture of such textured yarn. The said exemption was further circumscribed through a proviso added to the main exemption clause which reads thus:

> "Provided that nothing contained in this notification shall apply to the said textured yarn if such textured yarn has been manufactured out of

> (i) the said filament yarn other than textured, in respect of which the exemptions from the whole of the duty of excise under the said Central Excises and Salt Act or from the whole of the additional duty under the said Central Excises and Salt Act or from the whole of the additional duty under the Customs Tariff Act, as the case may be, has been availed of ..."

On the strength of the above proviso learned counsel advanced an argument that absence of such a proviso in the notification (with which we are concerned in these appeals) would clinch the issue. Mr. M. Gaurishankar Murthy, learned counsel for the Revenue, on the other hand, pointed out that the notification involved in the appeal was issued in 1963 and submitted that it was when the manufacturers claimed exemption even in respect of goods whose raw materials were totally exempted from duty that the Central Government found it necessary to make appropriate clarification in the later notification. Hence he contended that no leverage can be given to the respondent on the Strength of the proviso employed in the 1983 notification.

Having bestowed our consideration on the rival contentions we are persuaded to accept the argument of the learned counsel for respondent for the main reason that the Central Government could have inserted the same proviso in the notification now under consideration, by way of modification or amendment if the Government wanted that meaning to be adopted to it. We find considerable force in the contention that absence of any such proviso in the notification(under our consideration) is consistent with the construction sought to be placed on it by the respondents.

How the Revenue has understood the notification or made others to understand this position can be seen from the instructions or circulars issued by the Central Board of Excise and Customs (for short "the Board") from time to time. One such circular is dated 15.5.1995 no. 125/36/95-CX. The material portion thereof are extracted below:

> "There are a number of notifications which exempt specified goods provided such goods have been made from other goods on which the appropriate duty of excise has already been paid board has issued instructions from time to time that in such cases, even if the issued instructions from time to time that in such cases, even if the inputs are exempted from excise duty, the exemption on the finished goods cannot be denied on that ground. Still, cases have been brought to notice where exemption is being denied on the ground that the inputs did not bear any excise duty..... It was clarified by the Board that in the case of S.O. dyes made from exempted dyes, the exemption cannot be denied on the ground that the inputs were exempted from the whole of the duty of excise. This logic would apply to other similar cases also where exemption has been given on the consideration that the finished products have been made from inputs on which appropriate duty of excise has already been paid."

Learned counsel for the appellant adopted a contention that the circulars issued by the Board cannot take the place of judicial interpretation of statutory notifications as those circulars could at best be reflective of that line of thinking or the part of the department for a time. He pressed into service that judicial interpretation of a statutory provisions or notifications thereunder should not

be influenced by what the department thought it at a particular time.

No doubt the court has to interpret statutory provisions and notifications thereunder as they are with emphasis to the intention of the legislature. But when the Board made all others to understand a notification in a particular manner and when the latter have acted accordingly, is it open to the Revenue to turn against such persons on a premise contrary to such instructions?

Section 37-B of the Act enjoins on the Board a duty to issue such instructions and directions to the excise officers as the Board considers necessary or expedient for the purpose of uniformity in the classification of excisable goods or with respect to levy of duty excised on such goods." It is true that Section 37b was inserted in the Act only in December, 1985 but that fact cannot whittle down the binding effect of the circulars or instructions issued by the Board earlier. Such instructions were not issued earlier for fancy or as rituals. Even the pre-amendment circulars were issued for the same purpose of achieving uniformity in imposing excise duty on excisable goods. So the circular, whether issued before December 1985 or thereafter should have the same binding effect on the Department.

Through a catena of decisions this Court has pronounced that Revenue cannot be permitted to take a stand contrary to the instructions issued by the Board. It is a different matter that an assessee can contest the validity or legality of a departmental instruction. But that right cannot be conceded to the department, more so when others have acted according to such instructions, [vide Collector of Central Excise. Bombay vs. Collector of Central Excise [1996(88) ELT 638], Ranadey Micronutrients vs. collector of Central Excise [1996(87) ELT 19] , Poulose and Mathen vs. collector of central Excise [1997(90) ELT 264, British Machinery Supplies Co. vs. Union of India[1996(86) ELT 449]. Of course the appellate authority is also not bound by the interpretation given by the Board but the assessing officer cannot take a view contrary to the Board's interpretation.

We may observe particularly that a special aspect highlighted by the Bench in Poulose and Mathen vs. Collector of Central Excise [1997(90) ELT 264] is apposite for fastening the revenue with binding force as regards the instructions issued, while constructing a notification which was not free from doubt, Learned judges in that decision have observed thus:

> "One aspect deserves to be noticed in this context. The earlier tariff advice no. 83/81 on the basis of which trade notice No. 222/81 was issued by the Collector of Central Excise and Customs is binding on the department. It should be given effect to . There is no material on record to show that this has been rescinded or departed from, and even so, to what extent. Even assuming that the later tariff advice No.6/85 has taken a different view about which there is no positive material the facts point out that the concerned department itself was having considerable doubts about the matter. The position was not free from doubt. It was far from clear. In such a case, where two opinions are possible, the assessee should be given the benefit of doubt and that opinion which is in its favour should be given effect to. In the light of the above, it is unnecessary to adjudicate the other points involved in the appeal on the merits."

(emphasis supplied) Thus, looking from different angles we are inclined to take the view that benefit of exemption from duty can legitimately be claimed by the respondents in respect of those goods referred to in the notifications under consideration the raw materials of which were not exigible to any excise duty at all. In the result, we dismiss all these appeals.