# Commnr. Of Central Excise, Surat-I vs M/S. Favourite Industries on 29 February, 2012

## Equivalent citations: AIR 2012 SUPREME COURT 1758, 2012 (7) SCC 153, 2012 AIR SCW 2213, 2012 (3) SCALE 537, (2012) 3 KCCR 175, (2012) 3 SCALE 537

## Bench: Anil R. Dave, H.L. Dattu

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.949 OF 2004

COMMISSIONER OF CENTRAL EXCISE, SURAT-I APPELLANT

VERSUS

M/S.FAVOURITE INDUSTRIES RESPONDENT

W I T H

C.A.NO.3588 OF 2005
C.A.NO.3638 OF 2006
C.A.NO.1388 OF 2008

O R D E R

For the sake of convenience, we take the facts in C.A.NO.949/2004, for disposal of these appeals.

1. This appeal is directed against the judgment and order passed by the Customs, Excise and Service Tax Appellate Tribunal (for short 'the Tribunal'), Mumbai in Appeal No.E/158/03-Mum. dated 25.07.2003. By the impugned judgment and order, the Tribunal has partly allowed the appeal filed by the respondent-assessee, inter alia, stating that the assessee is entitled to avail the benefit of the Notification No.8/97-CE, dated 1.3.1997. It is the correctness or otherwise of the said finding and

conclusion reached by the Tribunal, is the subject matter of this appeal.

2.The core issue that falls for our consideration and decision is: whether the finished goods manufactured by the 100% Export Oriented Unit ('the EOU' for short) out of the raw material supplied by another 100% EOU, and subsequently, cleared in the Domestic Tariff Area (for short "the DTA") in accordance with the EXIM Policy 1997-2002 are entitled to the benefit of the exemption provided under the Notification No.8/97-CE, dated 1.3.1997. In the alternative, whether the adjudicating authority is justified in holding that the assessee cannot take the benefit of the Notification No.8/97-CE, dated 1.3.1997 and the assessee, at the most, can take benefit of the Notification No.2/95-CE, dated 4.1.1995.

3.Brief facts, as noticed by the adjudicating authority may be stated: M/s. Favourite Industries, respondent herein, is engaged in the manufacture of processed Polyester Grey Man Made fabric, falling under chapter sub- heading 5407.51 of the Customs Tariff Act, 1975 and chapter sub-heading 5406.10 of the Central Excise Tariff Act, 1985 (for short "the Tariff Act"), out of raw materials obtained indigenously and/or imported free of Central Excise/Customs duties, as the case may be, under the obligation of export of the final product as well as clearance of final product in the DTA on payment of appropriate duty as applicable from time to time as provided under the EXIM Policy for the period commencing from 1997 to 2002.

4.The respondent-industrial unit of the assessee has been granted licence on 27.6.2000 for Private Bonded Warehouse under 100% Export Oriented Scheme under Section 58 of the Customs Act, 1962.

5. The respondent-industrial unit has also obtained permission for advance DTA sale, vide letter No. KFTWZ/100% EOU/II/765/2000- 01/3381 dated 27.7.2000 which will be valid for a period of three months counted from the date of issuance of permission, that is, upto 26th October, 2000 only.

6.In the Show Cause Notice, it was stated that the respondent-industrial unit had filed the RT-13 returns for the months of August, 2000 to December, 2000. On going through the invoices, in respect of clearance made in the DTA, filed by the respondent-industrial unit along with RT 13 returns for the month of June to October, 2000, it was noticed that the unit had cleared 17,52,421/- Liter Meters Of pro M.M. Fabrics viz. finished goods, rejected and waste worth Rs.1,41,43,082/- during the period commencing from 1.8.2000 to 15.10.2000 in DTA on payment of 8% basic excise duty amounting to Rs.13,53,695/- which, according to the adjudicating authority, is a short payment of duty amounting to Rs.2,19,70,733/-. It is further alleged in the show cause notice that the unit has also cleared 12,78,814 L.Mtrs. of finished goods, rejects and waste worth Rs.1,30,98,643/- during the period starting from 16.10.2000 to 31.12.2000 in DTA on payment of 8% basic excise duty amounting to Rs.13,52,262/-, which, according to the adjudicating authority, is a short payment of duty amounting to Rs. 2,13,30,228/-. According to the adjudicating authority, the respondent has contravened the provisions of EXIM Policy and Rules 100 D and 100 E of the Central Excise Rules, 1944 (for short "the Rules") and also the conditions prescribed under 100% EOU scheme. Further, according to the adjudicating authority, the respondent- industrial unit has contravened the provisions of the Notification No.2/95-CE, dated 4.1.1995 and, thereby, the duty amounting to

Rs.4,33,00,961/- has been short paid and the same requires to be recovered by invoking the provisions of Section 11A (1) read with Section 11A (2) of the Central Excise Act, 1944 (for short "the Act") and also for penal action under Rule 173Q (1) of the Rules.

7. In view of the aforesaid material/charges the adjudicating authority had issued the Show Cause Notices to the assessee, inter alia, directing the assessee to show cause as to why the duty of excise amounting to Rs.4,33,00,961/- should not be demanded and recovered under Section 11A(1) read with Section 11A (2) of the Act. Alternatively, to recover interest on the short duty payment by invoking the provisions under Section 11AB of the Central Excise Act and to take appropriate penal action as provided under Rule 173 Q (1) of the Rules, read with Section 11AC of the Act. Along with the notice, the adjudicating authority had enclosed Annexures A, B and C working out the details of the short payment of duty during the period in question.

8.After receipt of the show cause notices, the assessee had filed its reply dated 18.6.2002. The assessee had contended that the goods are manufactured from the raw material produced/manufactured in India and, therefore, they are entitled for the benefit of the exemption from payment of certain amount of duty as provided in the Notification No.8/97-CE, dated 1.3.1997 on payment of the appropriate duty and, therefore, it cannot be said that they had cleared the manufactured goods as provided in the Notification No.2/95-CE dated 4.1.1995. To make things clear, they had also said that they had purchased raw material from 100% EOU who had manufactured/produced goods in its industrial unit and the said goods cannot be considered as imported raw material and, therefore, the adjudicating authority is not justified in issuing the show cause notices.

9. After receipt of the reply so filed, the adjudicating authority, after affording an opportunity of hearing to the assessee, had proceeded to hold that the respondent- industrial unit could not have taken the benefit of the exemption notification No.8/97-CE, dated 1.3.1997 and, if at all, they are entitled to take benefit of the Notification No.2/95-CE, dated 4.1.1995. Accordingly, had confirmed the demands made in the show cause notices.

10. The assessee, being aggrieved by the order in original passed by the adjudicating authority, had preferred an appeal before the Tribunal. The Tribunal, after considering the conditions enumerated under both the notifications, namely, Notification No.2/95- CE, dated 4.1.1995 and Notification No.8/97- CE, dated 1.3.1997, has come to the conclusion that the adjudicating authority is not justified in pinning down the assessee to take the benefit only under the Notification No.2/95-CE but not under the Notification No.8/97-CE. Accordingly, has given relief to the assessee by setting aside the order in original passed by the adjudicating authority. The Revenue, being aggrieved by the order so passed by the Tribunal, is before us in this appeal.

11. Shri. K. Swami, learned counsel appearing for the Revenue, has taken all the pains to take us through the Notifications, which are the subject matter of this appeal, the reasoning of the adjudicating authority, and the so called fallacy in the reasoning, and the conclusion reached by the Tribunal. Learned counsel also refers to the EXIM Policy 1997-2002. Learned counsel would submit that in order to take the benefit of the Notification No.8/97-CE, the assessee must purchase the raw

material manufactured in an industrial unit in a domestic area and if such raw material is used for production or manufacture of goods and sold in the domestic area as provided in the EXIM Policy, then only, it could take the benefit of the Notification No.8/97-CE. In the alternative, the learned counsel would submit that the assessee in the present case has purchased the raw material/finished products from a 100% EOU for its manufacturing activity for the manufacture of a finished product and in the hands of the purchaser industrial unit, the transaction would be a deemed import and the finished goods in question would be made out of imported raw material/finished product and, therefore, the assessee cannot take the benefit of the Notification no.8/97-CE. Learned counsel would further submit that, if for any reason, the notification is made applicable to the respondent-industrial unit, the said unit would receive total or undue advantage in payment of the concessional rate of duty on the finished goods, which are even made out of imported raw materials/goods. The learned counsel fairly submits that there are no decisions on the issue in vogue but he would contend nearer to the point, by relying on the two decisions of this Court reported in Hindustan Granites v. Union of India, 2007 (211) ELT 3 (SC) and Virlon Textile Mills Ltd. v. Commissioner of Central Excise, Mumbai, 2007 (211) ELT 353 (SC).

12. The learned counsel also submits that the adjudicating authority, keeping in view the transaction of the assessee in buying the raw material/finished products from 100% EOU for its manufacturing activity to manufacture finished products, has rightly applied the Notification No.2/95-CE and, therefore, the Tribunal ought not to have interfered with the well considered and reasoned order of the adjudicating authority.

13. Shri Tarun Gulati, learned counsel appearing for the assessee, ably justifies the judgment and order passed by the Tribunal. The learned counsel has also brought to our notice the clear distinction between the Notification No.2/95-CE and the Notification No.8/97-CE. He has also endeavoured to take us through the relevant clauses in the EXIM Policy 1997-2002.

14. Before we deal with the contentions canvassed by the learned counsel for the parties to the lis, we deem it appropriate to notice the observations made by the Constitution Bench of this Court in the case of Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal & Ors., (2011) 1 SCC 236, insofar as the mechanism and interpretation of an exemption notification issued under a fiscal enactment. This Court has observed in the said decision:

> "A provision especially a fiscal statute providing for an exemption, concession or exception has to be construed strictly. An exemption notification has to be interpreted in the light of the words employed by it and not on any other basis. A person who claims exemption or concession must establish clearly that he is covered by the provision(s) concerned and, in case of doubt or ambiguity, the benefit of it must go to the State."

15. The observations made by the Constitution Bench of this Court are binding on us.

16. Furthermore, this Court in Associated Cement Companies Ltd. v. State of Bihar & Ors., (2004) 7 SCC 642, while explaining the nature of the exemption notification and also the manner in which it

should be interpreted has held:

> "12. Literally "exemption" is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in a growing economy. In fact, an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden of progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking, liberal and strict construction of an exemption provision is to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in the nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. (See Union of India v. Wood Papers Ltd. and Mangalore Chemicals and Fertilisers Ltd. v. Dy. Commr. of Commercial Taxes to which reference has been made earlier.)"

17. In G.P. Ceramics Private Limited v. Commissioner, Trade Tax, Uttar Pradesh, (2009) 2 SCC 90, this Court has held:

> "29. It is now a well-established principle of law that whereas eligibility criteria laid down in an exemption notification are required to be construed strictly, once it is found that the applicant satisfies the same, the exemption notification should be construed liberally. [See CTT v. DSM Group of Industries (SCC para 26); TISCO v. State of Jharkhand (SCC paras 42 to 45); State Level Committee v. Morgardshammar India Ltd.; Novopan India Ltd. v. CCE & Customs; A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala and Reiz Electrocontrols (P) Ltd. v. CCE.]"

18. In order to resolve the controversy posed in this appeal, we have to notice the two Notifications, namely, Notification No.2/95- CE, dated 4.1.1995 and Notification No.8/97- CE, dated 1.3.1997 and also the EXIM Policy 1997-2002. The Notification in juxtaposition reads as under:

> Notification No.2/95-CE, Notification dated 4.1.1995 No.8/97-CE, dated 1.3.1997 Exemption to all Exemption to finished excisable goods produced products, rejects and in 100% EOU, FTZ, EHTP or waste or scrap produced STP Units when sold in in a 100% EOU or FTZ India In exercise of the powers In exercise of the conferred by sub-section powers conferred by (1) of section 5A of the sub-section (1) of Central Excises and Salt section 5A of the Act, 1944 (1 of 1944), Central Excise Act, the Central Government, 1944 (1 of 1944), the being satisfied that it Central Government, is necessary in the being satisfied that it public interest so to do, is necessary in the hereby exempts all public interest so to excisable goods do, hereby exempts the (hereinafter referred to finished products, as the said goods) rejects and waste or specified in the Schedule scrap specified in the to the Central Excise Schedule to the

Central Tariff Act, 1985 (5 of Excise Tariff Act, 1985 1986) and produced or (5 of 1986) and manufactured in a hundred produced or per cent export oriented manufactured, in a undertaking or a free hundred per cent trade zone or an export-oriented Electronic Hardware undertaking or a free Technology Park (EHTP) trade zone wholly from unit or a Software the raw materials Technology Parks (STP) produced or unit and allowed to be manufactured in India, sold in India under and and allowed to be sold in accordance with the in India under and in provisions of ,- accordance with the provisions of sub-

(i)paragraphs 102 and 114 paragraphs (a), (b), of the Export and Import (d) and (h) of Policy, 1 April, 1992 - paragraph 6.8 or of 31 March 1997, in the paragraph 6.20 of the case of hundred percent Export and Import export oriented Policy, 1st April, 2002 undertaking or a free

- 31st March, 2007, trade zone; or from so much of the

(ii)notification of the duty of excise leviable Government of India in thereon under section 3 the Ministry of Commerce of the Central Excise No.42(N-8)/92-97, dated Act, 1944 (1 of 1944), the 14th September, 1992 as is in excess of an upto a value not amount equal to the exceeding forty percent aggregate of the duties of the value of of excise leviable production of components under the said section and finished goods 3 of the Central Excise manufactured, in the case Act or under any other of a Electronic Hardware law for the time being Technology Park (EHTP) in force on like goods, unit; produced or manufactured in India

(iii) notification of the other than in a hundred Government of India in per cent export- the Ministry of Commerce oriented undertaking or No. 33/(RE)92-97, dated a free trade zone, if the 22nd March, 1994, upto sold in India.

a value of production of software manufactured in Provided that nothing the case of a Software contained in this Technology Parks (STP) notification shall unit, apply where such finished products, if from so much of the duty manufactured and of excise leviable cleared by a unit other thereon under Section 3 than a hundred per cent of said Central Excise export-oriented and Salt Act as in excess undertaking or a unit of the amount calculated in a free trade zone, at the rate of fifty are wholly exempt from percent of each of the the duties of excise or duties of customs, which are chargeable to Nil would be leviable under rate of duty. Section 12 of the Customs Act, 1962 (52 of 1962) read with any other [Notification No.8/97- notification for the time CE, dated 1-3-1997 as being in force issued amended by Notification under sub-section (1) of No.21/97-CE, dated Section 25 of the said 11.4.1997; No.7/98-CE, Customs Acton the like dated 2.6.1998 and goods produced or No.11/2000-CE, dated manufactured outside 1.3.2000) India if imported into India;

Provided that the amount of duty payable in accordance with this notification in respect of the said goods shall not be less than the duty of excise leviable on the like goods produced or manufactured outside the hundred per cent export-

oriented undertaking or free trade zone or Electronic Hardware Technology Park (EHTP) unit or Software Technology Parks (STP) unit which is specified in the said Schedule, read with any other relevant notification issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944, or sub-section (1) of section 5A of the said Central Excise Act:

Provided further that nothing contained in the above proviso shall apply to the goods which are chargeable to nil rate of duty leviable under section 12 of the Customs Act read with any other notification for the time being in force issued under sub-section (1) of section 25 of the said Customs Act:

Explanation. - For the purpose of this notification, the expression, -

(1)"Export and Import Policy" means the Export and Import Policy, 1st April, 1992 - 31st March, 1997" means the Export and Import Policy, 1, April, 1992-31 March, 1997 published vide Public Notice of the Government of India in the Ministry of Commerce No.1- published by the Government of India in the Ministry of Commerce No.1-ITC (PN)/92-97, dated the 31st March, 1992 as amended from time to time.

(2)"Electronic Hardware Technology Park (EHTP) unit" means a unit established under and in accordance with Electronic Hardware Technology Park (EHTP) Scheme notified by the notification of the Government of India in the Ministry of Commerce No. 5 (RE-95) 92-97, dated 30th April, 1995 and approved by an inter-

Ministerial Standing Committee appointed by the notification of the Government of India in the Ministry of Industry {Department of Industrial Development) No. S.O. 117(E), dated the 22nd February, 1993;

(3) "Software Technology Parks (STP) unit" means a unit established under and in accordance with Software Technology Parks (STP) Scheme notified by the notification of the Government of India in the Ministry of Commerce No.4/(RE-95)/92-95, dated 30th April, 1995 and approved by an inter-

Ministerial Standing Committee appointed by the notification of the Government of India in the Ministry of Industry (Department of Industrial Development) No. S.O. 117(E), dated the 22nd February, 1993.

[Notification No.2/95-CE, dated 4.1.1995]

19. The relevant clauses for our purpose in the EXIM Policy 1997-2002 are 9.9, 9.10, 9.13(a), 9.16 (c) and 9.20. They read as under:

> "DTA Sales 9.9 The entire production of EOU/EPZ/EHTP/STP units shall be exported subject to the following:

a. Unless specifically prohibited in the LOP/LOI, rejects may be sold in the domestic tariff area (DTA), on prior intimation to the customs authority. Such sales shall be counted against DTA sale entitlement under para 9.9(b) of the Policy. Sale of rejects shall be subject to payment of duties as applicable to sale under para 9.9.

b. DTA sale up to 50% of the FOB value of exports may be made subject to payment of applicable duties and fulfillment of minimum NFEP prescribed in Appendix 1 of the Policy. No DTA sale shall be permissible in respect of motor cars, alcoholic liquors and such other items as may be stipulated by Director General of Foreign Trade by a Public Notice issued in this behalf.

e. EOU/EPZ/EHTP/STP units may be permitted to sell finished products which are either freely importable under the Policy, or against other import licenses, in the DTA, over and above the levels permissible under sub paragraph (b) above, against payment of full duties, on annual basis, provided they have achieved the stipula ted NFEP and export performance.

g. For services, including software units, sale in the DTA in any mode, including on-line data communication, shall be permissible up to 50% of FOB value of exports and/or 50% of foreign exchange earned, where payment for such services is received in free foreign exchange.

h. Items included as by-products in the LOP/LOI may be sold in the DTA on payment of applicable duty.

Note:-

In the case of units manufacturing electronics hardware and software, the NFEP and DTA sale entitlement shall be reckoned separately for hardware and software.

Other Supplies In DTA 9.10 The following supplies in DTA shall be counted towards fulfillment of export performance and NFEP:

a. Supplies effected in DTA in terms of paragraph 10.2 of the Policy.

b. Supplies effected in DTA against payment in foreign exchange.

c. Supplies to other EOU/EPZ/SEZ/EHTP/STP units provided that such goods are permissible for procurement in terms of paragraph 9.2 of the Policy.

d. Supplies made to bonded warehouses set up under paragraph 11.14 of the Policy and/or under section 65 of the Customs Act.

e. Supply of goods against special entitlement of duty free import of goods.

f. Supply of goods to defence and internal security forces, foreign missions/diplomats provided they are entitled for duty free imports of such items in terms of general exemption notification issued by Ministry of Finance.

Entitlement For Supplies From The DTA 9.13 a. Supplies from the DTA to EOU/EPZ/EHTP/ STP units will be regarded as "deemed exports" and, besides being eligible for the relevant entitlements under paragraph 10.3 of this Policy, will be eligible for the following:

i. Reimbursement of Central Sales Tax;

ii. Exemption from payment of Central Excise Duty on capital goods, components and raw materials; and iii. Discharge of EP, if any, on the supplier.

Inter Unit Transfer 9.16

a) Transfer of manufactured goods from one EOU/EPZ/ EHTP/STP unit to another EOU/EPZ/EHTP/STP unit will be allowed.

b) Goods imported/procured by an EOU/EPZ/ EHTP/STP unit may be transferred or given on loan to another EOU/EPZ/EHTP/STP unit which shall be duly accounted for, but not counted towards discharge of export performance.

Disposal Of Scrap/ Waste/ Remnants 9.20 Scrap/waste/remnants arising out of production process or in connection therewith may be sold or disposed of in the DTA on payment of applicable duties or exported. However, there shall be no duties/taxes on such scrap/waste/ remnants in case the same are destroyed with the permission of Customs authority."

20. Having noticed two Notifications and the policy, let us analyze first, the Notification No.2/95-CE. The Central Government, in exercise of its powers under Section 5A(1) of the Act, has issued the Notification in public interest. The Notification exempts all excisable goods mentioned in the Schedule to the Tariff Act, from payment of duty leviable under Section 3 of the Act. The Notification provides the measure/cap of exemption from payment of excise duty by an assessee/industrial unit. It says the exemption is from the excise duty which is in excess of the amount calculated at 50% of each of the duties of customs leviable under Section 12 of the Customs Act, 1962 read with any Notification issued under Section 25 of the Customs Act. The Notification also makes it clear with regard to the nature or type of goods that the 100% EOU should be manufacturing in its industrial unit. It says that the exempted goods should be in a nature or type of goods which are, normally, produced/manufactured outside India and, but for any reason, they are imported to India. That only means, there must be a similarity between the goods manufactured by a 100% EOU with that of the goods produced or manufactured outside the country but if it is imported into this country. The Notification provides two conditions in order to avail the benefit provided under the Notification. They are conjoint and not disjoint. Firstly, the exemption is available only, if the goods are produced or manufactured in a 100% EOU or FTA or EHTP unit or

STP unit and, secondly, they must be allowed to be sold as per EXIM Policy 1997-2002. Proviso is appended to the Notification. A reference to the same may not be necessary for the purpose of the disposal of this appeal.

21. Then we come to the Notification No.8/97-CE. The said Notification is again issued by the Central Government in public interest in exercise of its powers under Section 5A(1) of the Act. It exempts finished goods, rejects and waste or scrap enumerated in the Schedule to the Tariff Act, from payment of excise duty under Section 3 of the Act. Yet again, the Notification provides the entitlement or cap up to which the assessee can avail benefit under the Notification insofar as the payment of excise duty. The Notification also speaks of compliance of two conditions by an industrial unit for taking benefits/advantage of the Notification. Firstly, the finished goods must be produced or manufactured in a 100% EOU or FTA from the raw material produced or manufactured in India (emphasis supplied). The second condition is that the goods must have been allowed to be sold in India as per sub paras (a), (b), (c ), (d) and (f) of para 9.9 or para 9.20 of the EXIM Policy 1997-2002.

22. Clause 9 of the EXIM Policy 1997-2002 speaks of DTA sales. Clauses (a), (b), (c), (d) and

(f) put certain conditions to be complied with by a 100% EOU/FTA etc. for effecting its sales in DTA area. Clause 9.3 provides for benefits for supplies made from the DTA Area. Clause 9.16(c) in particular provides for inter unit transfers. Clause 9.20 provides for disposal of the scrap in the DTA area by a 100% EOU.

23. After having the bird's eye view of the two Notifications, namely, Notification No.2/95- CE, dated 4.1.1995 and Notification No.8/97- CE, dated 1.3.1997 and the EXIM Policy 1997- 2002, let us consider the issues canvassed by the learned counsel appearing for the parties.

24. Shri. K. Swami, learned counsel for the revenue strenuously contends that the assessee has purchased raw material/finished goods, for its manufacturing activity to produce or manufacture the finished products, from a 100% EOU which had imported the raw material which are exempted from the payment of duty and when it affects the sale of such raw material/finished goods manufactured in its industry to another 100% EOU, then, in the hands of the said EOU, it becomes an imported raw material/finished goods. In this regard, he submits that since the language employed in the Notification no.8/97-CE, dated 1.3.1997 is "raw material produced or manufactured in India", only such raw material, when used for the production or manufacturing of the finished goods which are, ultimately, sold in the DTA, are eligible for exemption and, therefore, the assessee cannot take the benefit of the Notification no.8/97-CE. We are afraid that we can accept the argument canvassed by Shri. Swami, in the light of the unambiguous language employed in the Notification no.8/97-CE. There is no ambiguity, whatsoever, in the Notification issued by the Central Government. The Notification speaks of finished goods produced or manufactured by a 100% EOU and if it is sold in a DTA, the said EOU can take the benefit of the Notification no.8/97-CE. If for any reason, we accept the submission of Shri K.Swami, learned counsel for the Revenue, then we will be adding something into the notification and, in our opinion, the same is impermissible.

25. The notification requires to be interpreted in the light of the words employed by it and not on any other basis. There cannot be any addition or subtraction from the notification for the reason the exemption notification requires to be strictly construed by the Courts. The wordings of the exemption notification have to be given its natural meaning, when the wordings are simple, clear and unambiguous. In Commissioner of Customs, Kolkata v. Rupa & Co. Ltd., (2004) 6 SCC 408, this Court has observed that the exemption notification has to be given strict interpretation by giving effect to the clear and unambiguous wordings used in the notification. This Court has held thus:

> "7. However, if the interpretation given by the Board and the Ministry is clearly erroneous then this Court cannot endorse that view. An exemption notification has to be construed strictly but that does not mean that the object and purpose of the notification is to be lost sight of and the wording used therein ignored. Where the wording of the notification is clear and unambiguous, it has to be given effect to. Exemption cannot be denied by giving a construction not justified by the wording of the notification."

26. In Commissioner of Central Excise, Trichy v. Rukmani Pakkwell Traders, (2004) 11 SCC 801, this Court has also held:

> "5. ... It is settled law that exemption notifications have to be strictly construed. They must be interpreted on their own wording. Wordings of some other notification are of no benefit in construing a particular notification."

27. In Kohinoor Elastics (P) Ltd. v. Commissioner of Central Excise, Indore, (2005) 7 SCC 528, this Court has held:

> "7. When the wordings of the notifications are clear and unambiguous they must be given effect to. By a strained reasoning benefit cannot be given when it is clearly not available."

28. In Compack (P) Ltd. v. Commissioner of Central Excise, Vadodara, (2005) 8 SCC 300, this Court has observed thus:

> "20. Bhalla Enterprises laid down a proposition that notification has to be construed on the basis of the language used. Rukmani Pakkwell Traders is an authority for the same proposition as also that the wordings of some other notification are of no benefit in construing a particular notification. The notification does not state that exemption cannot be granted in a case where all the inputs for manufacture of containers would be base paper or paperboard. In manufacture of the containers some other inputs are likely to be used for which MODVAT credit facility has been availed of. Such a construction, as has been suggested by the learned counsel for the respondents, would amount to addition of the words "only out of" or "purely out of"

the base paper and cannot be countenanced. The notification has to be construed in terms of the language used therein. It is well settled that unless literal meaning given to a document leads to anomaly or absurdity, the golden rule of literal interpretation shall be adhered to."

29. In Commissioner of Central Excise, Chandigarh-I v. Mahaan Dairies, (2004) 11 SCC 798, this Court has held:

> "8. It is settled law that in order to claim benefit of a notification, a party must strictly comply with the terms of the notification. If on wording of the notification the benefit is not available then by stretching the words of the notification or by adding words to the notification benefit cannot be conferred. The Tribunal has based its decision on a decision delivered by it in Rukmani Pakkwell Traders v. CCE. We have already overruled the decision in that case. In this case also we hold that the decision of the Tribunal is unsustainable. It is accordingly set aside."

30. In Commissioner of Customs (Preventive), Gujarat v. Reliance Petroleum Limited, (2008) 7 SCC 220, this Court has held:

> "30. We are not oblivious of the proposition of law that an exemption notification should be construed directly but it is also well settled that interpretation of an exemption notification would depend upon the nature and extent thereof. The terminologies used in the notification would have an important role to play. Where the exemption notification ex facie applies, there is no reason as to why the purport thereof would be limited by giving a strict construction thereto.
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> 31. The comparison made by the learned Solicitor General that mobility of a person would depend upon his personal fitness and not when he is placed on a wheelchair, in our opinion, is not apposite. The purpose of grant of exemption is different. The object for grant of notification shall be considered in a broad based manner. The wordings used therein have to be given their natural meaning. The purpose must be allowed to be achieved. The words "all types of materials" should be construed widely."

31. Moreover, a liberal construction requires to be given to a beneficial notification. This Court in Commissioner of Customs (Preventive), Mumbai v. M. Ambalal and Company, (2011) 2 SCC 74, (in which one of us was the party) has observed that the beneficial notification providing the levy of duty at a concessional rate should be given a liberal interpretation:

> "16. It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. The rule regarding exemptions is that exemptions should generally be strictly interpreted but beneficial exemptions having their purpose as encouragement or promotion of certain activities should be liberally interpreted. This composite rule is not stated in any particular judgment in so many words. In fact,

> majority of judgments emphasise that exemptions are to be strictly interpreted while some of them insist that exemptions in fiscal statutes are to be liberally interpreted giving an apparent impression that they are contradictory to each other. But this is only apparent. A close scrutiny will reveal that there is no real contradiction amongst the judgments at all. The synthesis of the views is quite clearly that the general rule is strict interpretation while special rule in the case of beneficial and promotional exemption is liberal interpretation. The two go very well with each other because they relate to two different sets of circumstances."

32. In Commissioner of Sales Tax v. Industrial Coal Enterprises, (1999) 2 SCC 607, this Court has observed thus:

> "11. In CIT v. Straw Board Mfg. Co. Ltd. this Court held that in taxing statutes, provision for concessional rate of tax should be liberally construed. So also in Bajaj Tempo Ltd. v. CIT it was held that provision granting incentive for promoting economic growth and development in taxing statutes should be liberally construed and restriction placed on it by way of exception should be construed in a reasonable and purposive manner so as to advance the objective of the provision."

33. In Commissioner of Central Excise, Shillong v. North-Eastern Tobacco Co. Ltd., (2003) 1 SCC 161, this Court has observed thus:

> "10. The other important principle of interpreting an exemption notification is that as far as possible liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. See State Level Committee v. Morgardshammar India Ltd."

34. In our view, the Tribunal has rightly understood the purpose and the language employed in Notification no.8/97-CE and the EXIM Policy 1997-2002. Therefore, we do not see any legal infirmity in the judgment and order so passed by the Tribunal.

35. Accordingly, while rejecting the appeal filed by the revenue, we confirm the findings and conclusions reached by the Tribunal. In the facts and circumstances of the case, the parties are directed to bear their own costs. C.A.No.3588/2005, C.A.No.3638/2006 & C.A.No.1388/2008 The Tribunal, while allowing the assessee's appeals has followed the judgment and order rendered in the case of M/s. Favourite Industries Vs. CCE, Surat-I. Since we have confirmed the reasoning and the conclusions reached by the Tribunal in the aforesaid decision, the appeals filed by the revenue against the impugned judgments and orders requires to be rejected and accordingly, they are rejected. Ordered accordingly.

.....J. (H.L. DATTU) .....J. (ANIL R. DAVE) NEW DELHI, FEBRUARY 29, 2012.