

CASE NO.:
Appeal (civil) 5944 of 2002

PETITIONER:
Commissioner of Customs, Kolkata

RESPONDENT:
M/s. Rupa & Co. Ltd.

DATE OF JUDGMENT: 21/07/2004

BENCH:
S. N. VARIAVA & ARIJIT PASAYAT.

JUDGMENT:
J U D G M E N T

(WITH C.A. Nos. 1975/2003, C.A. Nos. 3538-3562/2003, C.A. Nos. 3761-3763/2003, C.A. No. 4190/2003, C.A. Nos. 9306-9311/2003, C.A. Nos. 9565-9569/2003, C.A. Nos. 1277-1283/2004, C.A. Nos. 1284-1285/2004 and C.A. No. 2619/2004)

S. N. VARIAVA, J.

All these Appeals are being disposed of by this common Judgment as the facts are identical and they all involve a common point.

In all these Appeals the Respondents are manufacturers of textile garments. By Notification bearing No. 29/97-Cus dated 1st April, 1997 exemption from custom duty was granted to capital goods, components and spares thereof etc. imported under the Export Promotion Capital Goods Scheme (for short EPCG Scheme). The relevant portion of the Notification reads as follows:

"Exemption to capital goods, components and spares thereof etc. imported under EPCG Scheme.- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in the Table annexed hereto from whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from so much of the additional duty leviable thereon under section 3 of the said Customs Tariff Act, as is in excess of the amount calculated at the rate of 10% of the value of goods:

Provided that where the said goods are required for-

(i) the manufacture of leather garments, textile garments (including knitwears), agro products and products of horticulture, floriculture, poultry and bio-tech products, or

(ii) rendering services to hotel industry,

such goods shall be exempted from the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act.

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6. The capital goods imported, assembled or manufactured as in stalled in the importer's factory or premises and a certificate from the jurisdictional Assistant Commissioner of Central Excise or independent Chartered engineer, as the case may be, is produced confirming installation and use of capital goods in the importer's factory or premises, within six months from the date of completion of imports or within such extended period as the said Assistant Commissioner of Customs may allow.

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Explanation \026 In this notification \026

- (1) "Capital goods" means, -
 - (i) any plant, machinery, equipment and accessories required for-
 - (a) manufacture or production of other goods, including packaging machinery and equipments, refractories, refrigeration, equipment, power generating sets, machine tools, catalysts for initial charge, and equipment and instruments for testing, research and development, quality and pollution control;
 - (b) use in manufacturing; mining agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, viticulture and sericulture; and

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- (4) "export obligation"-
 - (i) in relation to importers other than hotel industry rendering services, means export to a place outside India of products manufactured with the use of capital goods imported, assembled or manufactured in terms of this notification or making of supplies of such products in terms of clauses (a), (b), (d), (e), (f) and (g) of paragraph 10.2 of the Export and Import Policy; and

xxx xxx xxx
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Thus capital goods imported under the EPCG Scheme were exempted from payment of customs duty and so much of additional duty as was in excess of 10% of the value of the goods. Under the proviso if the capital goods were imported for manufacture of items mentioned therein then they were exempted from payment of whole of

the additional duty. Thus, if the capital goods were imported for manufacture of textile garments then, under this Notification, the importer would be exempted from payment of customs duty and additional duty.

Parties are agreed that cutting and stitching machine would be capital goods required for manufacture of garments. The Respondents, in this batch of Appeals, had however imported machines required for processing of fabric/yarn, fabric inspection machines, machines for knitting and dyeing fabrics and other such machines. The Respondents were denied benefits of 100% exemption on the ground that the machines imported by them were not required for the purposes of manufacture of textile garments. The Appeals filed by the Respondents to the Commissioner (Appeals) had been dismissed.

The Customs Excise & Gold (Control) Appellate Tribunal (CEGAT) has, in these cases, held that the term "goods are required for manufacture of" in the proviso was wide enough to cover even these machines. The Tribunal has relied upon a letter dated 15th January, 1999 from the International Federation of Knitting Technologists which states that for export of garments to Europe and U.S.A. good quality is required. It is opined that to manufacture good quality garments one has to first select a good quality fabric, then the fabric is required to be reversed to prevent the right side of the fabric from abrasion and tear and wear. It is stated that whilst reversing the fabric has to be inspected for holes and other mistakes like needle marks, needle breakage etc. The letter goes on to state that a garment manufacturer has to have a well equipped laboratory to test the dyes because after dyeing there has to be shrinkage tests, peeling fastness test and various other such tests. It is stated that the fabric then has to be dried as drying plays an important role in controlling shrinkage and maintaining dimensional stability. It is stated that one needs dryers by which the temperature can be controlled so as to avoid any unhygienic method of drying by leaving the wet fabric open in the sun. The letter then goes on to highlight the use of wet expanders and padding mangles for special finishes like softness, velvet finish etc. The letter states that it is only thereafter that cutting and stitching can take place. The Tribunal also relied upon an authority of this Court in the case of Oblum Electrical Industries Pvt. Ltd. vs. Collector of Customs reported in (1997) 7 SCC 581. The Tribunal has held that the Respondents were entitled to the benefit of 100% exemption under the above mentioned Notification.

Mr. Ganguli submits that a Notification must be strictly construed. In support of this submission, he relied upon the authority of this Court in the case of H.M.M. Limited vs. Collector of Central Excise reported in (1996) 11 SCC 332. He also relied upon the case of Novopan India Ltd. vs. Collector of Central Excise and Customs reported in (1994) Supp (3) SCC 606. He pointed out that this Notification has been subsequently amended in 1999 wherein Annexure III has been added. He points out that a list of machines which could be imported as capital goods for manufacture of "textile products" has been set out in this Annexure. He submits that the list does not contain cutting and stitching machines as that list is for machines required for manufacture of "textiles products". He submits that the same Notification uses the words "textile products" in respect of exemption being granted under the first part of the Notification and the words "textile garments" when 100% exemption is to be granted under the proviso. He submits that it is significant that 100% exemption is granted only to capital goods used for manufacture of "textile garments", whereas for capital goods used for manufacture of "textile products" the exemption is restricted only to whole of custom duty and so much of the additional duty as is in excess of 10% of the value of the goods. He submits that the words "textile products" would include fabric, yarn etc. He submits that the term "textile garments"

would not include fabric, yarn etc. He submits that the use of the words "textile garments" clearly show that the capital goods required for manufacturing of yarn or fabric do not fall within the proviso. He submits that it is only capital goods directly required for manufacture of textiles garments which get 100% exemption. He also relies upon a Circular bearing No. 13/2000-Cus dated 22nd February, 2000 issued by the Board wherein it has been clarified that 100% exemption as per the Notification is not to be given to machines which are used for knitting, dyeing and/or for compacting machines which are used in the manufacturing/processing of fabrics. The Circular states that 100% exemption is only to be given to machines which are used for the manufacturing or processing of textiles garments. Mr. Ganguli also relies upon a letter dated 18th April, 1999 from the Joint Secretary, Government of India, Central Board of Excise and Customs, to one Mr. Rajagopalan, Commissioner of Customs, wherein also it has been clarified that 100% exemption is only to be given to machines which are used for manufacture of garments. He also relies upon a letter dated 20th July, 1999 from the Ministry of Finance to Mr. Rajagopalan, Commissioner of Customs, clarifying that the 100% exemption could not be given to fabric processing machines like knitting machines, dyeing machines, compacting machines etc.

Undoubtedly, the Board circular and letters relied upon support Mr. Ganguli. 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 constrained 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 wordings of the Notification are clear and unambiguous they have to be given effect to. Exemption cannot be denied by giving a construction not justified by the wordings of the Notification. The Notification has been issued pursuant to the EPCG Scheme. The import of goods is under a license which contains an export obligation. In all these cases, the obligation is to export garments. It is fairly admitted that, in all these cases, the Respondents manufacture garments. The Notification grants an exemption to capital goods imported under the EPCG Scheme. The Proviso grants 100% exemption to capital goods which are required for manufacture, amongst other, of "textiles garments (including knit-wears)". The words used are thus "goods are required for manufacture of". This Court has in the case of Oblum Electrical Industries (supra), whilst considering another exemption Notification wherein also the words used were "raw material and components required for manufacture" held that the purpose and object of the Notification were to encourage export by granting exemption from the custom duty on material required to be imported for manufacture of the resultant product. It has been held that the manufacture of the resultant product has to be for execution of the export orders. It has been held that the term "capital goods required for purposes of manufacture" cannot be construed as referring only to materials which are used in the manufacture of that product. It was held that the term must be given its natural meaning to also include materials which would be required in order to manufacture the resultant product. It has been held that the term would also include materials which are not directly used in the manufacture of resultant product but are still required for the purposes of manufacturing the resultant product. It is held that the term was wide enough to include not just products which are directly involved in the process of manufacturing but also products which would be necessary for the ultimate manufacture. We are in agreement with this view.

Further, in our view, this Notification is very clear. The 100% exemption is given to capital goods required for manufacture of, amongst others, "textile garments". The term "capital goods" has been defined in the Notification. The term "capital goods" means goods which are used in the manufacture of that product and also

goods which would be required for manufacture or production of other goods including packaging machinery and equipments. The term also includes instruments for testing, research and development. The term includes machines for pollution control, refrigeration, power generating sets etc. Thus, for example, if after manufacturing of textile garments the same have to be packed, the machinery required for packing would be capital goods required for manufacture of textile garments. Similarly, refrigeration machinery for refrigerating the plant would also fall within the term capital goods required for manufacture of textile garments. If such sort of equipments and machinery get covered by the term "capital goods" we fail to understand as to how machinery required for knitting, dyeing, compacting are not covered.

For the purposes of manufacture of garments it cannot be said that only stitching and knitting machines are required. Apart from stitching and cutting the manufacturer may himself manufacture the yarn or fabric. The quality of the yarn or fabric would have to be tested. Machines would be required for that. Similarly, machines for dyeing and/or drying the fabric or yarn, machines for inspecting the defects etc. would be required. The term "capital goods" required for manufacture of textile garments would thus include all machines required for the ultimate manufacture of the garments. The Notification has its own safeguards. The import can only be under a license issued under the EPCG Scheme. The license would contain a condition that garments must be exported by the importer. The Notification also contains a condition that the capital goods (which are imported) are installed in the importers' factory or premises and a certificate to that effect has to be produced within 6 months of the date of the import.

We also see no substance in the submission that the use of different words "textile garments" indicates that only machinery used directly for manufacture of garments gets 100% exemption. The use of different terms merely indicates that the 100% exemption is given to a manufacturer of garments. If the import is by a person who is manufacturing textile products then that importer will get exemption from payment of custom duty and so much of the additional duty as is in excess of 10% of the value of the goods. The difference in language is only for purposes of emphasizing that the 100% exemption is only to manufacturers of garments. So long as the imported machinery is used by a person who manufactures garments, which are then used to meet the export obligation, the importer will be entitled to benefit of 100% exemption under the Notification.

In this view of the matter, we see no infirmity in the Judgment of the Tribunal. We see no reason to interfere.

The Appeals stand disposed of accordingly. There will be no order as to costs.