**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CIVIL APPELLATE JURISDICTION**
**CIVIL APPEAL NOS. 848-852 OF 2009**

**COMMISSIONER OF CENTRAL EXCISE, NAGPUR ...APPELLANT(S)**

**VERSUS**

**M/S UNIVERSAL FERRO & ALLIED CHEMICALS LTD. & ANR. .... RESPONDENT(S)**

**J U D G M E N T**

1. Being aggrieved by the judgments and orders dated 21.10.2005 and 7.7.2006 passed by the Customs, Excise, Service Tax Appellate Tribunal, West Zonal Bench at Mumbai (hereinafter referred to as "CESTAT") thereby, allowing the appeals filed by the respondent – Assessee and its Chairman being Appeal Nos.E-2691-2693/03 arising out of Order-in-Original No.14-20 of 2003 dated 23.6.2003, Order-in-Original

No.21 of 2003 dated 23.6.2003 and Appeal No. E/1976/04 arising out of Order-in-Original Nos.19-20/2004 dated 15.3.2004 and dismissing the appeal filed by the Revenue being Appeal No. E/1607/06-Mum arising out of order of the Commissioner (Appeals), Customs & Central Excise, Nagpur dated 14.2.2006 in Appeal No. SVS/91/NGP-B/2006, the Revenue is before this Court.

2. The facts in brief giving rise to the present appeals are as under:

The respondent – Universal Ferro & Allied Chemicals Ltd., Maneck Nagar, Tumsar (hereinafter referred to as "UFAC") is 100% Export Oriented Unit ("EOU" for short) approved by the Secretariat for Industrial Approvals, Department of Industrial Development in the Ministry of Industry, Government of India. UFAC was engaged in the manufacture/processing and clearance of Ferro Manganese and Silicon Manganese falling under Chapter 72 of the Schedule to the Central Excise Tariff Act, 1985. UFAC cleared these items for export as well as in Domestic Tariff

Area (hereinafter referred to as "DTA") on payment of Central Excise duty.

3. The Central Intelligence Unit of the Central Excise Headquarters visited the unit of UFAC on 19.9.2001 on getting information from the Central Excise Audit party that UFAC being an EOU was indulging in the job-work activity of conversion of raw material supplied by M/s Tata Iron & Steel Company Ltd., Jamshedpur (hereinafter referred to as "TISCO"). In the view of the Revenue, the same was not allowed in terms of EXIM Policy of 1997-2002 (hereinafter referred to as "EXIM Policy")

4. During the course of scrutiny of the records, the officers noticed, that UFAC was having a Memorandum of Agreement dated 28.12.1999 with TISCO for conversion of Manganese Ore/Coke into prime Silicon Manganese. As per the agreement, TISCO was to supply Manganese Ore and Coke/Coal free of cost at its site at Maneck Nagar. Rest of the raw materials and consumables i.e. Quartzite, Charcoal, Carbon paste, Dolomite, Fluxes, Refractories and

Transformer Oil required for the conversion of Manganese Ore/Coke into Silicon Manganese for TISCO was to be used by UFAC from their own purchases obtained under CT-3 as and where applicable. As per the agreement, UFAC was to charge job charges to TISCO at the rate of Rs.14,090/- per metric tonne ("PMT" for short) which was inclusive of cost of material added by UFAC. The job work charges were to be recovered from TISCO on commercial invoices. In the invoices, Silicon Manganese was to be charged at the rate of Rs.20,623/- PMT which also included cost of ingredients supplied by TISCO. The said invoices were prepared under erstwhile Rule 100-E of the Central Excise Rules.

5. The activities of the UFAC had come to a standstill for some period and it re-started its production in August, 1999 and was declared a sick company by the Board for Industrial and Financial Reconstruction (BIFR) under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). It is not in dispute that the UFAC carried out conversion of the raw materials supplied by

TISCO, on TISCO making the payment of conversion charges of Rs.14,090/- PMT of Silicon Manganese. However, while dispatching the Silicon Manganese to TISCO, excise duty was paid on the value of Rs.20,623/- PMT which included cost of raw materials supplied by TISCO as well as the inputs used by UFAC from their own purchases.

6. The Commissioner, Central Excise & Customs, Nagpur, issued a show cause notice to the UFAC dated 9.10.2001 in respect of the Silicon Manganese cleared during September 2000. It was stated in the said show cause notice, that the Circular No.67/98-Cus dated 14.9.1998, issued by the Central Board of Excise & Customs, New Delhi (hereinafter referred to as "the Board") had permitted the EOUs to undertake job-work on behalf of a DTA unit only in textile, readymade garments, agro-processing and granite sectors and by another Circular No.74/99 dated 5.11.1999 the said facility was extended to EOUs to undertake job-work on behalf of a DTA unit in aquaculture, animal husbandry, electronics hardware and software sectors. The show cause

notice therefore stated, that the sector in which respondent – Assessee had carried out the job-works was not covered by either of the Circulars and, as such, the said job-works were in violation of EXIM Policy. The show cause notice called upon the respondent – Assessee to show cause, as to why the said Silicon Manganese should not be charged to full Central Excise duty as per the proviso to Section 3(1) of the Central Excise Act, 1944 (hereinafter referred to as "the Act") by denying the benefit of Notification No.8/97 dated 1.3.1997 (hereinafter referred to as "the said Exemption Notification").-

7. The show cause notice also called upon the UFAC to show cause, as to why the central excise duty amounting to Rs.23,08,443/- short paid on Silicon Manganese cleared in DTA during September 2000, should not be recovered under Section 11-A of the Act. It also called upon to show cause, as to why the goods i.e. 296 MT Silicon Manganese valued at Rs.61,04,408/- cleared in DTA during the aforesaid period (i.e. September 2000) should not be held liable for confiscation. The said show cause notice also required to

show cause, as to why penalty should not be imposed on the UFAC under Rule 209 of the Central Excise Rules, 1944 read with Section 38-A of the Act.

8. In all, ten (10) show cause notices of various dates, last being 2.12.2003 for the identical charges for different periods (i.e. from March 2000 to May 2003) were issued.

9. In response to the show cause notices, UFAC had submitted its written replies stating therein, that in the show cause notices no violation of Central Excise Law has been alleged. It was submitted, that the removals in the DTA were in accordance with the permission granted by the Development Commissioner and, as such, there was no ground for denial of the concessional rate of duty laid down in the said Exemption notification. It was further submitted, that since the issue was based on the interpretation of the provisions of EXIM Policy, it was necessary to obtain ruling of the Development Commissioner on the issue. It was submitted, that since the Development Commissioner had clarified that the removals made by UFAC to TISCO were in

accordance with the permission under the EXIM Policy, there was no occasion to proceed further.

10. However, the Commissioner while passing the order-in-original came to a finding that the conversion work performed by UFAC was nothing but the job work and that the said job work done by an EOU was governed by para 9.17(b) of the EXIM Policy. He found, that under para 9.17(b) of the EXIM Policy, an EOU was permitted to do job work for a DTA unit only for the purposes of exporting the finished goods directly from EOU. However, since after the job work the finished goods were not exported by the EOU but cleared to a DTA unit for home consumption, the UFAC had contravened the provisions of the EXIM Policy. He also came to a finding, that the sector in which UFAC had undertaken the job work was not covered by the Circular dated 14.9.1998 and as extended by another Circular dated 5.11.1999, issued by the Board. He also came to a conclusion that since there was no sale of the goods but only return of the goods after job work, it was not a sale and, as such, contrary to the

provisions of the EXIM Policy. He, therefore, vide order dated 23.6.2003 confirmed the demand for Rs.11,56,08,497/- along with interest. He also imposed penalty of Rs.50 lakhs on UFAC. He further held, that the goods i.e. 15792.85 MTs of Silicon Manganese valued at Rs.32,31,30,000/- were liable for confiscation. However, since the said goods were not available for confiscation, redemption fine of Rs.50 lakhs in lieu of confiscation was imposed. Two more similar orders confirming demand as raised under subsequent show cause notices were also passed vide order dated 23.6.2003 and 15.3.2004. In the second order dated 23.6.2003 being Order-in-Original No.21 of 2003, personal penalty of Rs. 5 lakh was also imposed on the Chairman of UFAC, Dhunjishaw M. Naterwala.

11. Being aggrieved thereby, the UFAC as well as the Chairman of UFAC, Dhunjishaw M. Naterwala preferred appeals before the learned CESTAT.

12. The Commissioner (Appeals) had set aside the demand raised by the Revenue in respect of duty free carbon

paste procured by UFAC under the CT-3 certificate in terms of Notification No.1/95-CE dated 4.1.1995 for use in the conversion process of Manganese ore. Being Aggrieved thereby, the Revenue filed appeal before the CESTAT being Appeal No.E/1607/2006. By the impugned judgment dated 21.10.2005, the demand orders against UFAC were reversed by the CESTAT. Also, the CESTAT dismissed the Revenue's Appeal No. E/1607/2006 by order dated 7.7.2006, referring to its order and judgment dated 21.10.2005 in UFAC's appeal,

Hence, the present appeals.

13. We have heard Shri K. Radhakrishnan, learned Senior Counsel appearing for the appellant- Revenue and Shri M.H. Patil, learned counsel appearing on behalf of the respondent – UFAC._

14. The main contention raised by Shri Radhakrishnan, learned Senior Counsel on behalf of the Revenue is that, in view of proviso to sub-section (1) of Section 3 of the Act, the duty which is liable to be levied and collected on any excisable goods manufactured by a 100% EOU and brought

to any other place in India shall be leviable as per the duties of Customs, which are leviable under the Customs Act, 1962 on like goods produced and manufactured outside India, if imported into India. It is contended, that the proviso to Section 5A of the said Act specifically provides, that no exemption granted under Section 5A shall apply to the excisable goods which are produced or manufactured by a 100% EOU and brought to any other place in India. He further submits, that in the transaction between the UFAC and TISCO, there is no transfer of property in goods to the UFAC and, as such, it cannot be considered to be a sale under Section 4 of the Sale of Goods Act, 1930. The learned Senior Counsel therefore submits, that the order passed by the CESTAT deserves to be set aside and the orders-in-original passed by the Commissioner (Appeals) need to be maintained.

15. It is further contended by Shri Radhakrishnan, learned Senior Counsel, that the words "allowed to be sold in India" in clause (ii) of proviso to sub-section (1) of Section 5A

of the Act have been substituted by words "brought to any other place in India" with effect from 11.5.2001. He therefore submits, that in view of change in law from 11.5.2001, the statutory force of the said Exemption Notification is lost from 11.5.2001. In his submission, the said Exemption Notification would stand impliedly repealed with effect from 11.5.2001. He relies on the judgments of this Court in the cases of (1) ***M. Karunanidhi*** vs. ***Union of India & Anr.***[1]; (2) ***Dharangadhra Chemical Works*** vs. ***Dharangadhar Municipality and Anr.***[2]; and (3) ***Ratan Lal Adukia*** vs. ***Union of India***[3]. He further submits, that the terms "allowed to be sold in India" and "brought to any other place in India" have been considered by this Court in the cases of ***Siv Industries Ltd.*** vs. ***Commissioner of Central Excise & Customs***[4] and ***Sarla Performance Fibers Limited and ors.*** vs. ***Commissioner of Central Excise, Surat-II***[5] and as such,

1 (1979) 3 SCC 431
2 (1985) 4 SCC 92
3 (1989) 3 SCC 537
4 (2000) 3 SCC 367
5 (2016) 11 SCC 635

the UFAC would be liable to pay duty as if the goods were imported into India.

16. Shri M.H. Patil, on the contrary submits, that the case of the present appellant is covered by paragraph 9.9(b) of the EXIM Policy and not by paragraph 9.17(b) of the EXIM Policy. He further submits, that all the transactions made by UFAC were made only after the valid permissions were granted by the Joint Development Commissioner, SEEPZ. Learned counsel further submits, though initially vide Circular dated 14.9.1998 (No.67/98-Cus) the permission to undertake job work to EOU/EPZ from the DTA units was restricted only to units in textile, readymade garments, agro-processing and granite sectors and subsequently vide Circular dated 5.11.1999 (No.74/99-Cus) it was extended to certain other units; by a subsequent Circular dated 22.5.2000 (No.49/000-Cus), the said facility was extended to all the sectors. He submits, that this fact has not been taken into consideration by the Authority passing the Orders-in-Original. It is submitted that the Sponsoring Authority i.e.

the Development Commissioner, SEEPZ had clarified the position that the activity which was carried out by the UFAC was permissible under paragraph 9.9(b) of the EXIM Policy.

17. To counter the submission that there is no transfer of property in goods, Shri Patil submits, that the ‘sale’ and ‘purchase’ in the present case will have to be construed with reference to the definition of ‘sale’ and ‘purchase’ under the Central Excise Act and not under the Sale of Goods Act, 1930. Lastly, Shri Patil submits, that UFAC is entitled to the benefits of said Exemption Notification and, as such, the findings as recorded by the learned CESTAT warrant no interference.

18. We shall first deal with the submission of Shri K. Radhakrishnan, learned Senior Counsel appearing for the Revenue, to the effect that since in the transaction between UFAC and TISCO there is no transfer of property in goods, the same cannot be termed as ‘sale’ and therefore would not be covered under paragraph 9.9 (b) of the EXIM Policy. Shri

Radhakrishnan, in that respect, would rely on the provisions of the Sale of Goods Act, 1930.

19. We do not find any merit in the submission of Shri Radhakrishnan in this regard. It will be relevant to note that clause (h) of Section 2 of the Central Excise Act, 1944 specifically defines the terms 'sale' and 'purchase'. Section 2(h) of the Act reads thus:

> "2(h) "sale" and "purchase", with their grammatical variations and cognate expressions, mean any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration;"

20. The perusal of the definition makes it clear that when there is a transfer of possession of goods in the ordinary course of trade or business either for cash or for deferred payment or any other valuable consideration, the same would be covered by the terms 'sale' and 'purchase' within the meaning of the Central Excise Act, 1944. Undisputedly, in the present case, there is a transfer of Manganese Ore by

TISCO to UFAC for the purposes of processing the same and converting it into Silicon Manganese. Undisputedly, the same is also for a valuable consideration.

21. In this respect, it will be apposite to refer to the judgment of this Court in the case of ***Commissioner of Central Excise, New Delhi*** vs. ***Connaught Plaza Restaurant Private Limited, New Delhi***[6] wherein this Court observed thus:

> "**46.** We are unable to persuade ourselves to agree with the submission. It is a settled principle in excise classification that the definition of one statute having a different object, purpose and scheme cannot be applied mechanically to another statute. As aforesaid, the object of the Excise Act is to raise revenue for which various goods are differently classified in the Act. The conditions or restrictions contemplated by one statute having a different object and purpose should not be lightly and mechanically imported and applied to a fiscal statute for non-levy of excise duty, thereby causing a loss of revenue. [See *Medley Pharmaceuticals Ltd.* v. *CCE and Customs* [(2011) 2 SCC 601] (SCC p. 614, para 31) and *CCE* v. *Shree Baidyanath Ayurved Bhavan Ltd.* [(2009) 12 SCC 419] ] The provisions of PFA, dedicated to food adulteration, would require a technical and scientific understanding of "ice-cream" and thus, may require different standards for a good to be marketed as "ice-cream". These provisions are for ensuring quality control and

6 (2012) 13 SCC 639

> have nothing to do with the class of goods which are subject to excise duty under a particular tariff entry under the Tariff Act. These provisions are not a standard for interpreting goods mentioned in the Tariff Act, the purpose and object of which is completely different."

22. This Court has held, that it is a settled principle in excise classification that the definition of one statute having a different object, purpose and scheme cannot be applied mechanically to another statute. It has further been held, that the conditions or restrictions contemplated by one statute having a different object and purpose should not be lightly and mechanically imported and applied to a fiscal statute.

23. It is also equally well settled that the first principle of interpretation of plain and literal interpretation has to be adhered to. We are therefore of the considered view, that the narrower scope of the term 'sale' as found in the Sale of Goods Act, 1930 cannot be applied in the present case. The term 'sale' and 'purchase' under the Central Excise Act, 1944, if construed literally, it would give a wider scope and also

include transfer of possession for valuable consideration under the definition of the term 'sale'.

24. The next issue that requires consideration is as to whether under the EXIM Policy, UFAC was entitled to carry out the job-work for TISCO and whether it was entitled to exemption from payment of duty under the Exemption Notification.

25. It will be relevant to refer to the relevant clauses of Chapter 9 of the EXIM Policy. As per para 9.1 of the said EXIM Policy, units undertaking to export their entire production of goods may be set up under the EOU Scheme. As per para 9.9, the entire production of EOU units is required to 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 paragraph 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).
>
> (b) DTA sale upto 50% of the FOB value of exports may be made subject to payment of applicable duties and fulfilment of minimum NFEP prescribed in Appendix 1 of the Policy….."

26. It will also be relevant to refer to para 9.17 (b) of the EXIM Policy, which reads thus:

> "(b) EOU/EPZ units may undertake job-work for export, on behalf of DTA units, with the permission of Assistant Commissioner of Customs, provided the goods are exported direct from the EOU/EPZ units. For such exports, the DTA units will be entitled for refund of duty paid on the inputs by way of Brand Rate of duty drawback."

27. It can therefore be seen, that under para 9.9(a) of the EXIM Policy, EOU is entitled to sell the rejects in the DTA on prior intimation to the Customs authorities. Such sales are to be counted against DTA sale entitlement under paragraph 9.9(b) of the EXIM Policy. The sale of rejects shall be subject to payment of duties as applicable to sale under paragraph 9.9(b) of the EXIM Policy.

28. Under paragraph 9.9(b) of the EXIM Policy, DTA sale upto 50% of the FOB value of exports is also permitted subject to payment of applicable duties and fulfilment of minimum Net Foreign Exchange earning as a Percentage of exports (NFEP) as prescribed in Appendix-1 of the Policy.

29. Under paragraph 9.17 (b), the EOU/EPZ units are also entitled to undertake job-work for export, on behalf of DTA units, with the permission of Assistant Commissioner of Customs, provided the goods are exported direct from the EOU/EPZ units and for such exports, the DTA units will be entitled for refund of duty paid on the inputs by way of Brand Rate of duty drawback.

30. It can thus clearly be seen, that paragraph 9.9(b) and paragraph 9.17(b) of the EXIM Policy operate in totally different fields. Under paragraph 9.9 (b), an EOU is entitled to sell upto 50% of the FOB value of exports to DTA subject to payment of applicable duties and fulfilment of minimum NFEP as prescribed in Appendix-I of the Policy, whereas under paragraph 9.17(b), an EOU is entitled to undertake job-work for export, on behalf of DTA units, with the permission of Assistant Commissioner of Customs, provided the goods are exported direct from the EOU/EPZ units. In such type of exports, the DTA units would be entitled for

refund of duty paid on the inputs by way of Brand Rate of duty drawback.

31. The order-in-original states that since the UFAC has not exported the final product of Manganese raw material received by it from TISCO, it had violated the provisions of paragraph 9.17 (b) and 9.9(b) of the EXIM Policy. We will have to examine the correctness of the said finding. For that, it will also be relevant to examine as to whether under paragraph 9.9 (b) of the EXIM Policy, an EOU is entitled to carry a job-work on behalf of another unit in DTA.

32. The order-in-original refers to Circular No.67/98-cus dated 14.9.1998 and Circular No.74/99-cus dated 5.11.1999. However, the Commissioner, it appears, that while passing the order has not noticed the subsequent Circular No.49/2000-Cus dated 22.5.2000. It will be relevant to refer to paragraph 10 and 11 of the said Circular dated 22.5.2000.

> "10. Under para 9.17(d), the EOU/EPZ units in specific sectors were allowed to undertake job work for export on behalf of DTA units. This paragraph has been amended to extend this facility to all sectors. It has also been provided

> that DTA units shall be entitled to brand rate of duty draw back.
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> 11. The EOU /EPZ units in textiles, ready made garments and granite sectors were allowed to undertake job work on behalf of DTA units by Board's Circular 69/98-Cus., dated 14th September 1998. This facility was subsequently extended to the EOU/EPZ units in aquaculture, animal husbandry, hardware, software sector vide Board's Circular No. 74/99-Cus., dated 5th Nov., 1999. Now, it has been decided to extend this facility to EOU/EPZ units in all sectors. Further, it has been decided that the DTA units shall be entitled to avail of the brand rate of duty drawback for such job-work undertaken by EOUs/EPZ units concerned. Board's Circulars 67/98-Cus., dated 14-9-1998 and 74/99-Cus., dated 5-11-1999 stand modified to the above extent."
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> (emphasis supplied)

33. In view of paragraph 10 of the Circular dated 22.5.2000, the facility of undertaking job-work by EOU/EPZ units which was restricted to specific sectors has been amended and the said facility has been extended to all sectors. It has also been provided, that DTA units shall be entitled to brand rate of duty draw back. Similarly, paragraph 11 of the Circular dated 22.5.2000 also provides, that the facility which was given to EOU/EPZ to undertake

job-work on behalf of DTA units in textiles, readymade garments and granite sectors which was subsequently extended to the EOU/EPZ units in aquaculture, animal husbandry, hardware and software sectors vide Circular dated 5.11.1999, was extended to EOU/EPZ units in all sectors. It has further been provided, that DTA units shall be entitled to avail of the brand rate of duty drawback for such job-work undertaken by EOUs/EPZ units concerned. It also provides, that earlier circulars issued by the Board stood modified to the said extent.

34. We find, that failure on the part of the Commissioner, who passed the order-in-original, to notice the Circular dated 22.5.2000 has resulted in passing an erroneous order. It also appears, that after the show cause notice was issued to UFAC, the Commissioner had sought a clarification from the Sponsoring Authority i.e. the Development Commissioner, SEEPZ vide communication dated 6.11.2001. It will be relevant to refer to the communication dated 28.11.2001 addressed by Joint Development Commissioner to the

Additional Commissioner (CIU), Office of the Commissioner of Customs and Central Excise, Nagpur, relevant part of which reads thus:.

> "Sub: Manufacture of goods of DTA Unit by an EOU on conversion basis – Provisions of Para 9.17(b) of the EXIM Policy 1997-2002 – Correspondence regarding. M/s Universal Ferro Ltd., Tumsar
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> *********
>
> Kindly refer to letter C.No. II(39)/25/CIU/2001, dated 6th November, 2001, addressed to Development Commissioner, SEEPZ SEZ. Ministry of Commerce has clarified that the EXIM Policy permits the kind of operation being undertaken by the unit and it should be permitted."

35. UFAC had also sought a clarification to this effect from the Sponsoring Authority. It will be relevant to refer to the communication dated 23.10.2001, addressed by the Joint Development Commissioner, SEEPZ, relevant part of which reads as under:

> "Kindly refer to your query regarding DTA sale. The position clarified to Central Excise, Nagpur, is as follows: -
>
> 'The general question raised was whether while selling in DTA under DTA

> sale permission issued in terms of Para 9.9 (b) of the EXIM Policy, a unit can take supply of raw material from a Company in the DTA and give back the finished product (its approved as per LOP and also covered by the DTA sale permission).
>
> The unit is free to procure raw material in terms of Para 9.2 of Policy. The raw material is meant for production either export or clearance under valid DTA permission. The unit may convert the RM into its approved product and clear the same against valid DTA sale permission (under para 9.9(b) after paying applicable duty on assessable value of finished product, i.e. value of RM + conversion charges. There is no bar on this activity under the EXIM Policy.'"
>
> (emphasis supplied)

36. It is not in dispute that all transactions between UFAC and TISCO have been entered into after the necessary permission was obtained from the Development Commissioner. As a matter of fact, the order-in-original itself mentions thus:

> "The M/s. UFAC was a 100% EOU engaged in the manufacture of Ferro Manganese & Silico Manganese and clearances thereof for export as well as in DTA on payment of Central Excise duty. The unit was also doing job work for M/s TISCO in respect of Silico Manganese on the basis of Memorandum of Agreement dated 28.12.99 entered into with M/s. TISCO. These clearances of the goods

> manufactured on the basis of job work had been effected on payment of duty vide Notification no.8/97-Central Excise dated 1.3.97 against permission for DTA sales granted by the Development Commissioner SEEPZ, Mumbai from time to time."

37. It could thus be clearly seen, that the Original Authority itself has found that clearance of the goods manufactured on the basis of job-work had been effected on payment of duty vide Exemption Notification of 1997 against permission for DTA sales granted by the Development Commissioner, SEEPZ, Mumbai from time to time.

38. The combined reading of paragraph 9.9(b) of the EXIM Policy, the Circulars issued by the Board, particularly, the Circular dated 22.5.2000 and reply to the query of the Customs Authorities by the Development Commissioner, SEEPZ would clearly show, that the UFAC was entitled to carry out the job-work on behalf of TISCO on payment of duty as provided under Exemption Notification of 1997.

39. In this respect, it will also be apposite to refer to the Circular dated 6.5.2003 (No.38/2003-Cus) issued by the

Board which would further clarify the position, relevant part of which reads thus:

> "I am directed to say that cases have been brought to the notice of the Board that in case of stock transfer of goods to a DTA unit, EOUs were not being allowed the benefit of payment of concessional duty under notification No. 2/95 – Central Excise, dated 4-1-1995 even though the EOU had a valid DTA sale permission and had earned the DTA sale entitlement as provided under paragraph 6.8 of the Exim Policy 2002-2007 (Paragraph 9.9 of the Exim Policy 1997-2002) and fulfil other conditions specified in aforesaid notification. The benefit of concessional rate of duty was being denied on the ground that stock transfer of goods is not a sale and thus, not eligible for concessional rate of duty in terms of the above notification.
>
> 2. The matter has been examined by the Board. Notification 2/95 – C.E., dated 1-4-1995 provided for 50% exemption on..... "**goods allowed to be sold in India under and in accordance with the provisions of sub-paragraphs (a), (b), (d) and (h) of para 6.8 (earlier para 9.9) of the Exim Policy**".... The notification, therefore, allowed concessional duty only when goods were sold into DTA in accordance with para 6.8 (or 9.9) of the policy. What is covered in para 6.8 (or 9.9) of the policy has been clarified by Ministry of Commerce in Appendix 14-IH of the Handbook of procedures, 2002 – 2007 (Appendix 42 of the Hand Book of Procedures Vol – I – 1997 - 2002) that it covers **any clearance** to another DTA unit. Thus it is

> not open to the Department to interpret the Exim Policy in any other manner than what has been mentioned in Appendix 14 – IH (or 42). The word DTA sale has been loosely used in the Exim Policy and there is no definition of DTA sale in the Policy. Appendix 14-IH (or 42) clarifies that it not only covers transfers through sales to DTA units but also through other means. It would be illogical to contend that the concession is available if the goods are transferred on sale to an independent unit but it would not be available when removed on stock transfer to another division / unit of the same company."

40. We will now deal with the next submission made by Shri K. Radhakrishnan, learned Senior Counsel, to the effect that under proviso to sub-section (1) of Section 3 of the Central Excise Act, 1944, an EOU is liable to pay duty on the goods brought to a DTA, as if the goods were produced and manufactured outside India and were imported into India as per the provisions of the Customs Act, 1962 and that under Section 5A of the Central Excise Act, 1944, the Central Government has no power to grant exemption from payment of duty to an EOU.

41. To consider the submission, it will be relevant to refer to the relevant part of Sections 3 and 5A of the Central Excise Act, 1944, which read thus:

> "3. **Duty specified in the Fourth Schedule to be levied**.-(1) There shall be levied and collected in such manner as may be prescribed a duty of excise to be called the Central Value Added Tax (CENVAT) on all excisable goods (excluding goods produced or manufactured in special economic zones) which are produced or manufactured in India as, and at the rates, set forth in the Fourth Schedule:
>
> Provided that the duty of excise which shall be levied and collected on any excisable goods which are produced or manufactured by a hundred per cent export-oriented undertaking and brought to any other place in India, shall be an amount equal to the aggregate of the duties of customs which would be leviable under the Customs Act, 1962 (52 of 1962) or any other law for the time being in force, on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value, the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975 (51 of 1975)."
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> 5A. **Power to grant exemption from duty to excise**.-(1) If the Central Government is

satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after removal) as may be specified in the notification, excisable goods of any specified description from the whole or any part of the duty of excise leviable thereon:

Provided that, unless specifically provided in such notification, no exemption therein shall apply to excisable goods which are produced or manufactured-

(i) In a free trade zone or a special economic zone and brought to any other place in India; or

(ii) by a hundred per cent export-oriented undertaking and brought to any other place in India.

Explanation-In this proviso, “free trade zone”, “special economic Zone” and “hundred per cent export-oriented undertaking” shall have the same meanings as in Explanation 2 to sub-section (1) of Section 3.”

42. A perusal of sub-section (1) of Section 3 of the Act would show, that sub-section (1) of Section 3 provides for levy and collection of duty of excise in such manner as may be prescribed to be called the Central Value Added Tax (CENVAT) on all excisable goods, which are produced or

manufactured in India as, and at the rates, set forth in the Fourth Schedule. However, the said sub-section (1) of Section 3 excludes the applicability thereof, to the goods produced or manufactured in special economic zones. The proviso to sub-section (1) of Section 3 of the Act is applicable to the excisable goods, which are produced or manufactured by a 100% export-oriented undertaking when such goods are brought to any other place in India. It provides, that in such a case, an amount equal to the aggregate of the duties of customs which would be leviable under the Customs Act, 1962 or any other law for the time being in force, on like goods produced or manufactured outside India if imported into India and where the said duties of customs are chargeable by reference to their value, the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975.

43. Relying on the proviso to sub-section (1) of Section 3 of the Act, it is the contention of Shri Radhakrishnan that since UFAC has supplied the goods to TISCO, which is any other place in India, it will be liable to pay the import duty as if the goods were imported in India.

44. However, for considering the said submission, it will also be necessary to refer to Section 5A of the Act, which is already reproduced above. Sub-Section (1) of Section 5A of the Act provides, that if the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions, to be fulfilled before or after removal, as may be specified in the notification, excisable goods of any specified description from the whole or any part of the duty of excise leviable thereon. The proviso thereto provides, that unless specifically provided in such notification, no exemption therein shall apply to excisable goods which are produced or manufactured in a free trade zone or a special economic zone and brought to any other

place in India; or by a hundred per cent export-oriented undertaking and brought to any other place in India.

45. It is the submission of Shri Radhakrishnan that a combined reading of proviso to sub-section (1) of Section 3 of the Act and proviso to sub-section (1) of Section 5A of the Act, would not entitle the Central Government to grant any exemption to an EOU when it brings the goods to any other place in India (i.e. DTA) and the duty that would be leviable would be as if the said goods were imported in India.

46. We are of the considered view, that if such an interpretation is accepted, the words "unless specifically provided in such notification" in sub-section (1) of Section 5A will have to be ignored and the said words would be rendered otiose. It is a settled principle of law that while interpreting a provision due weightage will have to be given to each and every word used in the statute.

47. In this respect, we may gainfully refer to the following observations of the Constitution Bench of this Court in the case of ***Hardeep Singh*** vs. ***State of Punjab and others***[7]:

7 (2014) 3 SCC 92

"**42.** To say that powers under Section 319 CrPC can be exercised only during trial would be reducing the impact of the word "inquiry" by the court. It is a settled principle of law that an interpretation which leads to the conclusion that a word used by the legislature is redundant, should be avoided as the presumption is that the legislature has deliberately and consciously used the words for carrying out the purpose of the Act. The legal maxim *a verbis legis non est recedendum* which means, "from the words of law, there must be no departure" has to be kept in mind.

**43.** The court cannot proceed with an assumption that the legislature enacting the statute has committed a mistake and where the language of the statute is plain and unambiguous, the court cannot go behind the language of the statute so as to add or subtract a word playing the role of a political reformer or of a wise counsel to the legislature. The court has to proceed on the footing that the legislature intended what it has said and even if there is some defect in the phraseology, etc., it is for others than the court to remedy that defect. The statute requires to be interpreted without doing any violence to the language used therein. The court cannot rewrite, recast or reframe the legislation for the reason that it has no power to legislate.

**44.** No word in a statute has to be construed as surplusage. No word can be rendered ineffective or purposeless. Courts are required

to carry out the legislative intent fully and completely. While construing a provision, full effect is to be given to the language used therein, giving reference to the context and other provisions of the statute. By construction, a provision should not be reduced to a "dead letter" or "useless lumber". An interpretation which renders a provision otiose should be avoided otherwise it would mean that in enacting such a provision, the legislature was involved in "an exercise in futility" and the product came as a "purposeless piece" of legislation and that the provision had been enacted without any purpose and the entire exercise to enact such a provision was "most unwarranted besides being uncharitable". (Vide *Patel Chunibhai Dajibha* v. *Narayanrao Khanderao Jambekar* [AIR 1965 SC 1457] , *Martin Burn Ltd.* v. *Corpn. of Calcutta* [AIR 1966 SC 529] , *M.V. Elisabeth* v. *Harwan Investment and Trading (P) Ltd.* [1993 Supp (2) SCC 433 : AIR 1993 SC 1014] , *Sultana Begum* v. *Prem Chand Jain* [(1997) 1 SCC 373] , *State of Bihar* v. *Bihar Distillery Ltd.* [(1997) 2 SCC 453 : AIR 1997 SC 1511] , *Institute of Chartered Accountants of India* v. *Price Waterhouse* [(1997) 6 SCC 312] and *South Central Railway Employees Coop. Credit Society Employees' Union* v. *Registrar of Coop. Societies* [(1998) 2 SCC 580 : 1998 SCC (L&S) 703 : AIR 1998 SC 703] .)"

48. We therefore find, that the interpretation as sought to be placed by Shri Radhakrishnan would render the term

"unless specifically provided in such notification" in sub-section (1) of Section 5A otiose or useless. Such an interpretation would not be permissible. We find, that the harmonious construction of sub-Section (1) of Section 5A of the Act and the proviso thereto would be, that an EOU which brings the excisable goods to any other place in India would not be entitled for a general exemption notification unless it is so specifically provided in such a notification.

49. In this respect, it will be relevant to refer to Exemption Notification of 1997 as amended by Notification No.21/97-C.E. dated 11.4.1997, relevant part of which reads thus:

> "**Effective rate of duty on certain goods produced in FTZ or EOU.** – In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the **finished products, rejects and waste or scrap** specified in the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and produced or manufactured, in a hundred per cent export-oriented undertaking or a free trade zone wholly from the raw materials produced or manufactured in India, and allowed to be sold in India under and in accordance with the

> provisions of sub-paragraphs (a), (b), (c), (d) and (f) of paragraph 9.9 or of paragraph 9.20 of the Export and Import Policy, 1st April, 1997 – 31st March, 2002, from so much of the duty of excise leviable thereon under section 3 of the Central Excise Act, 1944 (1 of 1944), **as is in excess of an amount equal to the aggregate of the duties of excise leviable under the said Section 3 of the Central Excise Act or under any other law for the time being in force** on like goods, produced or manufactured in India other than in a hundred percent export-oriented undertaking or a free trade zone, if sold in India."

50. The bare reading of the aforesaid Notification would amply make it clear, that the Central Government after being satisfied that it was necessary in the public interest so to do, thereby exempted the finished products, rejects and waste or scrap which was produced or manufactured in a hundred per cent export-oriented undertaking or a free trade zone wholly from the raw materials produced or manufactured in India and allowed to be sold in India under and in accordance with the provisions of sub-paragraphs (a), (b), (c), (d) and (f) of paragraph 9.9 or of paragraph 9.20 of the EXIM Policy, from so much of the duty of excise leviable thereon under Section 3 of the Central Excise Act, 1944, as is in excess of an

amount equal to the aggregate of the duties of excise leviable under the said Section 3 of the Central Excise Act or under any other law for the time being in force on like goods, produced or manufactured in India other than in a hundred per cent export-oriented undertaking or a free trade zone, if sold in India.

51. It could thus be seen, that the said notification specifically provides grant of exemption to the EOUs from the payment of duties, which are in excess of what is leviable under sub-section (1) of Section 3 of the Central Excise Act, 1944 on like goods, produced or manufactured in India. In our considered view, since the said Exemption Notification specifically mentions, that the goods produced or manufactured by an 100% EOU, which are allowed to be sold in India in accordance with para 9.9(b) of the EXIM Policy, the proviso would be inapplicable thereby, requiring the duties to be paid, as are required to be paid under sub-Section (1) of Section 3 of the said Act. The conditions which

can be culled out for enabling to get the benefit of the said Exemption Notification are as under:

(i) The finished products, rejects and waste or scrap specified in the Schedule to the Central Excise Tariff Act, 1985 should be produced or manufactured in the 100% export-oriented undertaking or a free trade zone;

(ii) The said finished products should be manufactured wholly from the raw materials produced or manufactured in India;

(iii) They are allowed to be sold in India under and in accordance with the provisions of sub-paragraphs (a), (b), (c), (d) and (f) of paragraph 9.9 or of paragraph 9.20 of the EXIM Policy.

52. Undisputedly, in the present case, the transaction between UFAC and TISCO satisfies all the three conditions. The goods are produced and manufactured by UFAC, an 100% export-oriented unit; they are manufactured wholly from the raw materials produced or manufactured in India and, thirdly, they have been allowed to be sold in India in

accordance with the provisions of paragraph 9.9(b) of the EXIM Policy.

53. We will now consider the submission of Shri Radhakrishnan, learned Senior Counsel, that in view of substitution of the words “allowed to be sold in India” by “brought to any other place in India”, the said Exemption Notification shall stand impliedly overruled/repealed.

54. No doubt, that the reliance placed by the learned Senior Counsel on the judgments of this Court to the effect that if there are inconsistencies in two statutes, the later would prevail is well placed. This Court in ***Deep Chand*** vs. ***State of Uttar Pradesh***[8] has laid down the following principles to ascertain whether there is repugnancy or not:

> “(1) Whether there is direct conflict between the two provisions;
>
> (2) Whether the legislature intended to lay down an exhaustive code in respect of the subject matter replacing the earlier law;
>
> (3) Whether the two laws occupy the same field.”

8 AIR 1959 SC 648

The said view has been consistently followed by this Court in catena of judgments.

55. We do not find, that there would be any conflict in the amended provisions of clause (ii) of the proviso to sub-section (1) of Section 5A of the Act and the said Exemption Notification. In any case, by the 2001 Amendment, the legislature has not laid down any exhaustive code in respect of the subject matter in replacing the earlier law. It appears, that the said Amendment has been incorporated to bring the said clause (ii) of sub-Section (1) of Section 5A in sync with the words used in clause (i) of the proviso to sub-section (1) of Section 5A of the Act and the words used in the proviso to sub-section (1) of Section 3 of the Act. In that view of the matter, we find, that the said contention is without substance.

56. Insofar as the reliance placed by the learned Senior Counsel on the judgment of this Court in the case of ***Siv Industries Ltd.*** (supra) so as to distinguish the terms “allowed to be sold in India” and “brought to any other place

in India" is concerned, we find, that the said judgment would rather support the case of the respondent – Assessee. It would be relevant to refer to the following observation in paragraph 18 of the said judgment, which reads thus:

> "Thus it is apparent that debonding and permission to sell in India are two different things having no connection with each other. It also becomes apparent that in view of the EOU Scheme as modified from time to time and corresponding amendments to Section 3 of the Act the expression "allowed to be sold in India" in the proviso to Section 3(1) of the Act is applicable only to sales made up to 25% of production by 100% EOU in DTA and with the permission of the Development Commissioner. No permission is required to sell goods manufactured by 100% EOU lying with it at the time approval is granted to debond."

57. It is to be noted that the case that fell for consideration before this Court was with regard to debonding. What this Court has held is, that no permission is required to sell goods manufactured by 100% EOU lying with it, at the time approval is granted to debond. It has been held, that the expression "allowed to be sold in India" in the proviso to

Section 3(1) of the Act was applicable only to sales made upto 25% of production by 100% EOU in DTA and with the permission of the Development Commissioner. Admittedly, in the present case, the sales made by UFAC to TISCO are within the permissible limits and with the permission of the Development Commissioner.

58. The view taken by this Court in the case of ***Sarla Performance Fibers Limited*** (supra) is a similar view, taken following the decision of this Court in ***Siv Industries Ltd.*** (supra). As such, the said judgment also is of no assistance to the case of the appellant.

59. In that view of the matter, we do not find, that the CESTAT has committed any error in reversing the orders-in-original passed by the Commissioner. The appeals are, therefore, dismissed.

**......................CJI.**
**[S.A. BOBDE]**

**.....................J.**
**[B.R. GAVAI]**

**…………………..J.**
**[SURYA KANT]**

**NEW DELHI;**
**MARCH 06, 2020**