CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70199 of 2017

(Arising out of Order-in-Appeal No.11-12/ST/APPL-Alld/LKO/2017 dated 06/01/2017 passed by Commissioner (Appeals) Central Excise & CGST, Lucknow)

M/S OBEETEE PVT. LTD., ...Appellant
(Bisunderpur, Civil Lines, Mirzapur, U.P.)

VERSUS

Commissioner of Customs, Central Excise &

Service Tax, Lucknow ....Respondent

(Sector-H, Aliganj Lucknow-22024)

WITH

Service Tax Appeal No.70200 of 2017

(Arising out of Order-in-Appeal No.11-12/ST/APPL-Alld/LKO/2017 dated 06/01/2017 passed by Commissioner (Appeals) Central Excise & CGST, Lucknow)

M/S OBEETEE PVT. LTD., ...Appellant
(Bisunderpur, Civil Lines, Mirzapur, U.P.)

VERSUS

Commissioner of Customs, Central Excise &

Service Tax, Lucknow ....Respondent

(Sector-H, Aliganj Lucknow-22024)

APPEARANCE:

Shri Dharmendra Srivastava, Chartered Accountant for the Appellants
Shri Sandeep Pandey, Authorised Representative for the Respondents

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NOs.70023-70024/2024

DATE OF HEARING : 10 October, 2023
DATE OF DECISION : 10 October, 2023

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No. 11-12/ST/APPL-Alld/LKO/2017 dated 06/01/2017 passed by

Commissioner (Appeals) Central Excise & CGST, Lucknow. Vide the impugned order Learned Commissioner (Appeals) has held as follows:-

"I have carefully gone through the impugned orders, appeal memorandum and written/ oral submission made by the appellant. As the both appeals have similar issue, I take up both the appeals altogether for consideration. The issues to be decided in both cases are as under:

i) Whether appellant is eligible for refund of Service Tax under the notification no. 41/2012 dated 20.06.2016 which is less than 20% of the difference between the amount of rebate available under the procedure specified in para 2 and para 3 of the notification on the basis of claim in totality or shipping bill wise.

ii) Whether the appellant is eligible for refund under the said notification where refund is less than five hundred in individual shipping bill/ bill of export.

iii) Whether appellant is eligible for refund on the basis of invoices received through email.

iv) Whether authority travelled beyond the show cause notice.

To examine the first issue, I would like to reproduce the relevant para of the said notification:

Para (2) the rebate shall be claimed in the following manner, namely:-

……

From the above I find that there is two mechanism to claim the refund of service tax paid in export of goods. Either appellant may claim on the basis of specified rate available under the para (2) of the notification or on the basis of documents as per procedure specified in para (3).

In the instant cases, appellant have opted the option specified in para (3). However, I find that para (3) has limitation to extent that refund claim under para (3) shall not be claimed wherever the difference between the *amount of refund under the procedure specified in para (2) & para (3) is less than 20% of refund available as specified in para (2) of the said notification. I find that whenever claim of refund/rebate or export benefit is claimed it is always processed shipping bill wise. Each claim is considered individually shipping bill wise, not in totality, though amount is sanctioned collectively against bundle of shipping bills. Appellant's contention that claim should be considered in totality is not tenable in the light of discussion supra. In the same manner I find that whenever the claim of refund is less than Rs. 500.00 in individual shipping bills the same shall not be allowed as per condition (j) of para 3 of notification. When an alternative option is available, it is open to appellant they may exercise option specified in para (2) of the notification.*

I observed that adjudicating authority have rejected the claim on the ground that claim is made on the basis of invoices received on email. Appellant have contended that invoices in electronic form have been given same legal validity as hard copies of invoices. I see there is force in argument of appellant as long as the payment of service tax is not challenged refund claim on export goods which Is an Incentive for the exporter should not be denied on this ground, if otherwise condition of the refund claim envisaged in the notification is fulfilled. Further, I find that appellant have submitted the certificate issued from the Chartered Account M/s P.L. Tandon & Co., Kanpur to fulfill the condition as envisaged in para (i) of the said notification. Therefore, refund claim in respect of shipping bills where claim is more than 50% of F.O.B. value shall be allowed to the appellant in case where shipping bill has been certified by the Chartered Accountant.

I find that adjudicating authority have rejected the claim on the ground that in some cases container number is not matching with invoices issued by M/s Container Corporation of India and Shipping Bills. In a matter of fact *refund of service tax paid on export goods has been given as a incentive to boost the export. Refund is available only in the cases where it has been proved beyond doubt that services has actually been utilized for export of the consignment against which claim has been filed under the notification. I find that in the instance case appellant have failed to prove the same as details of invoices issued by M/s Container Corporation India do not match with the details of container mentioned in the shipping bills.*

Appellant have contended that adjudicating authority travelled beyond the show cause notice and rejected refund in respect of shipping bills on the ground that these refund claims are less than five hundred rupees.

I find that the impugned order is issued for disposal of show cause notice cum processing of refund claim, though this issue was not raised in the show cause notice, I find that this has been taken in the course of disposal of refund claim and reason has been recorded for denial of refund. Even than remedy is always available to the appellant by way of appeals which has already been addressed in para supra.

In view of above discussion, facts and circumstances of case, I pass the following order:

ORDER

Appeal No. 158-ST/APPL/ALLD/2014 and 377-ST/APPL/ALLD/2014 of M/s Obeetee Pvt. Ltd. Bisunderpur, Civil Lines, Mirzapur is allowed in above term."

2.1 Appellant had filed a refund claims of Rs.9,44,888/- for the period from September, 2012 to March, 2013 and of Rs.24,31,239/- for the period from April, 2013 to September, 2013 under Para 3 of Notification No.41/2012-ST dated 29.06.2012 before the Assistant Commissioner, Mirzapur on 29.03.2014 claiming refund of service tax paid on taxable services.

2.2 During the scrutiny of the refund claim, it was observed that appellant had,-

- in some cases had not submitted original invoices and the invoices produced were not signed,
- in some cases shipping bills were not supported by the bill of lading;
- the details mentioned in the invoices issued by M/s Container Corporation of India Ltd. are not in match with that mentioned on the corresponding shipping bills/ bill of lading.
- in respect of some of shipping bills the refund claimed was not in terms of clause (c) of Para-1 of the said notification,
- in respect of some of shipping bills the credit involved was less than Rs.500/- and not in terms of Para 3 (j) of the said notification,
- in respect of some of shipping bills the percentage of refund was more than 0.50% of the FOB value, without accompanying with the Certificate of Chartered Accountant, supporting invoices of Banking & other Financial services do not match with the shipping bills and annexure to Form A-1; and

2.3 Accordingly, show cause notices, C NO V(76)(18)ST/Ref/ OBEETEE/MZP/112/2013/330 dated 13.01.2014, for refund claim filed for period September 2012 to March 2013 and for refund claim filed for period April 2013 to September 2013, C NO V(76)(18)ST/Ref/OBEETEE/MZP/17/2014/2569 dated 30.05. 2014, were issued to the appellant proposing to rejection of refund claim.

2.4 The first refund claims was partly allowed by the original authority holding as follows:

"I hereby sanction the refund claim amounting to Rs 54,410/- (Rs Fifty Four One thousand Four hundred and ten only) in terms of Notification No 41/2012-ST dated 29.06.2012."

2.5 The refund claim for subsequent period was also partly allowed holding as follows:

"I hereby sanction the refund claim amounting to Rs 171,759/- (Rs One Lakh Seventy One thousand Seven hundred and fifty

nine only) in terms of Notification No 41/2012-ST dated 29.06.2012."

2.6 Aggrieved with the above orders, appellant preferred appeals before the Commissioner (Appeals) who vide the impugned order disposed the appeal of appellants as stated in para-1 above

2.7 Aggrieved by the said order, appellant preferred appeal before this Tribunal.

3.1 We have heard Shri Dharmendra Srivastava, Learned Chartered Accountant appearing for the appellant and Shri Santosh Kumar Learned Authorised Representative appearing for the Revenue.

3.2 Arguing for the appellants Learned Chartered Accountant submits that:

- the condition in para c of Notification No.41/2012 does not require that difference in the amount of rebate under procedure in para 2 and para 3 is less than twenty percent of rebate available under procedure as per para 2 was satisfied shipping bill wise
- they have claimed this refund on the basis of aggregate value by showing that condition at Para (1)(c) is satisfied in respect of all the shipping bills filed by them during the period.
- In any case, if the Commissioner (Appeals) view is to be accepted then also the matter needs to be re-determine for the reason that in most of the shipping bills this condition is satisfied. No calculation has been provided in respect of shipping bills for which revenue has contended that this condition is not satisfied.
- Notification also do not lay down that condition as specified in para 3 (j) needs to be satisfied shipping bill wise. This condition simply states that where the total amount of the rebate/ refund is less than Rs 500/- the same shall not be allowed. Relaince is placed on the decision in the case of Lucid Colloids Limited [2017 (52) STR 152 ()]

- Container number has been given in the invoices of CCI & same container number has also been mentioned in the shipping bills, so this can be correlated by the container number. Sufficient correlation is thus available to show nexus between the input services and the export goods.
- The Order-in-Appeal is bad in law and should be set aside.

3.3 Arguing for the respondent-Revenue Learned Authorized Representative reiterates the findings referred in the impugned order.

4.1 We have considered the impugned order along with the submissions made in the appeal and during the course of argument.

4.2 The text of Notification No.41/2012 is reproduced bellow:-

> *"G.S.R. (E).-In exercise of the powers conferred by section 93A of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) number 52/2011-Service Tax, dated the 30th December, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 945(E), dated the 30th December, 2011, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby grants rebate of service tax paid (hereinafter referred to as rebate) on the taxable services which are received by an exporter of goods (hereinafter referred to as the exporter) and used for export of goods, subject to the extent and manner specified herein below, namely :-*
>
> *Provided that –*
>
> *(a) the rebate shall be granted by way of refund of service tax paid on the specified services*
>
> *Explanation. - For the purposes of this notification,-*
>
> *(A) "specified services" means –*
>
> *(i) in the case of excisable goods, taxable services that have been used beyond the*

place of removal, for the export of said goods;

(ii) in the case of goods other than (i) above, taxable services used for the export of said goods;

(B) "place of removal" shall have the meaning assigned to it in section 4 of the Central Excise Act,1944(1 of 1944);.

(b) the rebate shall be claimed either on the basis of rates specified in the Schedule of rates annexed to this notification (hereinafter referred to as the Schedule), as per the procedure specified in paragraph 2 or on the basis of documents, as per the procedure specified in paragraph 3;

(c) the rebate under the procedure specified in paragraph 3 shall not be claimed wherever the difference between the amount of rebate under the procedure specified in paragraph 2 and paragraph 3 is less than twenty per cent of the rebate available under the procedure specified in paragraph 2;

(d) no CENVAT credit of service tax paid on the specified services used for export of goods has been taken under the CENVAT Credit Rules, 2004;

(e) the rebate shall not be claimed by a unit or developer of a Special Economic Zone;

(2) the rebate shall be claimed in the following manner, namely:-

(a) manufacturer-exporter, who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder shall register his central excise registration number and bank account number with the customs;

(b) exporter who is not so registered under the provisions referred to in clause (a), shall register his service tax code number and bank account number with the customs;

(c) service tax code number referred to in clause (b), shall be obtained by filing a declaration in Form A-2 to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be,

having jurisdiction over the registered office or the head office, as the case may be, of such exporter;

(d) the exporter shall make a declaration in the electronic shipping bill or bill of export, as the case may be, while presenting the same to the proper officer of customs, to the effect that—

(i) the rebate of service tax paid on the specified services is claimed as a percentage of the declared Free On Board(FOB)value of the said goods, on the basis of rate specified in the Schedule;

(ii) no further rebate shall be claimed in respect of the specified services, under procedure specified in paragraph 3 or in any other manner, including on the ground that the rebate obtained is less than the service tax paid on the specified services;

(iii) conditions of the notification have been fulfilled;

(e) service tax paid on the specified services eligible for rebate under this notification, shall be calculated by applying the rate prescribed for goods of a class or description, in the Schedule, as a percentage of the FOB value of the said goods;

(f) amount so calculated as rebate shall be deposited in the bank account of the exporter;

(g) shipping bill or bill of export on which rebate has been claimed on the basis of rate specified in the Schedule, by way of procedure specified in this paragraph, shall not be used for rebate claim on the basis of documents, specified in paragraph 3;

(h) where the rebate involved in a shipping bill or bill of export is less than rupees fifty, the same shall not be allowed;

(3) the rebate shall be claimed in the following manner, namely:-

(a) rebate may be claimed on the service tax actually paid on any specified service on the basis of duly certified documents;

(b) the person liable to pay service tax under section 68 of the said Act on the taxable service provided to the exporter for export of goods shall not be eligible to claim rebate under this notification;

(c) the manufacturer-exporter, who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, shall file a claim for rebate of service tax paid on the taxable service used for export of goods to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of manufacture in Form A-1;

(d) the exporter who is not so registered under the provisions referred to in clause (c), shall before filing a claim for rebate of service tax, file a declaration in Form A-2, seeking allotment of service tax code, to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, of such exporter;

(e) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code number to the exporter referred to in clause (d), within seven days from the date of receipt of the said Form A-2;

(f) on obtaining the service tax code, exporter referred to in clause (d), shall file the claim for rebate of service tax to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, in Form A-1;

(g) the claim for rebate of service tax paid on the specified services used for export of goods shall be filed within one year from the date of export of the said goods.

Explanation .- For the purposes of this clause the date of export shall be the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under section 51 of the Customs Act, 1962(52 of 1962);

(h) where the total amount of rebate sought under a claim is upto 0.50% of the total FOB value of export goods and the exporter is registered with the Export Promotion Council sponsored by Ministry of Commerce or Ministry of Textiles, Form A-1 shall be submitted along with relevant invoice, bill or challan, or any other document for each specified service, in original, issued in the name of the exporter, evidencing payment for the specified service used for export of the said goods and the service tax paid thereon, certified in the manner specified in sub-clauses (A) and (B):

(A) if the exporter is a proprietorship concern or partnership firm, the documents enclosed with the claim shall be self-certified by the exporter and if the exporter is a limited company, the documents enclosed with the claim shall be certified by the person authorised by the Board of Directors;

(B) the documents enclosed with the claim shall also contain a certificate from the exporter or the person authorised by the Board of Directors, to the effect that specified service to which the document pertains has been received, the service tax payable thereon has been paid and the specified service has been used for export of the said goods under the shipping bill number;

(i) where the total amount of rebate sought under a claim is more than 0.50% of the total FOB value of the goods exported, the procedure specified in clause (h) above

shall stand modified to the extent that the certification prescribed thereon, in sub-clauses (A) and (B) shall be made by the Chartered Accountant who audits the annual accounts of the exporter for the purposes of the Companies Act, 1956 (1 of 1956) or the Income Tax Act, 1961(43 of 1961), as the case may be;

(j) where the rebate involved in a claim is less than rupees five hundred, the same shall not be allowed;

(k) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after satisfying himself,-

(i) that the service tax rebate claim filed in Form A-1 is complete in every respect;

(ii) that duly certified documents have been submitted evidencing the payment of service tax on the specified services;

(iii) that rebate has not been already received on the shipping bills or bills of export on the basis of procedure prescribed in paragraph 2;and

(iv) that the rebate claimed is arithmetically accurate, refund the service tax paid on the specified service within a period of one month from the receipt of said claim:

Provided that where the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, has reason to believe that the claim, or the enclosed documents are not in order or that there is a reason to deny such rebate, he may, after recording the reasons in writing, take action, in accordance with the provisions of the said Act and the rules made thereunder;

(4) Where any rebate of service tax paid on the specified services has been allowed to an exporter on export of goods but the sale proceeds in respect of said goods are not received by or on behalf of the exporter, in India, within the period allowed by the Reserve Bank of India

under section 8 of the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such rebate shall be deemed never to have been allowed and may be recovered under the provisions of the said Act and the rules made thereunder;

(5) This notification shall come into effect on the 1st day of July, 2012."

4.3 On perusal of the above notification it is quite evident that the person claiming the benefit of this notification, will get rebate of the service tax paid either on the basis of prescribed rates as per (2) or the basis of actual service tax paid in respect of specified services used for exporting the goods. The notification itself prescribes the procedures for claiming the rebate and also prescribes the conditions to be fulfilled for claiming the benefit of this notification either under (2) or (3) of the notification.

4.4 Condition (c) of the first proviso prescribes that procedure under (3) cannot be availed in case the difference between the amount claimed as rebate, in terms of the procedure as per (3) and that as per (2) is less than 20%. There is no condition prescribed in the Notification as per which the rebate claims as admissible under (2) and (3) are to be calculated for the difference shipping bill wise for the purpose of determining eligibility as per this condition shipping bill wise. It is settled position in law that any notification needs to be interpreted strictly on the basis of the words used in the notification and not by interpolating or extrapolating anything further in the wordings of the notification. Hon'ble Supreme Court has in the case of Dilip Kumar & Co [2018 (361) ELT 577 (SC)] held as follows:

"28. With the above understanding the stage is now set to consider the core issue. In the event of ambiguity in an exemption notification, should the benefit of such ambiguity go to the subject/assessee or should such ambiguity should be construed in favour of the revenue, denying the benefit of exemption to the subject/assessee?

There are catena of case laws in this area of interpretation of an exemption notification, which we need to consider herein. The case of Commissioner of Inland Revenue v. James Forrest, [(1890) 15 AC 334 (HL)] - is a case which does not discuss the interpretative test to be applied to exemption clauses in a taxation statute - however, it was observed that 'it would be unreasonable to suppose that an exemption was wide as practicable to make the tax inoperative, that it cannot be assumed to have been in the mind of the Legislature' and that exemption 'from taxation to some extent increased the burden on other members of the community'. Though this is a dissenting view of Lord Halsbury, LC, in subsequent decisions this has been quoted vividly to support the conclusion that any vagueness in the exemption clauses must go to the benefit of the revenue. Be that as it is, in our country, at least from 1955, there appears to be a consistent view that if the words in a taxing statute (not exemption clause) are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and it does not matter if the taxpayer escapes the tax net on account of Legislatures' failure to express itself clearly (See the passage extracted hereinabove from Kesoram Industries case (supra)).

29. The first case with which we need to concern ourselves is the case in Union of India v. The Commercial Tax Officer, West Bengal and Ors. - AIR 1956 SC 202. It may be noted that this case was dealt with by five Learned Judges of this Court resulting in two different opinions; one by the then Chief Justice of India, S.R. Das for the majority, and Justice B.P. Sinha (as His Lordship then was) rendering minority view. The question before this Court was whether the sale of goods made by one private mill to the Government of India, Ministry of Industries and Supplies were to be deducted as taxable turnover of the mill for the exemption given under Section 5 of the Bengal Finance (Sales Tax) Act, 1941 (Bengal Act VI of 1941). The *exemption under Section 5(2)(a)(iii) of the Bengal Finance (Sales Tax) Act, 1941 provided for exemption 'to sales to the Indian Stores Department, the Supply Department of the Government of India, and any railway or water transport administration'. The Court was to interpret the aforesaid provision in order to ascertain whether the sale to the Government of India, Ministry of Industries and Supplies would be covered under the Section.*

30. The majority was of the view that the Government of India, Ministry of Industries and Supplies was not similar to those mentioned in the exemption notification. The majority extensively relied on the history and origin of Ministry of Industries and Supplies and concluded that the functions of the aforesaid Ministry were different from the erstwhile departments mentioned under the exemption provision. The majority reasoned that the exemption being the creation of the statute itself, it should have to be construed strictly and the interpretation cannot be extended to sales to other departments. We might find some clue as to the content of a strict construction also. It was canvassed before the Court that the object of Section 5(2)(a)(iii) of the relevant statute, was to give exemption not to the particular departments but to the sale of such goods to those departments and, therefore, sale of those goods made to any Departments of the Government of India, which came to be charged with the duty of purchasing those goods should also come within the purview of the exemption. The Court while repelling the aforesaid interpretation, reasoned as under :

"We are unable to accept this line of reasoning. This interpretation will unduly narrow the scope and ambit of the exemption by limiting it to sales of only those goods as, at the date of the Act, used to be sold to those two departments and sales of other goods even to those two departments, however necessary for the prosecution of the war, would not get benefit of the exemption. Such could

not possibly be the intention of the Legislature as expressed by the language used by it in framing the Section."

31. The aforesaid placitum is suggestive of the fact that the Courts utilized the rule of strict interpretation in order to decipher the intention of the Legislature and thereafter provide appropriate interpretation for the exemption provided under the provisions of the Act which was neither too narrow nor too broad. It may be noted that the majority did not take a narrow view as to what strict interpretation would literally mean; rather they combined legislative intent to ascertain the meaning of the statute in accordance with the objective intent of the Legislature.

32. On the contrary, the minority opinion of Justice B.P. Sinha (as His Lordship then was) provided a purposive interpretation for Section 5(2)(a)(iii) of the Act, which is clear from the following passage :

"The judgment under appeal is based chiefly on the consideration that the exemption clause in question does not in terms refer to the newly created department which now goes by the name of the Ministry of Industry and Supply. But this department insofar as it deals with industry, is not concerned with the main purchasing activities of the Government of India. The exemption was granted in respect of the purchasing activity of the Government of India and that function continues to be assigned to the Supply Department which has now become a wing of the newly created department of the Government. The question therefore arises whether in those circumstances the Government of India could claim the benefit of the exemption. The High Court in answering that question in the negative has gone upon mere nomenclature. It has emphasized the change in the name and overlooked the substance of the matter."

33. The minority construed 'strict interpretation' to be an interpretation wherein least number of "determinates in *terms of quantity" would fall under the exemption. The minority referred to an old English case of Commissioner of Inland Revenue v. James Forrest, (1890) 15 AC 334. It may be relevant to note that the minority could not find the justification to apply strict interpretation as the exemption notification was broad enough to include exemptions for commodities purchased by the Government of India. The Court was of the opinion that the strict interpretation provided by the majority was uncalled for as there was no additional burden on others by giving such exemptions. The relevant observations are as follows -*

"The High Court referred to the observations of Lord Halsbury in the case of Commissioner of Inland Revenue v. James Forrest (1890) 15 AC 334, to the effect that exemptions from taxation should be strictly construed because otherwise the burden of taxation will fall on other members of the community. Those observations, in my opinion, have no relevance to the facts and circumstances of the present controversy, because we know that the exemption was granted to the Government of India in the department dealing with purchase of certain commodities and articles without reference to quantity. As already pointed out, the Indian Stores Department was concerned with purchase of stores for public services on behalf of all Central Departments of Government and local Government, etc., and the Government of Bengal as then constituted was one of the provinces of India which have been receiving subsidies and subventions to make up the deficit in their budgets. As a matter of fact, as stated on behalf of the Bengal Government the concession was granted in order to enable business communities within the province of Bengal to compete on favourable terms with others outside Bengal in the matter of supplying the needs of the Government. Hence, there is no question of liberal construction of the exemption resulting in throwing a greater burden on other citizens. On the other hand, the

larger the sales in the province of Bengal as it used to be, the greater the benefit to the business community doing business within that province. It was therefore stated at the Bar that though the present case involved taxes amounting to less than Rs. 10,000, the question arising for determination in this case affected much larger amounts because such sales within the province amounted to several crores. I should have thought that the business community in the province of Bengal having had the advantage of the transactions of sale, the Government of Bengal in all fairness should have allowed the purchasing agency of the Government of India the benefit of the exemption until that benefit was in terms withdrawn sometimes in the beginning of 1949."

34. In Hansraj Gordhandas v. H.H. Dave, Asst. Collector of Central Excise & Customs, Surat and Ors., AIR 1970 SC 755 = (1969) 2 SCR 253 = 1978 (2) E.L.T. J350 (S.C.) [hereinafter referred as Hansraj Gordhandas case' for brevity], wherein this Court was called upon to interpret an exemption notification issued under the Central Excise Act. It would be relevant to understand the factual context which gave rise to the aforesaid case before the Court. The appellant was sole proprietor who used to procure cotton from a co-operative society during the relevant period. The society had agreed to carry out the weaving work for the appellant on payment of fixed weaving charges at Re. 0.19 np. per yard which included expenses the society would have to incur in transporting the aforesaid cotton fabric. In the years 1959 and 1960, the Government issued an exemption notification which exempted cotton fabrics produced by any co-operative society formed of owners of cotton powerlooms, registered on or before 31st March, 1961. The question before the Court was whether the appellant who got the cotton fabric produced from one of the registered co-operative society was also covered under the aforesaid notification. It may be of some significance *that the revenue tried to interpret the aforesaid exemption by relying on the purposive interpretation by contending that the object of granting the above exemption was to encourage the formation of co-operative societies which not only produced cotton fabrics but also consisted of members, not only owning but having actually operated not more than four powerlooms during the three years immediately preceding their having joined the society. The policy was that instead of each such member operating his looms on his own, he should combine with others by forming a society to produce clothes. It was argued that the goods produced for which exemption could be claimed must be goods produced on his own and on behalf by the society. The Court did not countenance such purposive interpretation. It was held that a taxing legislation should be interpreted wholly by the language of the notification. The relevant observations are :*

"It is well-established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the taxpayer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different, but that is not the case here. In this connection we may refer to the observations of Lord Watson in Salomon v. Salomon & Co., (1897) AC 22) :

'Intention of the Legislature is a common but very slippery phrase, which, popularly understood may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended to be done or not to be done can only be

legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication.'

It is an application of this principle that a statutory notification may not be extended so as to meet a casus omissus. As appears in the judgment of the Privy Council in Crawford v. Spooner.

'…. we cannot aid the Legislature's defective phrasing of the Act, we cannot add, and mend, and, by construction, make up deficiencies which are left there.'

Learned Counsel for the respondents is possibly right in his submission that the object behind the two notifications is to encourage the actual manufacturers of handloom cloth to switch over to powerlooms by constituting themselves in co-operative Societies. But the operation of the notifications has to be judged not by the object which the rule making authority had in mind but by the words which it has employed to effectuate the legislative intent."

35. In the judgment of two Learned Judges in Union of India v. Wood Papers Limited, (1990) 4 SCC 256 = 1990 (47) E.L.T. 500 (S.C.) [hereinafter referred as Wood Papers Ltd. case' for brevity], a distinction between stage of finding out the eligibility to seek exemption and stage of applying the nature of exemption was made. Relying on the decision in Collector of Central Excise v. Parle Exports (P) Ltd., (1989) 1 SCC 345, it was held "Do not extend or widen the ambit at the stage of applicability. But once that hurdle is crossed, construe it liberally". The reasoning for arriving at such conclusion is found in para 4 of Wood Papers Ltd. case (supra), which reads -

"… Literally exemption is freedom from liability, tax or duty. Fiscally, it may assume varying shapes, specially, in a growing economy. For instance tax holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective, etc. That is why its construction, unlike charging provision, has to be tested on

different touchstone. 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 or progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principles requires it to be construed strictly. Truly speaking liberal and strict construction of an exemption provision are 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 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..."

(emphasis supplied)

36. In Mangalore Chemicals & Fertilizers Ltd. v. Dy. Commissioner of Commercial Taxes, (1992) Supp. 1 SCC 21 [hereinafter referred as 'Mangalore Chemicals case' for brevity], the facts of the case were that the State Government issued a notification in exercise of power under Section 8A of the Karnataka Sales Tax Act, 1957, providing certain incentives to entrepreneurs starting new industries in the State pursuant to State's policy for "rapid industrialization". The notification contains a package of reliefs and incentives including one concerning relief from payment of sales tax with which the case was concerned. There was no dispute that the appellant was entitled to the benefit of the Notification dated June 30, 1969. There was also no dispute that the refunds were eligible to be adjusted against sales tax payable for respective years. The only controversy was whether the appellant, not having actually secured the "prior permission" would be *entitled to adjustment having regard to the words of the Notification of August 11, 1975, that "until permission of renewal is granted by the Deputy Commissioner of Commercial Taxes, the new industry should not be allowed to adjust the refunds". The contention of the appellants therein was that the permission for the three years had been sought well before the commencement of the respective years but had been withheld for reasons which were demonstrably extraneous. Therefore, contention was that if, in these circumstances, the Deputy Commissioner could withold the permission.*

37. This Court while accepting the interpretation provided by the appellant, observed on the aspect of strict construction of a provision concerning exemptions as follows :

"… There is support of judicial opinion to the view that exemptions from taxation have a tendency to increase the burden on the other unexempted class of taxpayers and should be construed against the subject in case of ambiguity. It is an equally well-known principle that a person who claims an exemption has to establish his case.

... The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the legislature manifest on the statutory language. Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. If the words are plain and clear and directly convey the meaning, there is no need for any interpretation. It appears to us the true rule of construction of a provision as to exemption is the one stated by this Court in Union of India v. Wood Papers Ltd. [(1990) 4 SCC 256 = 1990 SCC (Tax) 422 = JT (1991) SC 151]."

Three important aspects which comes out of the discussion are the recognition of horizontal equity by this Court as a consideration for application of strict interpretation, *subjugation of strict interpretation to the plain meaning rule and interpretation in favour of exclusion in light of ambiguity.*

38. We will now consider another Constitution Bench decision in Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal, (2011) 1 SCC 236 = 2010 (260) E.L.T. 3 (S.C.) [hereinafter referred as 'Hari Chand case' for brevity]. We need not refer to the facts of the case which gave rise to the questions for consideration before the Constitutional Bench. K.S. Radhakrishnan, J., who wrote the unanimous opinion for the Constitution Bench, framed the question, viz., whether manufacturer of a specified final product falling under Schedule to the Central Excise Tariff Act, 1985 is eligible to get the benefit of exemption of remission of Excise duty on specified intermediate goods as per the Central Government Notification dated 11-8-1994, if captively consumed for the manufacture of final product on the ground that the records kept by it at the recipient end would indicate its "intended use" and "substantial compliance" with procedure set out in Chapter 10 of the Central Excise Rules, 1944, for consideration? The Constitution Bench answering the said question concluded that a manufacturer qualified to seek exemption was required to comply with the preconditions for claiming exemption and therefore is not exempt or absolved from following the statutory requirements as contained in the Rules. The Constitution Bench then considered and reiterated the settled principles qua the test of construction of exemption clause, the mandatory requirements to be complied with and the distinction between the eligibility criteria with reference to the conditions which need to be strictly complied with and the conditions which need to be substantially complied with. The Constitution Bench followed the ratio in Hansraj Gordhandas case (supra), to reiterate the law on the *aspect of interpretation of exemption clause in para 29 as follows -*

"The law is well-settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, thought at times, some latitude can be shown, if there is failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption."

39. The Constitution Bench then considered the doctrine of substantial compliance and "intended use". The relevant portions of the observations in paras 31 to 34 are in the following terms -

"31. Of course, some of the provisions of an exemption notification may be directory in nature and some are mandatory in nature. A distinction between the provisions of a statute which are of substantive character and were built in with certain specific objectives of policy, on the one hand, and those which are merely procedural and technical in there nature, on the other, must be kept clearly distinguished...

Doctrine of substantial compliance and "intended use"

32. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the *concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the pre-requisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleased if a clear statutory pre-requisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the Court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.*

33. A fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance with an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements *that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted.*

34. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance with those factors which are considered as essential."

40. After considering the various authorities, some of which are adverted to above, we are compelled to observe how true it is to say that there exists unsatisfactory state of law in relation to interpretation of exemption clauses. Various Benches which decided the question of interpretation of taxing statute on one hand and exemption notification on the other, have broadly assumed (we are justified to say this) that the position is well-settled in the interpretation of a taxing statute : It is the law that any ambiguity in a taxing statute should enure to the benefit of the subject/assessee, but any ambiguity in the exemption clause of exemption notification must be conferred in favour of revenue - and such exemption should be allowed to be availed only to those subjects/assesses who demonstrate that a case for exemption squarely falls within the parameters enumerated in the notification and that the claimants satisfy all the conditions precedent for availing exemption. Presumably for this reason the Bench which decided Surendra Cotton Oil Mills case (supra) observed that there exists unsatisfactory state of law and *the Bench which referred the matter initially, seriously doubted the conclusion in Sun Export Case (supra) that the ambiguity in an exemption notification should be interpreted in favour of the assessee.*

41. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State.

42. In Govind Saran Ganga Saran v. Commissioner of Sales Tax, 1985 Supp (SCC) 205, this Court pointed out three components of a taxing statute, namely subject of the tax; person liable to pay tax; and the rate at which the tax is to be levied. If there is any ambiguity in understanding any of the components, no tax can be levied till the ambiguity or defect is removed by the legislature [See Mathuram Agrawal v. State of Madhya Pradesh, (1999) 8 SCC 667; Indian Banks' Association v. Devkala Consultancy Service, (2004) 4 JT 587 = AIR 2004 SC 2615; and Consumer Online Foundation v. Union of India, (2011) 5 SCC 360.].

43. There is abundant jurisprudential justification for this. In the Governance of rule of law by a written Constitution, there is no implied power of taxation. The tax power must be specifically conferred and it should be strictly in accordance with the power so endowed by the Constitution itself. It is for this reason that the Courts insist upon strict compliance before a State demands and extracts money from its citizens towards various taxes. Any ambiguity in a *taxation provision, therefore, is interpreted in favour of the subject/assessee. The statement of law that ambiguity in a taxation statute should be interpreted strictly and in the event of ambiguity the benefit should go to the subject/assessee may warrant visualizing different situations. For instance, if there is ambiguity in the subject of tax, that is to say, who are the persons or things liable to pay tax, and whether the revenue has established conditions before raising and justifying a demand. Similar is the case in roping all persons within the tax net, in which event the State is to prove the liability of the persons, as may arise within the strict language of the law. There cannot be any implied concept either in identifying the subject of the tax or person liable to pay tax. That is why it is often said that subject is not to be taxed, unless the words of the statute unambiguously impose a tax on him, that one has to look merely at the words clearly stated and that there is no room for any intendment nor presumption as to tax. It is only the letter of the law and not the spirit of the law to guide the interpreter to decide the liability to tax ignoring any amount of hardship and eschewing equity in taxation. Thus, we may emphatically reiterate that if in the event of ambiguity in a taxation liability statute, the benefit should go to the subject/assessee. But, in a situation where the tax exemption has to be interpreted, the benefit of doubt should go in favour of the revenue, the aforesaid conclusions are expounded only as a prelude to better understand jurisprudential basis for our conclusion. We may now consider the decisions which support our view.*

44. In Hansraj Gordhandas case (supra), the Constitutional Bench unanimously pointed out that an exemption from taxation is to be allowed based wholly by the language of the notification and exemption cannot be gathered by necessary implication or by construction of words; in other words, one has to look to the language *alone and the object and purpose for granting exemption is irrelevant and immaterial.*

45. In Parle Exports case (supra), a Bench of two-Judges of this Court considered the question whether non-alcoholic beverage base like Gold spot base, Limca base and Thumps Up base, were exempted from payment of duty under the Central Government notification of March, 1975. While considering the issue, this Court pointed out the strict interpretation to be followed in interpretation of a notification for exemption. These observations are made in para 17 of the judgment, which read as follows :

"How then should the Courts proceed? The expressions in the Schedule and in the notification for exemption should be understood by the language employed therein bearing in mind the context in which the expressions occur. The words used in the provision, imposing taxes or granting exemption should be understood in the same way in which these are understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them. It is, however, necessary to bear in mind certain principles. The notification in this case was issued under Rule 8 of the Central Excise Rules and should be read along with the Act. The notification must be read as a whole in the context of the other relevant provisions. When a notification is issued in accordance with power conferred by the statute, it has statutory force and validity and, therefore, the exemption under the notification is as if it were contained in the Act itself. See in this connection the observations of this Court in Orient Weaving Mills (P) Ltd. v. Union of India, 1962 Supp 3 SCR 481 = AIR 1963 SC 98. See also Kailash Nath v. State of U.P., AIR 1957 SC 790. The principle is well-settled that when two views of a notification are possible, it should be construed in favour of the subject as notification is part of a fiscal enactment. But in this connection, it is well to remember the observations of the Judicial Committee in Coroline M. Armytage v.

Frederick Wilkinson, (1878) 3 AC 355, that it is only, however, in the event of there being a real difficulty in ascertaining the meaning of a particular enactment that the question of strictness or of liberality of construction arises. The Judicial Committee reiterated in the said decision at page 369 of the report that in a taxing Act provisions enacting an exception to the general rule of taxation are to be construed strictly against those who invoke its benefit. While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided."

In the above passage, no doubt this Court observed that "when two views of a notification are possible, it should be construed in favour of the subject as notification is part of fiscal document". This observation may appear to support the view that ambiguity in a notification for exemption must be interpreted to benefit the subject/assessee. A careful reading of the entire para, as extracted hereinabove would, however, suggest that an exception to the general rule of tax has to be construed strictly against those who invoke for their benefit. This was explained in a subsequent decision in Wood Papers Ltd. case (supra). In para 6, it was observed as follows :

"... In Collector of Central Excise v. Parle Exports (P) Ltd., (1989) 1 SCC 345, this Court while accepting that exemption clause should be construed liberally applied rigorous test for determining if expensive items like Gold Spot base or Limca base of Thums Up base were covered in the expression food products and food preparations used in Item No. 68 of First Schedule of Central Excises and Salt Act and held 'that it should not be in consonance with spirit and the reason of law to give exemption for non-alcoholic beverage basis under the notification in question'. Rationale or ratio is same. Do not extend or

widen the ambit at stage of applicability. But once that hurdle is crossed construe it liberally. Since the respondent did not fall in the first clause of the notification there was no question of giving the clause a liberal construction and hold that production of goods by respondent mentioned in the notification were entitled to benefit."

46. The above decision, which is also a decision of two-Judge Bench of this Court, for the first time took a view that liberal and strict construction of exemption provisions are to be invoked at different stages of interpreting it. The question whether a subject falls in the notification or in the exemption clause, has to be strictly construed. When once the ambiguity or doubt is resolved by interpreting the applicability of exemption clause strictly, the Court may construe the notification by giving full play bestowing wider and liberal construction. The ratio of Parle Exports case (supra) deduced as follows :

"Do not extend or widen the ambit at stage of applicability. But once that hurdle is crossed, construe it liberally".

47. We do not find any strong and compelling reasons to differ, taking a contra view, from this. We respectfully record our concurrence to this view which has been subsequently, elaborated by the Constitution Bench in Hari Chand case (supra)."

4.5 After taking the note of above decision, Hon'ble Supreme Court ahs in case of Mother Superior Adoration Convent [2021 (376) E.L.T. 242 (S.C.)] observed as follows:

"22. A recent 5-Judge Bench judgment was cited by Shri Gupta in Commr. of Customs v. Dilip Kumar & Co. - (2018) 9 SCC 1 = 2018 (361) E.L.T. 577 (S.C.). The 5-Judge Bench was set up as a 3-Judge Bench in Sun Export Corporation v. Collector of Customs - 1997 (6) SCC 564 = 1997 (93) E.L.T. 641 (S.C.) was doubted, as the said judgment ruled that an ambiguity in a tax exemption provision must be interpreted so as to favour the assessee claiming the benefit of such exemption. This Court after

dealing with a number of judgments relating to exemption provisions in tax statutes, ultimately concluded as follows :

"66. To sum up, we answer the reference holding as under :

66.1 Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

66.2 When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.

66.3 The ratio in Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] is not correct and all the decisions which took similar view as in Sun Export case stand overruled."

23. It may be noticed that the 5-Judge Bench judgment did not refer to the line of authority which made a distinction between exemption provisions generally and exemption provisions which have a beneficial purpose. We cannot agree with Shri Gupta's contention that sub-silentio the line of judgments qua beneficial exemptions has been done away with by this 5-Judge Bench. It is well settled that a decision is only an authority for what it decides and not what may logically follow from it [see Quinn v. Leathem - [1901] AC 495 as followed in State of Orissa v. Sudhansu Sekhar Misra - (1968) 2 SCR 154 at 162, 163].

24. This being the case, it is obvious that the beneficial purpose of the exemption contained in Section 3(1)(b) must be given full effect to, the line of authority being applicable to the facts of these cases being the line of authority which deals with beneficial exemptions as opposed to exemptions generally in tax statutes. This being the case, a literal formalistic interpretation of the statute at hand is to be eschewed. We must first ask *ourselves what is the object sought to be achieved by the provision, and construe the statute in accord with such object. And on the assumption that any ambiguity arises in such construction, such ambiguity must be in favour of that which is exempted. Consequently, for the reasons given by us, we agree with the conclusions reached by the impugned judgments of the Division Bench and the Full Bench."*

4.6 From the notification itself it is evident that the notification has been issued to grant the rebate/ refund of service tax paid in respect of export of goods. Such a beneficial notification which provide for refund/ rebate of taxes to the exporters are in line with the most talked philosophy in this regards "that export the goods and not the taxes". If the taxes paid on the goods either at the stage of input of finished product as exported, are exported than that will render the exports of the country un-competitive with the goods being exported from elsewhere. Hence all such notifications which provide for disburdening the exports from the domestic taxes need to be interpreted with the above objective in mind.

4.7 Further from plain reading of the wordings in the Par 2 and para 3, it is evident that the para 2, refers to rebate shipping bill wise whereas para 3 refers to the claim to be made for a particular period. Admittedly appellant has filed the rebate claim in terms of para 3 and not para 2, and the claim has been filed for a period of six months. Further authorities below should have substantiated the rejection of the refund claim on this account by actually pointing to the shipping bills which do not fulfil the said condition. We do not find any application of mind in this respect by the adjudicating authority or the appellate authority.

4.8 In the case of Lucid Colloids Limited [2017 (52) STR 152 (T-Del))] interpreting a similar notification 17/2009-ST dated following has been held:

"5. *As regards the claims less than Rs. 500/- for certain shipping bills, ld. Counsel submits that Para 2(h) states that - "No refund claim shall be allowed if the same is for*

> *an amount of less than rupees five hundred." In this regard, refund claim does not mean that an individual service will form a refund claim. The word refund claim means a total refund claim. He submits that when one refund claim is filed for a number of services, the total amount of refund claim is to be considered and if the total refund claim is less than Rs. 500/-, the same be rejected.*
>
> *The impugned refund claim has been disallowed in all cases where service tax refund is less than Rs. 500/- in respect of each shipping bill. This is clearly a wrong interpretation of Para 2(h) of the relevant notification. Since the total service tax refund claim is much more than Rs. 500/-, rejecting the refund in each case is not called for."*

4.8 We do not find any merits in the impugned order by holding that this calculation has to be done shipping bill wise and rebate claim rejected where the difference arrived at in respect of those shipping bills where the papers arrived at is less than twenty percent when such a condition is not prescribed by the notification. Our view is in accordance with settled law as per the decisions referred above, that a notification needs to be interpreted on the basis of the conditions specified on the basis of word used in the notification without any addition or subtraction. Hence, we do not find any merits in the interpretation given by the Commissioner (Appeal) in the impugned order.

4.9 In our view the approach of revenue while interpreting such notifications which are in respect of the export of goods should be in line with the avowed policy of making the exports competitive, by ensuring that the goods are exported denuded of the domestic taxes. There should be an effort to co-relate the documents and determine the correct and due amount of rebate/ refund. The minimum co-relation which can establish the nexus of the input services with the export goods should be enough to allow the rebate/ refund as envisaged. We find that refund/ rebate in this case is sought to be disallowed for the reason that shipping bill No mentioned on the invoice of Container Corporation of India do not tally with the shipping bill against which refund/ rebate claim has been made. We agree with the submissions made by the appellant that if the container number mentioned on the invoice tallies with that on shipping bill sufficient co-relation is established.

4.10 We are clear in our mind that the order which are passed without consideration of the submissions made by the appellant and considering all the grounds agitated by them are bad in law. The order should cogently analyze the submissions and state the reasons for rejecting or accepting the same. The order without disclosing the reasons in succinct manner cannot be sustained. In case of Siemenns Engg & Manufacturing Co [(1976) 2 SCC 1981] Hon'ble Supreme Court observed:

"Before we part with this appeal, we must express our regret at the manner in which the Assistant Collector, the Collector and the Government of India disposed of the proceedings before them. It is incontrovertible that the proceedings before the Assistant Collector arising from the notices demanding differential duty were quasi judicial proceedings and so also were the proceedings in revision before the Collector and the Government of India. Indeed, this was not disputed by the learned counsel appearing on behalf of the respondents. It is now settled law that where an authority makes an order in exercise of a quasi-judicial function it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with N. M. Desai v. The Testeels Ltd. & Anr. (C. A.245 of 1970 decided on 17th December. 1975.
[(1979) 3 SCC 225*]) But, unfortunately, the Assistant Collector did not choose to give any reasons in support of the order made by him con firming the demand for differential duty. This was in plain disregard of the requirement of law. The Collector in revision did give some sort of reason but it was hardly*

satisfactory. He did not deal in his order with the arguments advanced by the appellants in their representation dated 8th December, 1961 which were repeated in the subsequent representation dated 4th June, 1965. It is not suggested that the Collector should have made an elaborate order discussing the arguments of the appellants in the manner of a court of law. But the order of the Collector could have been a little more explicit and articulate so as to lend assurance that the case of the appellants has been properly considered by him. If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. The Government of India also failed to give any reasons in support or its order rejecting the revision application. But we may presume that in rejecting the revision application, it adopted the same reason which prevailed with the Collector. The reason given by the Collector was, as already pointed out, hardly satisfactory and it would, therefore, have been better if the Government of India had given proper and adequate reasons dealing with the arguments advanced on behalf of the appellants while rejecting the revision application. We hope and trust that in future the Customs authorities will be more careful in adjudicating upon the proceedings which come before them and pass properly reasoned orders, so that those *who are affected by such orders are assured that their case has received proper consideration at the hands of the Customs authorities and the validity of the adjudication made by the Customs authorities can also be satisfactorily tested in a superior tribunal or court. In fact, it would be desirable that in cases arising under Customs and Excise laws an independent quasi-judicial tribunal, like the Income-tax Appellate Tribunal or the Foreign Exchange Regulation Appellate Board, is set up which would finally dispose of appeals and revision applications under these laws instead of leaving the determination of such appeals and revision applications to the Government of India. An independent quasi-judicial tribunal would definitely inspire greater confidence in the public mind."*

4.11 Similar preposition has been laid in the following decisions:

- Best Infra Projects Ltd [2010-TIOL-987-CESTAT-Bang]
- Ratlam Wires Pvt. Ltd. [2010 (262) ELT 118 (T-Del)]
- Sudtrac Linkages Pvt. Ltd. [2010 (251) ELT 535 (T-Del)]
- Khan Estate Agency [2009 (248) ELT 179 (Bom)]
- Harsingar Guthka Pvt. Ltd. [2009 (245) ELT 558 (T-Del)]
- Ramnord Research Laboratories Pvt. Ltd [2009 (239) ELT 83 (T-Mum)]
- Golden Tobacco Ltd. [2012 (275) ELT 577 (T-Del)]
- Rungta Project Ltd. [2011 (24) STR 495 (T-Del)]

5.1 In view of the above discussions, the impugned order to the extent appealed against is set aside and appeals are allowed.

(Operative part of the order pronounced in open court)

Sd/-
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp