

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

Regional Bench

CUSTOMS APPEAL NO. 40312 OF 2020

(Arising out of Order-in-Original No. 74269/2020-CH-IV dated 28.02.2020 (received on 06.30.2020) passed by the Commissioner of Customs, Chennai IV)

Commissioner of Customs
Chennai IV
Custom House, Chennai 600001

..... Appellant

VERSUS

**M/s. India Land and Properties
Limited**
Plot No. 14, 3rd Main Road
Ambattur Industrial Estate,
Ambattur, Chennai 600058

..... Respondent

with

CUSTOMS APPEAL NO. 40603 OF 2020

(Arising out of Order-in-Original No. 74269/2020 dated 06.03.2020 passed by the Commissioner of Customs, Chennai IV)

**M/s. India Bulls Real Estate
Limited [IBREL]**
Plot No. 448-451, Udyog Vihar,
Phase V, Gurgaon,
Haryana – 122016

..... Appellant

VERSUS

Commissioner of Customs (Chennai-IV)
Rajaji Salai,
Chennai-600001

..... Respondent

APPEARANCE:

Ms. P. Usha, Authorized Representative for the Department
Shri P. Saravanan Advocate for the Appellant

**CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**DATE OF HEARING: 19.07.2021
DATE OF DECISION: 03.08.2021**

FINAL ORDER NOS. 41713-41714 / 2021**P. Venkata Subba Rao**

These two appeals are filed against the same impugned order and hence are being disposed of together.

2. M/s. India Land and Properties Ltd¹ is an infrastructure service provider² to the Software Technology Park³. It imported various capital goods during the period 2007 to 2011 by availing the benefit of exemption notification No. 153/93-Cus dated 13.8.1993 as amended meant for ISP. ILPL obtained the requisite permissions for setting up the STP from the Ministry of Commerce and also obtained private bonded warehouse licence from the Customs for the area and after executing a bond, imported the goods claiming the benefit of exemption notification 153/93-Cus dated 13-8-1993 as amended 1/2017-Cus dated 20-1-2017. This notification exempted telematic infrastructural equipment when imported into India for being used for the export of software out of India under STP hundred percent export oriented scheme subject to several conditions, of which the condition in question is condition (ii) which read as follows in the original notification no 153/93-Cus dated 13-8-1993:

"(ii) The importer uses the said goods only for the purpose of export of software"

3. This condition has been modified by notification 1/2017-Cus dated 20-1-2017 as follows:

1 ILPL
2 ISP
3 STP

"(ii) the goods shall only be used for the purpose of export of software by the STP units located in the premises of ISP"

4. This amended condition is relevant for the period of dispute. It is undisputed that ILPL used the imported goods to provide common service centre for the units located in the STP some of which were STP units and others were non- STP units. STP is treated as a custom bonded area and goods imported and used in it are treated as if the goods have not been cleared for home consumption and are still within the Customs Area. There are exemption notifications which deal with the goods imported into them. Often, after sometime, the importer may want to de-bond the goods, i.e., clear them for home consumption due to many reasons. For instance, the entire STP may be dissolved and converted into domestic area after obtaining permission from the Development Commissioner or the goods may have to be replaced with newer and better goods and the existing goods sold in the domestic market. At that stage, the amount of duty payable is calculated and the importer will have to pay the duty but generally on a lower, depreciated value.

5. In this case, ILPL applied for de-bonding of the goods. Condition (v) of the exemption notification 153/1993, as amended, provided for reckoning the depreciation to arrive at a value for calculation of duty.

This condition reads as follows:

" (v) without prejudice to any other provision contained in this notification, the Assistant Commissioner of Customs or Deputy Commissioner of Customs may, in accordance with the Foreign Trade Policy, allow the ISP to clear the goods specified in the Annexure to this notification on payment of duty on the depreciated value thereof and at the rate in force on the date of clearance. The depreciation shall be allowed in straight line method as specified below, namely:-
For every quarter in the first year@4%
For every quarter in the second year@ 3%

For every quarter in the third year@ 3%
 For every quarter in the fourth and fifth year @ 2.5%
 And thereafter for every quarter @ 2%
 Explanation-....."
 Thus, the condition of depreciation is without prejudice to any
 of the other conditions of the exemption notification."

6. In the impugned order, the Commissioner observed that ILPL had not fulfilled condition (ii) of the exemption notification inasmuch as the goods were used both for both STP and non-STP units but the condition is that " *the goods shall **only be used for the purpose of export of software by the STP units located in the premises of ISP***". The Commissioner confirmed a demand on proportionate basis reckoning the area of STP units and non-STP units in the STP.

7. It is the case of the Revenue that the Commissioner erred in confirming the demand on proportionate basis after recording that ILPL has not fulfilled the condition of the notification. If the Commissioner found that the condition was not fulfilled, she should have denied the entire exemption sought under the notification and confirmed the demand. It is also the contention of the Revenue that the Commissioner gave the benefit of depreciation available under the notification without any basis. This benefit is available if the importer is eligible for the exemption notification and after some period, decides to debond the goods. If ILPL is not entitled to the benefit of the exemption notification at all, it cannot get the benefit of a lower value reckoned in the exemption notification. Therefore, duty should be charged on the full value of the goods as proposed in the show cause notice.

8. On the other hand, it is the case of ILPL that it has largely used the imported goods for STP units but has also used it for some non-

STP units. It has achieved the Net Foreign Exchange requirement as required under the policy. It has not used the imported goods except in STP area. As an ISP, it provides infrastructural support to the units in the STP and does not export software by itself. Since there was inadequate demand for setting up the STP units, some portions of the STP area were given to non-STP unit without which, considering the market conditions, the STP could not have survived. What was imported is Telematic equipment which supported all the units situated in the STP area both which are STP units and those which are non-STP units. Even the non-STP units do export software. Merely because the facilities have also been allowed to be used by some non-STP units, they should not be denied the benefit of the exemption notification of the equipment which was used in providing the service. This is more so because the main objective of the STP, namely, achieving the Net Foreign Exchange requirement has been met by them. The exemption notification should not be interpreted literally but must be interpreted based on its purpose and since they fulfilled the purpose, they should be given full benefit of the exemption notification.

9. **In short, both sides want the impugned order to be set aside. Revenue wants the matter to be remanded to the original authority after setting aside the impugned order.**

10. We have considered the submissions on both sides.

11. ILPL has, admittedly, availed the benefit of the exemption notification which is available subject to some conditions. Condition (ii) as applicable during the relevant period mandates "the goods shall **only be used for the purpose of export of software by the STP**

units located in the premises of ISP". It is undisputed that ILPL used the goods for both STP and non-STP units. In the impugned order, partial exemption was given on proportionate basis in proportion to the land used for STP and non-STP units. There is no provision in the exemption notification to allow partial exemption. It would have been a different case if in the imported goods, the violation of condition was only in respect of some goods and the duty is demanded and confirmed only on those goods where there was a violation. For example, if goods A, B,C,D and E are imported and if the conditions of the exemption were violated only in respect of C and D, exemption can be denied in respect of those two goods and allowed in respect of the A,B and E. In this case, all the disputed goods were used in the common service area to support both STP and non-STP units.

12. What the Commissioner has done is to convert the full exemption available under this notification into a proportionate partial exemption. The Commissioner has no power to modify an exemption notification while applying it.

13. It would be proper to examine Section 25 of the Customs Act under which exemptions from duty are granted. It reads as follows:

"SECTION 25. Power to grant exemption from duty (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 clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable.

(2A) The Central Government may, if it considers it necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification in the Official Gazette, at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

(3) An exemption under sub-section (1) or sub-section (2) in respect of any goods from any part of the duty of customs leviable thereon (the duty of customs leviable thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of customs chargeable on such goods shall in no case exceed the statutory duty.

Explanation. - "Form or method", in relation to a rate of duty of customs, means the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable.

(4) Every notification issued under sub-section (1) or sub-section (2A) shall, unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette.

(4A) Where any exemption is granted subject to any condition under sub-section (1), such exemption shall, unless otherwise specified or varied or rescinded, be valid upto 31st day of March falling immediately after two years from the date of such grant or variation:

Provided that in respect of any such exemption in force as on the date on which the Finance Bill, 2021 receives the assent of the President, the said period of two years shall be reckoned from the 1st day February, 2021.

(6) Notwithstanding anything contained in this Act, no duty shall be collected if the amount of duty leviable is equal to, or less than, one hundred rupees.

(7) The mineral oils (including petroleum and natural gas) extracted or produced in the continental shelf of India or exclusive economic zone of India as referred to in section 6 and section 7, respectively, of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976), and imported prior to the 7th day of February, 2002 shall be deemed to be and shall always be deemed to have been exempted from the whole of the duties of customs leviable on such mineral oils and accordingly, notwithstanding anything contained in any judgement, decree or order of any court, tribunal or other authority, no suit or other proceedings in respect of such mineral oils shall be maintained or continued in any court, tribunal or other authority.

(8) Notwithstanding the exemption provided under sub-section

(7), no refund of duties of customs paid in respect of the mineral oils specified therein shall be made.”

14. From the above, it is clear that sub-section (1) of Section 25:

- (a) confers on the Government the power to grant exemption from duty under Section 25 of the Customs Act;
- (b) such exemption can be generally or subject to conditions to be fulfilled; and
- (c) the conditions can be prior to the clearance of the goods or after the clearance of the goods.

15. Two different approaches were taken in the past by various Courts, including the Supreme Court and quasi-judicial authorities towards interpretation of exemption notifications- strict or literal and liberal or purposive. In view of the divergent approaches taken in different cases, the matter was referred to a five member constitution Bench of the Supreme Court in **Commissioner of Customs, Mumbai vs Dilip Kumar**⁴ and it was held as follows:

“**45.** In Parle Exports case⁵ (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

4 (2018 (361) E.L.T. 577 (S.C.)
5 Collector of Central Excise v. Parle Exports (P) Ltd., (1989) 1 SCC 345

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 Chand⁶ case (supra).

48. The next authority, which needs to be referred is the case in Mangalore Chemicals⁷ (supra). As we have already made reference to the same earlier, repetition of the same is not necessary. From the above decisions, the following position of law would, therefore, clear. Exemptions from taxation have tendency to increase the burden on the other unexempted class of taxpayers. A person claiming exemption, therefore, has to establish that his case squarely falls within the exemption notification, and while doing so, a notification should be construed against the subject in case of ambiguity.

49. The ratio in Mangalore Chemicals case (supra) was approved by a three-Judge Bench in Novopan India Ltd. v. Collector of Central Excise and Customs, 1994 Supp (3) SCC 606 = [1994 \(73\) E.L.T. 769](#) (S.C.). In this case, probably for the first time, the question was posed as to whether the benefit of an exemption notification should go to the subject/assessee when there is ambiguity. The three-Judge Bench, in the background of English and Indian cases, in para 16, unanimously held as follows :

“We are, however, of the opinion that, on principle, the decision of this Court in Mangalore Chemicals - and in Union of India v. Wood Papers, referred to therein - represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision, they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State....”

6 Commissioner v. Hari Chand Shri Gopal — [2010 \(260\) E.L.T. 3](#) (S.C.)
7 Mangalore Chemicals & Fertilizers Ltd. v. Dy. Commissioner of Commercial Taxes — (1992) Supp. 1 SCC 21

50. In *Tata Iron & Steel Co. Ltd. v. State of Jharkhand*, (2005) 4 SCC 272, which is another two-Judge Bench decision, this Court laid down that eligibility clause in relation to exemption notification must be given strict meaning and in para 44, it was further held -

“The principle that in the event a provision of fiscal statute is obscure such construction which favours the assessee may be adopted, would have no application to construction of an exemption notification, as in such a case it is for the assessee to show that he comes within the purview of exemption (See *Novopan India Ltd. v. CCE and Customs*).”

51. In *Hari Chand* case (*supra*), as already discussed, the question was whether a person claiming exemption is required to comply with the procedure strictly to avail the benefit. The question posed and decided was indeed different. The said decision, which we have already discussed *supra*, however, indicates that while construing an exemption notification, the Court has to distinguish the conditions which require strict compliance, the non-compliance of which would render the assessee ineligible to claim exemption and those which require substantial compliance to be entitled for exemption. We are pointing out this aspect to dispel any doubt about the legal position as explored in this decision. As already concluded in para 50 above, we may reiterate that we are only concerned in this case with a situation where there is ambiguity in an exemption notification or exemption clause, in which event the benefit of such ambiguity cannot be extended to the subject/assessee by applying the principle that an obscure and/or ambiguity or doubtful fiscal statute must receive a construction favouring the assessee. Both the situations are different and while considering an exemption notification, the distinction cannot be ignored.

52. To sum up, we answer the reference holding as under -

(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.

(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.

(3) The ratio in *Sun Export* case (*supra*) is not correct and all the decisions which took similar view as in *Sun Export* case (*supra*) stands overruled.”

16. This judgment clarifies that exemption notifications must be interpreted strictly and if the case does not fall within the parameters,

the benefit cannot be given. Any benefit of doubt must be given to the Revenue and should be decided against the appellant. Once the threshold of applicability of the exemption notification is crossed, it should be construed liberally as held in **Parle Exports** and reaffirmed in **Dilip Kumar**.

17. The modified application of the exemption notification 153/1993 (as amended) giving partial exemption to the imported goods in proportion to the area, in the impugned order cannot be sustained because the adjudicating authority cannot modify the exemption notification even if it finds it is fair to do so. The Adjudicating authority can only decide whether the benefit of exemption notification is available to the importer or not.

18. This takes us to the next question which is: If the conditions of the exemption notification were not fulfilled, can the adjudicating authority still give the benefit of the exemption notification or will it amount to modifying the exemption notification?

19. If the Government had imposed some conditions in the notification which have not been fulfilled by the claimant, can the adjudicating authority or the officer even on such non-fulfilment of the conditions still give the benefit of the notification? The answer to this lies in section 111(o) of the Customs Act, 1962 which reads as follows:

“(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer”

20. We, therefore, set aside the impugned order dated 03.03.2020 and remand the matter to the Adjudicating Authority to pass an order

citing specific provisions of the exemption notification under which the decisions are taken regarding the availability of the benefit of notification, benefit of depreciation in value. If the Adjudicating Authority decides to sanction non-fulfilment of any of the conditions of the exemption notification as per section 111(o), that must also be indicated. If any confiscation is ordered or penalty imposed, the relevant provisions must be cited.

21. Both the appeals are disposed of as above.

(Order Pronounced on 03.08.2021)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

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APPEARANCE:

Ms. P. Usha, Authorized Representative for the Department
Shri P. Saravanan Advocate for the Appellant

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

Date of Decision: August 03, 2021

ORDER

Order pronounced.

**(JUSTICE DILIP GUPTA)
PRESIDENT**

Shreya