C/51703/2017-DB

IN THE CUSTOMS, EXISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing: 16.01.2018
Date of Pronouncement: 22.01.2018

Appeal No. C/51703/2017-DB

[Arising out of Order-in-Appeal No. CC-A-CUS-D-II-ICD-PPG-829-2017 dated 31.08.2017 passed by the Commissioner of Customs, Central Excise & Service Tax Appeals, Delhi]

M/s. Mascot Footcare — Appellant

Vs.

CC-Patparganj — Respondent

Appearance:
Rep by Shri R. Krishnan, Advocate for the appellant.
Rep by Shri R.K. Majhi, DR for the respondent.

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 50280/2018

Per V. Padmanabhan:

The appeal is against the Order-in-Appeal No. 829/2017 dated 31.08.2017. The appellant imported "Ethylene Vinyl Acetate" and filed four bills of entry and claimed the benefit of concessional rate of import duty at the rate of 10%, as per Notification No. 21/2002 dated 01.03.2002 (Sl. No. 494). The rate of duty was further reduced to 5% vide Notification No. 11/2006 dated 01.03.2006 by amending the above notification. The benefit of concessional rate of duty was denied by both the authorities below.

2. The relevant entry in the notification is reproduced below:

S.No.	Chapter or Heading No. or sub-heading No.	Description of goods	Standard rate	Additional duty rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
-	-	-	-	-	-
-	-	-	-	-	-
-	-	-	-	-	-
494.	39	Ethyl vinyl acetate (EVA)	10%	-	-

In the impugned order, the stand taken is that the concession is applicable to "Ethyl Vinyl Acetate", falling under Chapter 39, whereas the goods imported were Ethylene Vinyl Acetate. Hence, it was held that the imported goods are not covered under the notification. Aggrieved, the present appeal has been filed. With the above background, we heard Shri R. Krishnan, learned Advocate representing appellant, as well as Shri R.K. Majhi, D.R. representing Revenue.

3. Shri Krishnan, learned Advocate, admitted that the imported goods were not Ethyl Vinyl Acetate which is specified in the notification, but he argued that the imported goods, i.e., Ethylene Vinyl Acetate is classifiable under Chapter 39 and hence, should be extended the benefit of the concession. He brought to our notice that the Sl. No. 494 of the Notification No. 21/2002 was later amended to read as "Ethylene Vinyl Acetate" vide notification No. 20/2007 dated 01.03.2007. He argued that the original notification did not mention the product correctly as can be seen from the amendment carried out in 2007. He relied on the decision of the Honorable Supreme Court in the case of Indian Tobacco Association, reported as

2005-187-E.L.T.-162(SC) in which it was held that substitution of any word to correct obvious mistakes will have retrospective effect.

4. The learned D.R. justified the impugned order. He submitted that the benefit cannot be extended to the goods imported by the appellant during the relevant period since the notification did not cover the item. He relied on the Apex Court's judgment in the case of Gammon India Limited, reported as 2011(269)E.L.T.289(S.C.).

5. After hearing both sides and perusal of record, we note that the only question before us is whether the imported goods are eligible to the concessional rate of customs duty as per the Notification No. 21/2002 dated 01.03.2002 (as amended) (Sl. No. 494). The goods imported are "Ethyl Vinyl Acetate", but during the relevant time, the notification granted the concession only to Ethylene Vinyl Acetate. It is not disputed that these two goods are different. Since the imported goods do not find mention in the notification, the concessional rate of duty cannot be extended to them.

6. The Honorable Supreme Court in the case of Gammon India Limited has observed that Exemption Notification, being an exception, is to be strictly construed. The Honorable Supreme Court in the above case, has observed as follows:

"6.8 The Hon'ble Apex Court further laid down the principle of interpreting the Exemption Notification as under:

"22. As regards the plea of the appellant that the Exemption Notification should receive a liberal construction to further the object

underlying it, it is well settled that a provision providing for an exemption has to be constructed strictly. In Novopan India Ltd. (supra), dealing with the same issue in relation to an Exemption Notification, a three Judge Bench of this Court, stated the principle as follows:

> *'16. We are, however, of the opinion that, on the 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 the law. The principle that in case of ambiguity, a taxing statute should be constructed 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. This is for the reason explained in Mangalore Chemicals and other decisions, viz, each such exception/exemption increases in the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave that such a notification has to be interpreted in the light of the words employed by it and not*

on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the Notification, i.e., by the plain terms of the exemption.'

23. Applying the above principles, we are of the opinion that since in the instant case, the language of the condition No. 38 in the Exemption Notification is clear and unambiguous, there is no need to resort to the interpretative process in order to determine whether the said condition is to be imparted strict of liberal construction."

7. By following the ratio of the above judgment by the Apex Court, we find no reason to interfere with the impugned order which is upheld. In the result, the appeal is dismissed.

[Pronounced in Open Court on]

(Justice (Dr) Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

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