CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Appeal No. C/419/2009

(Arising out of Order-in-Appeal No.09/2009 (H-II) CUS, dated 19.03.2009 passed by CCCE & ST (Appeals-II), Hyderabad)

SP Soft Digital Media Pvt Ltd ….. Appellant(s)

Vs.

Commissioner of Customs, Hyderabad ….. Respondent(s)

Appearance
Shri B. Venugopal, Advocate for the Appellant.

Shri Arun Kumar, Dy. Commissioner/AR for the Respondent.

Coram:
HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)
HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 02.08.2018
Date of Decision: 08.08.2018

FINAL ORDER No. A/30850/2018

[Order per: P.V. Subba Rao.]

1. This appeal is filed by the appellant against Order-in-Appeal No.09/2009 (H-II) CUS, dated 19.03.2009.

2. The appellant herein had imported machinery and filed bill of entry No.715189 dated 16.09.2008 claiming the benefit of Customs Notification No.25/2002 dated 01.03.2002. The lower authority denied the benefit of exemption on the ground that the exemption notification is meant for a complete line of DVD/CD manufacturing machine and they had not imported the complete line. He filed an appeal before the first appellate authority on

the ground that the principles of natural justice were not followed and they were not given any notice or an opportunity to present their case. The first appellate authority, vide Order-in-Appeal No.72/2008 (H-II) CUS, dated 28.11.2008 remanded the matter back to the original authority to pass a speaking order after following the principles of natural justice. After following the principles of natural justice, the lower authority passed Assessment Order No.01/2008 dated 14.11.2008 denying the benefit of the Notification No.25/2002. Aggrieved by this order the appellant herein preferred an appeal before the first appellate authority who vide the impugned order saw no merit and substance in the appeal and rejected the same and upheld the Order-in-Original. This appeal is against the impugned Order-in-Appeal.

3. The appellant vide the bill of entry imported "one demo skyline 11 CD manufacturing system equipped with one emould all-electric CD injection moulding machine as per invoice". They claimed the benefit of exemption notification no.25/2002-CUS, Sl.No.25 which reads as follows:

"25.	*CD/CD-R/DVD/DVD-R manufacturing machinery or replication lines comprising of injection moulding machines, metallisers, UV bonding station, inspection station, printing machines (screen and offset), mastering equipment with laser beam recorded, electroplating equipment, stamper punch and back polishing equipment.*	*CD/CD-R/DVD/DVD-R";*

4. It was held by the lower authority and the first appellate authority that the benefit of notification is available only if the complete manufacturing machinery is imported, whereas, the appellant had only imported injection moulding machine, metalliser, UV bonding and inspection station, leaving out

printing machine, mastering equipment, etc. Therefore, they held that appellant has not imported the complete manufacturing line and hence are not entitled to the benefit of notification. The appellant appealed on the following grounds:

(1) That the exemption notification is available for manufacturing machinery which is what they have imported and the notification does not require that all machines indicated therein must be imported.

(2) The Government has given exemption to IT industries with an intention to encourage the industry as it generates forex for the country and the authorities have failed to appreciate the spirit and essence of exemption notification. He relied on the following case laws:

   a. Oblum Electrical Industries Pvt Ltd [1997 (94) ELT 49 (SC)], in which it was held that while interpreting the taxing statute, the wordings in the notification have to be construed keeping in view the object and purpose of the notification.
   b. KR Steel Union Ltd [2001 (129) ELT 273 (SC)] in which it was held that interpretation of a notification like 77/80-Cus given to units in FTZ must not be read in a narrow manner so as to defeat the object of the notification
   c. CCE, Pondicherry Vs Acer India Ltd [2004 (172) ELT 289 (SC)], in which it was held that no one can be taxed by implication.
   d. Shriram Vinyl & Chemical Industries [2001 (129) ELT 278 (SC)]

e. CC, Kolkata Vs Rupa & Co. Ltd [2004 (170) ELT 129 (SC)]
f. CCE Vs Himalayan Co-op Milk Product Union Ltd [2000 (122) ELT 327 (SC)]
g. Precast Engineering Pvt Ltd [2000 (118) ELT 288 (Tri-LB)
h. Belapur Sugar & allied industries Ltd [1999 (108) ELT 9 (SC)]
i. ITC Ltd Vs CCE, New Delhi [2004 (171) ELT 433 (SC)]

5. The appellant prayed that the Order-in-Appeal may be set aside with consequential relief. The learned counsel for the appellant submitted that the exemption notification is meant for manufacturing machinery or replication lines comprising machines listed in it. They had imported machines listed therein except printing machines, mastering equipment with laser beam on recorded. He had argued that simply because they have not imported everything listed in the notification, they cannot be denied the benefit of the exemption notification. He argued that the word 'comprising' in the exemption notification must be read as referring to type of goods which can be imported and it should not be read that which should comprise all goods that are mentioned therein. It is his submission that even if some of the machinery listed therein are not included, they are still entitled to the benefit of exemption notification which has been unfairly denied by the lower authority and the first appellate authority.

6. Learned Departmental Representative reiterated the arguments made in the Order-in-Original and the Order-in-Appeal and opposed the appeal. It is his contention that the description of the goods in the exemption notification is that of manufacturing machinery or replication lines comprising certain machines; unless all the machines listed therein are

imported, it does not become manufacturing machine or a replication line. Therefore, the appellant is not entitled to the benefit of the exemption notification. He further argued that even if there is any doubt regarding the entitlement of the benefit of the notification, the benefit of doubt should go to the revenue and the notification should be viewed strictly against the person claiming the exemption notification in view of the law finally settled by the Constitutional Bench of the Hon'ble Supreme Court in the case of CC, Mumbai Vs M/s Dilip Kumar & Co and others [Civil Appeal No.3327/2007].

7. We have considered the arguments on the both sides. The short point to be decided is whether or not the appellant is entitled to the benefit of Sl.No.25 in Exemption Notification No.25/2002, since they have imported part of the machinery listed therein and not the entire replication line. The exemption notification provided exemption to CD/CD-R/DVD/DVD-R manufacturing machinery or replication lines. It is not in dispute that the replication line or manufacturing machinery comprises all the machines listed in the exemption notification and the appellant had imported some of the machinery and not others. It is the contention of the learned counsel for the appellant that they had imported some machinery because they procure the rest from alternative sources. He argues that they are entitled to the benefit of the notification even if all machinery listed therein is not imported. He relied on the above cited case laws which indicate that the spirit of the notification must be taken into account while deciding their eligibility of the exemption notification. We find that there were case laws taking both views with respect to the benefit of exemption notification. Some took a liberal view while interpreting the entitlement of a beneficial exemption notification, while others took a strict view. The matter was finally referred to a five

Member Constitutional Bench of the Hon'ble Supreme Court in the case of Dilip Kumar and Company and others [supra]. After examining all aspects and various judicial pronouncements, the Hon'ble Supreme Court took a final view on 30.07.2008 and held as follows:

> *"(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** is not correct and all the decisions which took similar view as in **Sun Export Case** stands over-ruled."*

8. The above decision of the Hon'ble Apex Court leaves us with no option but to hold that the appellant is not entitled to the benefit of the exemption notification.

9. The appeal is rejected and the Order-in-Appeal is upheld.

(Pronounced in the Open Court on 08.08.2018)

(P.VENKATA SUBBA RAO) MEMBER (TECHNICAL)	(M.V. RAVINDRAN) MEMBER (JUDICIAL)

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