IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No.E/75003/2018

M/s. Aerocon Corporation — Applicant (s)/Appellant (s)

Vs.

Commissioner of Central Excise, Kolkata-V — Respondent (s)

Appearance:

Shri B.N.Chattopadhyay, Consultant for the Appellant (s)
Shri S.S.Chattopadhyay, Suptd.(AR) the Respondent (s)

CORAM:

Hon'ble Shri P.K.Choudhary, Member (Judicial)

Date of Hearing/Decision:- 16.04.2018

ORDER NO.FO/75825/2018

Per Shri P.K.Choudhary

1. The appellant is engaged in the manufacture of industrial fan falling under Chapter-84 of the First Schedule of Central Excise Tariff Act (CETA), 1985. Show Cause Notice dated 08.08.2012 was issued alleging that appellant had contravened the provisions of Rule 19 of the Central Excise Rules, 2002 read with Notification No.42/2001-CE(NT) dated 26.06.2001 as amended.

2. Brief facts of the case are that the appellant had exported goods to Falta Special Economic Zone (SEZ) under four ARE-1 valued at Rs.7,10,000/- involving Central Excise duty of Rs.73,130/- without furnishing a General Bond or Letter of Undertaking to the jurisdictional Assistant Commissioner of Central Excise as required under Rule 19 read with Board's Circular No.29/2006-Cus dated 27.12.2006.

3. Ld. Counsel appearing on behalf of the appellant submits that after the purported export to Falta SEZ, the appellant had submitted triplicate and quadruplicate copies of ARE-1 to the department. However, the appellant did not

reply to the show cause notice nor appeared for personal hearing before the Adjudicating Authority. The Adjudicating Authority vide Order-in-Original dated 30.11.2012 confirmed the demand of Central Excise duties of Rs. 69,422/- along with interest and imposed penalty of equal amount. On appeal the Commissioner (Appeals) upheld the Order-in-Original and rejected the appeal of the assessee. Hence, the present appeal before this Tribunal.

4. Ld. Counsel for the appellant submits that they are a small SSI unit and their turnover is less than 1.5 crores in a financial year, but it was only on the instance of their customers that they had paid the duty. In the present case, industrial fans were supplied to the M/s. Infield Solar Energy Ltd. and M/s. Plastolene Polymers Pvt. Ltd. located in Falta SEZ. Ld. Counsel for the appellant further submits that it is not in dispute that the goods were duly received in SEZ. He admitted that the appellant had sent the goods to SEZ without executing the general bond or letter of undertaking as required under Notification No. 42/2001-CE(NT) (supra) as amended. He further submits that the appellant being a small scale undertaking were not fully aware of the procedures to be followed. He also submits that intimation dated 25.07.2012 was filed before the Superintendent, Central Excise, Kolkata-V Commissionerate on 31.07.2012 giving all the details of the exports/supplies to the SEZ. Ld. Counsel for the appellant vehemently argued that the failure to comply with the procedural aspect would not disqualify the appellant from availing substantive benefit. In support of his contention he relied on the following decision (i) Mangalore Chemicals & Fertilizers Ltd. vs. Deputy Commissioner [1991(55) E.L.T. 437(S.C.)], (ii)Commissioner of Central Excise vs. Chandresh C.Shah [2014(36) S.T.R. 972(Guj.)].

5. Ld. SDR reiterates the discussions and findings of the lower authorities. He further submits that the ground of ignorance of law cannot be entertained and there are lot of discrepancies in the documents as submitted by the appellants and accordingly the appeal is liable to be dismissed.

6. Heard both sides and perused the appeal records.

7. It is not in dispute that the goods were supplied/exported to the customers situated in Falta SEZ. I find that the Hon'ble Supreme Court in the case of Mangalore Chemicals & Fertilizers Ltd. vs. Deputy Commissioner (Supra) has observed as under:

> ***11.*** *We have given our careful consideration to these submissions. We are afraid the stand of the Revenue suffers from certain basic fallacies, besides being wholly technical. In Kedarnath's case, the question for consideration was whether the requirement of the declaration under the proviso to Sec. 5(2)(a)(ii) of the Bengal Finance (Sales-tax) Act, 1941, could be established by evidence aliunde. The Court said that the intention of the Legislature was to grant exemption only upon the satisfaction of the substantive condition of the provision and the condition in the proviso was held to be of substance embodying considerations of policy. Shri Narasimhamurthy would say the position in the present case was no different. He says that the notification of 11th August, 1975 was statutory in character and the condition as to 'prior permission' for adjustment stipulated therein must also be held to be statutory. Such a condition must, says Counsel, be equated with the requirement of production of the declaration form in Kedarnath's case and thus understood the same consequences should ensue for the non-compliance. Shri Narasimhamurthy says that there was no way out of this situation and no adjustment was permissible, whatever be the other remedies of the appellant. There is a fallacy in the emphasis of this argument. The consequence which Shri Narasimhamurthy suggests should flow from the non-compliance would, indeed, be the result if the condition was a substantive one and one fundamental to the policy underlying the exemption. Its stringency and mandatory nature must be justified by the purpose intended to be served. The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve.*
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> *In Kedarnath's case itself this Court pointed out that the stringency of the provisions and the mandatory character imparted to them were matters of important policy. The Court observed :*
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> *".....The object of S. 5(2)(a)(ii) of the Act and the rules made thereunder is self-evident. While they are obviously intended to give exemption to a dealer in respect of sales to registered dealers of specified classes of goods, it seeks also to prevent fraud and collusion in an attempt to evade tax. In the nature of things, in view of innumerable transactions that may be entered into between*

dealers, it will wellnigh be impossible for the taxing authorities to ascertain in each case whether a dealer has sold the specified goods to another for the purposes mentioned in the section. Therefore, presumably to achieve the two fold object, namely, prevention of fraud and facilitating administrative efficiency, the exemption given is made subject to a condition that the person claiming the exemption shall furnish a declaration form in the manner prescribed under the section. The liberal construction suggested will facilitate the commission of fraud and introduce administrative inconveniences, both of which the provisions of the said clause seek to avoid.".

(Emphasis Supplied)
[See: (1965) 3 SCR 626 at 630]
Such is not the scope or intendment of the provisions concerned here. The main exemption is under the 1969 notification. The subsequent notification which contains condition of prior-permission clearly envisages a procedure to give effect to the exemption. A distinction between the provisions of 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 their nature on the other must be kept clearly distinguished. What we have here is a pure technicality. Clause 3 of the notification leaves no discretion to the Deputy Commissioner to refuse the permission if the conditions are satisfied. The words are that he "will grant". There is no dispute that appellant had satisfied these conditions. Yet the permission was withheld - not for any valid and substantial reason but owing to certain extraneous things concerning some inter-departmental issues. Appellant had nothing to do with those issues. Appellant is now told "we are sorry. We should have given you the permission. But now that the period is over, nothing can be done". The answer to this is in the words of Lord Denning: "Now I know that a public authority cannot be estopped from doing its public duty, but I do think it can be estopped from relying on a technicality and this is a technicality" [See Wells v. Minister of Housing and Local Government: 1967 (1) WLR 1000 at 1007].
Francis Bennion in his "Statutory Interpretation", 1984 edition, says at page 683 :

"Unnecessary technicality: *Modern Courts seek to cut down technicalities attendant upon a statutory procedure where these cannot be shown to be necessary to the fulfilment of the purposes of the legislation."*

12. *Shri Narasimhamurthy against relied on certain observations in Collector of Central Excise, Bombay-I & Anr. v. Mis. Parle Exports (P) Ltd. [1989 (1) SCC 345 = 1988 (38) E.L.T. 741 (S.C.)], in support of strict construction of a provision concerning exemptions. 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 tax-payers 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. Indeed, in the very case of M/s. Parle Exports (P) Ltd. relied upon by Sri Narasimhamurthy, it was observed :*

"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."

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 & Ors. v. M/s. Wood Papers Ltd. & Ors. [1991 JT (1) 151 at 155]:

".....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)
13. *It appears to us that the view taken of the matter by the High Court does not acknowledge the essential distinction between what was a matter of form and what was one of substance. There was no other disentitling circumstance which would justify the refusal of the permission. Appellant did not have prior permission because it was withheld by the Revenue without any justification. The High Court took the view that after the period to which the adjustment related had expired no permission could at all be granted. A permission of this nature was a technical requirement and could be issued making it operative from the time it was applied for.*
14. *We, therefore, allow the appeal set aside the judgment of the High Court under appeal and direct the Deputy Commissioner of Sales Tax (Admn.) to grant the permission for the said three years operative from the dates of the application. The permission shall entitle the appellant to the adjustment of the refunds against the taxes due for the respective years. We issue these directions in view of the admitted position that, apart from the technical objection that periods to which the applications related had since expired, there was no other, impediment for the grant of*

permission. It also follows that the demand notices which proceed on the premise that adjustment of refunds against taxes due was unavailable cannot also stand. They are quashed.

8. By respectfully following the decision of the Hon'ble Supreme Court the impugned order is set aside and the appeal is allowed.

(Dictated and Pronounced in the open court)

S/d.
(P.K.Choudhary)
MEMBER (JUDICIAL)

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