

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

REGIONAL BENCH - COURT NO.2

**Excise Appeal No.75346 of 2022**

(Arising out of Order-in-Original No.09/Central Excise/Pr.Commr/2021 dated 30.03.2021 passed by Principal Commissioner, CGST & CX, Ranchi.)

**M/s. Kota Dall Mill**

(6-7, Heavy Industrial Area, Kota (Rajasthan).)

**...Appellant**

*VERSUS*

**Commissioner of CGST & CX, Ranchi Commissionerate**

**.....Respondent**

(C.R. Building, 5A, Main Road, Ranchi-834001.)

**APPEARANCE**

Shri Biren Poddar, Sr.Advocate AND Shri Dipak Sinha & Shri Rajeev Agarwal,  
both Advocates for the Appellant (s)

Shri J.Chattopadhyay, Authorized Representative for the Revenue

**CORAM: HON'BLE SHRI P.K. CHOUDHARY, MEMBER(JUDICIAL)  
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)**

**FINAL ORDER NO. 75886/2023**

DATE OF HEARING : 27 June 2023

DATE OF DECISION : 28 June 2023

**Per : P.K. CHOUDHARY :**

This appeal has been filed by M/s. Kota Dall Mill, Bokaro, against adjudication Order dated 12.04.2021 passed by the Pr. Commissioner, CGST & CX, Ranchi, whereby demand of central excise duty has been confirmed as proposed in Show Cause Notice dated 24.07.2019 pertaining to the period July 2014 to June 2017 by invoking extended period of limitation.

2. Briefly stated in facts of the case, appellant having its registered office and manufacturing unit situated in Kota, Rajasthan, is engaged in production and supply of various kinds of foods items including

manufacturing and clearance of Micronutrient Fortified Food/Energy Dense Food. A Tender was floated by the Social Welfare Department of Government of Jharkhand, for procurement of Micronutrients Fortified Food/Energy Dense Food. The appellant participated in said tender and accordingly got the contract for supply of food to the State Government. The supply of goods was initially made from their unit in Kota, Rajasthan, during the period July 2014 till December 2014. Thereafter, from January 2015 the supply was made from their Bokaro unit. The appellant did not pay central excise duty since the said goods are exempted vide Notification No. 12/2012-Central Excise dated 17.03.2012 (under serial no. 21 thereof). No registration was taken from the Central Excise Department since the goods stood excepted from excised duty.

3. An audit was carried out during the period 18.4.2017 to 20.4.2017, wherein the certificates issued by the Department of Women, Child Development and Social Security, Govt. of Jharkhand, were submitted to the Officers at the time of the audit. The said certificates duly state that the food items have been distributed free of cost to the economically weaker section of society. However, the audit team was not satisfied for the reason that the appellant did not submit the certificate from the concerned authority in State Government, within 5 months from the date of clearance of goods, as prescribed in Condition no. 5 of the above notification which condition is mandatory in order to avail the exemption. The audit para culminated into Show Cause Notice dated 24.07.2019 (SCN) to recover the duty amount by disallowing exemption under the above Not. 12/2012 (Supra) by invoking extended period of limitation. The appellant made detailed reply in defence to the said SCN.

The Ld. Commissioner vide the impugned adjudication order dated 12.04.2021 confirmed the demand alongwith penalty on the ground that since the certificate from the concerned authority in State

Government was not submitted with the prescribed time limit of 5 months, the appellant was not entitled to avail exemption. Further, the Ld. Commissioner also observed that no extension was ever sought by the appellant to furnish the certificate as per the notification. He also observed that the appellant has suppressed the fact of clearance of goods without payment of duty by wrongly claiming the exemption to invoke extended period of limitation. Against the said adjudication order, the appellant preferred a Writ Petition being W.P.(T) No. 2466 of 2021 before the Hon'ble Jharkhand High Court, which came to dismissed vide Order dated 06.05.2022 on the ground of alternative remedy. Hence this appeal.

4. Shri Biren Poddar, Ld.Sr.Advocate along with Shri Dipak Sinha & Shri Rajeev Agarwal, Ld.Advocates appeared for the appellant. Shri J.Chattopadhyay, Ld.AR, appeared for the Revenue.

4(i). The Ld. Counsels appearing for the appellant at the outset submits that the fact that goods have been duly supplied to the State Government through the concerned department is not in dispute, as the same is duly recorded in para 2.1 of the impugned SCN. The only dispute is with regard to non-submission of certificate within the prescribed period of 5 months, which is a procedural condition and non-fulfillment thereof should not be the reason to deny the exemption benefit. The fact that goods have been duly cleared for the purpose for which exemption has been granted, the substantive condition stands fulfilled in their case so as to entitle them the exemption. They relied on the Tribunal decision in the case Shri Balaji Castings vs. Commissioner of Customs (Export) Mumbai 2013 (297) ELT 234 (Tri-Mum), wherein the exemption was denied to the assessee for non fulfilment of condition as prescribed in the exemption notification, which has been identically worded in lines with Notf 12/2012 (Supra). The Tribunal held that although the required certificates were

submitted belatedly, the adjudicating authority should have granted extension in terms of the condition prescribed in the notification itself, instead of denying the exemption benefit. They also relied on the Tribunal decision in the case of JVS Foods (P) Ltd v. Commissioner of Central Excise, Jaipur 2004 (173) ELT 478 which has been upheld on merits by the Hon'ble Supreme Court, as reported in (2015) 14 SCC 756.

(ii) The Counsels for the appellant also relied on the decision of the Tribunal in the case of Bata India Ltd vs CCE, Kol-V (Final Order no. 75254 / 2023 dated 25.04.2023 in Excise Appeal no. 674 of 2009) wherein the aspect of substantial compliance was considered in the matter of exemption notification, as against the procedural requirement. They also relied on the Supreme Court decision in the case of Government of Kerala &Anr.vs. Mother Superior Adoration Convent (2021) 5 SCC 602 wherein it has been held that the beneficial purpose of the exemption contained in the statute or a notification must be given full effect.

(iii) On limitation, they submitted that in the course of first audit, the appellant vide letter dated 28.09.2015 duly submitted all the desired documents incl. Balance Sheet and Profit & Loss. It was categorically stated in the letter that they were engaged in the supply of food items for supply to Jharkhand State Govt which is exempted from excise duty under Notf no. 12/2012 (sl. 21), which fact has not been appreciated by the Ld. Commissioner in the impugned adjudication order. No dispute was raised in course of first audit with regard to entitlement of exemption notification. They submitted that merely because the said issue was raised in the second / subsequent audit during the period 18.4.2017 to 20.4.2017, the authorities cannot allege suppression on the part of the appellant to justify invocation of extended period of limitation. They relied on the decision in the case of Sunil Forging & Steel Ind. vs. CCE, Belapur 2016 (332) ELT 341 (Tri-

Mum) and Trans Engineers India Pvt Ltd vs. CCE, Pune 2015 (40) STR 490 (Tri-Mum) to submit that the Department cannot take a shelter by stating that the previous audit was not meant to find out the issues which has been found in the subsequent audit.

(iv) They further submitted that since the food items have been supplied to Government Department for consumption by the weaker section which they bonafidely believed to be exempted from duty payment. Had there been any reason for them to believe that non submission of certificate strictly with 5 months time period would disentitle them the exemption, there is no reason they would not have complied with the same diligently. They submitted that thus is not a case where contract has been entered with any private party to evade payment of duty. In this regard, they relied on the decision in the case of CCE vs. Channel Auto Electric Pvt Ltd 2017 (347) ELT 141 (Tri-Del). They also relied on following decisions :-

- AbanLoyd Chiles Offshore Ltd. vs. Comm. Of Customs (2006) 6 SCC 482 (Para-24)
- Anand Nishikawa Co. Ltd. vs. CCE (2005) 7 SCC 749
- Larsen & Tubro Ltd. vs. CCE (2007) 9 SCC 617 (Para-17)

The Counsels also submitted a date wise chart to show that the required applications were duly submitted with the State Govt for obtaining certificate well within the prescribed period of 5 months, however since the same were received belatedly, it could not be submitted with the prescribed period. They submitted that the doctrine of impossibility is applicable in this case as held by Hon'ble Supreme Court in State of Madhya Pradesh vs. Narmada Bachao Andolan & Ors. reported in (2011) 7 SCC 639 (Para-39 and 40).

5. The Ld. DR appearing for the Revenue supported the findings made in the impugned order to submit that since the required certificates were not submitted within the prescribed period of 5 months, the appellant has violated the condition of the exemption

notification. He also submitted that since the appellant did not seek extension of time for submission of certificates as provided in the notification, they cannot be said to have fulfilled the conditions prescribed in the notification. He also pointed out that the quantity of clearance of goods as alleged in the SCN did not exactly match with the ones appearing in the Certificates issued by the State Govt. He prayed that the appeal be rejected being devoid of any merit.

6. Heard both sides and perused the appeal records.

7. We find that the Ld. Commissioner in the impugned order has denied the exemption on the ground of nonsubmission of the certificates from the State Govt within the prescribed period of 5 months from the date of clearance of goods (which are the food items for supply to the weaker section of the society). It is on record that certificates were produced to the Officers at the time of Departmental Audit, as noted in para A3, Page 1-2 of the impugned Order. Further, the Ld. Commissioner in para D47 to D49, Page 91 – 93 of the Order has observed that since the appellant never applied for extension of time for submission of time, as provided in the notification, the appellant cannot be said to have met the criterion for availing the exemption.

8. We have perused the decision in the case of Shri Balaji Castings (Supra), as relied by the appellant. In the said case, after examining the conditions prescribed in the exemption notification no. 21/2002-Cus (which was the subject matter therein) that the assessee was required to submit the end user certificate within 5 months or within the extended time period as may be allowed by the authorities, the Tribunal observed that since the required certificate was duly submitted, the exemption could not be denied for delayed submission thereof. Taking note of the decision of the co-ordinate Bench, the Tribunal also observed that when the notification itself granted for

extension of time period, the adjudicating authorities should themselves have allowed the extension of time period for enabling the assessee to submit the same, instead of denying the exemption benefit. The observation made by the Tribunal is extracted below:

*"5. On perusal of the records, we find that the appellant has produced the End Use/Consumption Certificate issued by the Jurisdictional Central Excise Authorities, although there is a delay of almost three months but that is permissible as per the Notification No. 21/2002 (Sl. 200) in Condition 20 itself, Therefore, when the End use/Consumption Certificate has been produced by the appellant, the impugned order is not warranted at all. In the case of J.K. Corporation Ltd. v. Commissioner of Customs, Mumbai - [1996 \(88\) E.L.T. 112](#) (Tri.), the Tribunal was of the same view that extension would have been granted by the adjudicating authority himself. As the appellant has produced End use/Consumption certificate from the Jurisdictional Central Excise authorities therefore, the appellants are entitled for the benefit of Notification No. 21/2002 (Sl. 200). Accordingly, we set aside the impugned order and allow the appeal with consequential relief, if any."*

On perusal of condition no 20 of the Customs Exemption Notification no. 21/2002-Cus, which was the subject matter for consideration before the Tribunal in Shri Balaji's case (Supra), we find that the condition prescribed there in is similar to one prescribed in Notf. no. 12/2012 (Supra). The condition prescribed in the aforesaid customs exemption reads as below:

*"(b) the importer produces to the said Deputy Commissioner or Assistant Commissioner, as the case may be, within six months or such extended period, as that Deputy Commissioner or Assistant Commissioner may allow, a certificate issued by the Deputy Commissioner of Central Excise or the Assistant*

*Commissioner of Central Excise, as the case may be, in whose jurisdiction the said goods have been used in such unit, that the said goods have been so used."*

In the decision rendered by the Tribunal in the case of J K Corporation Ltd vs. Commissioner of Customs, Mumbai, 1996 (88) ELT 112 (Tri), which has been relied by the Tribunal in Shri Balaji Castings (Supra), it has been held that mere procedural lapse should not come in the way of availing substantive benefit intended to be given by the government and hence, the delay in submission of certificate could be condoned as also provided in the notification itself.

9. We have perused the certificates issued by the Department of Women, Child Development and Social Security, Govt. of Jharkhand, covering the entire period in dispute as submitted to the Ld. Commissioner vide letter 15.01.2021 at the time of adjudication and annexed in page no. 566 to 575 of the Appeal Book. It is clearly stated therein that the food items mentioned therein have been procured from the appellant and duly supplied under the Govt Scheme, free of cost, to the economically weaker section and the said certificates are being issued to comply with the requirement of exemption notf. 12/2012-CE. Therefore, there is no reason to doubt that the goods manufactured by the appellant have been used for the purpose distribution to the weaker section of society as per the Govt Schemes, for which the very exemption has been provided in the Notf. 12/2012, and therefore the conditions prescribed in the said notification is substantially met to entitle the appellant for claiming duty exemption. We also take note of the recent decision of the Hon'ble Supreme Court in the case of Government of Kerala & Anr. vs. Mother Superior Adoration Convent (Supra), as relied by the appellant to submit that the beneficial purpose of the exemption contained in the statute or a notification must be given full effect. The aforesaid decision also dealt with the 5-Judges Bench judgment of the Supreme Court in Commr. of

Customs v. Dilip Kumar & Co. (2018) 9 SCC 1. The relevant portion of the aforesaid decision is reproduced as below:-

*"22. A recent 5-Judge Bench judgment was cited by Shri Gupta in Commr. of Customs v. Dilip Kumar & Co. (2018) 9 SCC 1. The 5-Judge Bench was set up as a 3-Judge Bench in Sun Export Corporation v. Collector of Customs 1997 (6) SCC 564 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.*

25. *The matter can also be seen from a slightly different angle. Where a High Court construes a local statute, ordinarily deference must be given to the High Court judgments in interpreting such a statute, particularly when they have stood the test of time (see *State of Gujarat v. ZinabhaiRanchhodjiDarji* (1972) 1 SCC 233 at paragraph 10, *Bishamber Dass Kohli v. Satya Bhalla* (1993) 1 SCC 566 [LQ/SC/1993/36] at paragraph 11, *Duroflex Coir Industries Ltd. v. CST* 1993 Supp (1) SCC 568 at paragraph 2, *State of Karnataka v. G. Seenappa* 1993 Supp (1) SCC 648 at paragraph 3 and *BonamSatyavathi v. AddalaRaghavulu* 1994 Supp (2) SCC 556 at paragraph 4). This is all the more applicable in the case of tax statutes where persons arrange their affairs on the basis of the legal position as it exists.*

26. *In the result, the appeals filed by the State of Kerala are dismissed. The appeal filed in Civil Appeal No.204 of 2012 is allowed and the judgment of the Division Bench is set aside."*

Thus, in the present case, since the beneficial purpose for which exemption has been granted by the Govt. to make available food to the weaker section of society under various Govt schemes stands fulfilled, the exemption benefit should not be declined merely for the reason that the required certificates from the State Govt was not submitted within the prescribed period of 5 months when admittedly the notification itself has made a provision to grant extension of timeline,

as discussed above. In so far as the issue raised by the Ld. DR raised in the course of hearing that the quantity of clearance as per SCN did not exactly match with the ones stated in the certificates, we find that such allegations were never made in the SCN even though the certificates were duly made available to the Department in the course of audit, consequent to which the impugned SCN was issued. Moreover, we have duly perused the certificates, as stated above, which duly certify the procurement for the entire period of dispute and hence, do not find infirmity in this regard. We therefore find that the impugned order denying the exemption is not correct.

10. In so far as limitation is concerned, we are satisfied that there is no element of any fraud or willful suppression with an intent to evade payment of duty. The fact that the appellant was engaged in the manufacture of exempted goods for supply of the State Govt. under notf no. 12/2012 (Supra) was clearly informed vide letter dated 28.09.2015, appearing in page no. 345 of the Appeal Paper Book. The Ld. Commissioner in para D91 in page no. 141 of the Order, has observed that the appellant failed to inform the audit team in September 2015 (first audit) that they were not following the conditions prescribed in the notification. In this regard, we agree with the submission of the appellant that had there been any reason for the appellant to apprehend that non submission of certificates from the State Govt. strictly within the prescribed timeline would be fatal in the matter of claiming exemption, there would not have been reason to make any default in such compliances. We find that in the decision relied by the appellant in the case of Sunil Forging & Steel Ind. vs. CCE, Belapur (Supra), the Tribunal has observed that the Department cannot take a shelter by stating that the previous audit was not meant to find out the issues which has been found in the subsequent audit. Further, in the case of Trans Engineers India Pvt Ltd vs. CCE, Pune(Supra), the Tribunal taking note of the ratio arising out of the various decisions of the Hon'ble Karnataka and Bombay High Courts,

categorically held that the Department cannot allege fraud or suppression in the second audit when no such finding was made in the previous audit. In CCE vs. Channel Auto Electric Pvt Ltd (Supra), it found that where the Goods were being supplied to Ordnance Factory, which is a part of Government of India. The Tribunal noted that had there been any reason for the assessee to comprehend that process undertaken by it amounted to manufacture and liable to excise duty, there would not have been any reason for the appellant for not following the exemption as prescribed to claim benefit under the relevant notifications. In such case, sufficient grounds do not exist to sustain allegation of willful misstatement or suppression of facts. Thus, the demand cannot be sustained on the ground of limitation also.

For all the reasons stated above, it is not possible to sustain the impugned order and hence, the same is set aside. The appeal is allowed with consequential relief as per law.

(Order pronounced in the open court on 28 June 2023.)

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

Sd/  
**(K. ANPAZHAKAN)**  
**MEMBER (TECHNICAL)**