

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, WEST ZONAL BENCH AT MUMBAI
COURT NO. IV**

APPEAL NO. C/784/08

(Arising out of Order-in-Appeal No. 238/2008/MCH/Assistant
Commissioner/GR,VA/07-08 dated 23.05.2008 passed by the
Commissioner of Customs (Appeals), Mumbai.)

Commissioner of Customs (I), Mumbai

Appellant

Vs.

M/s Mahavir Roads & Infrastructure Pvt. Ltd.

Respondent

Appearance:

Ms. P.V. Sekhar, Jt. Commissioner (A.R.)
Shri Prashant Patankar, Advocate

for Appellant
for Respondent

CORAM:

HON'BLE MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE SHRI RAJU, MEMBER (TECHNICAL)

Date of Hearing: 09.03.2018
Date of Decision: 18.05.2018

ORDER NO. A/86416/2018

Per: Raju:

This appeal has been filed by Revenue against allowing
exemption to goods imported under Notification No. 21/2002-Cus. Sr.
No. 230.

2. Learned AR argued that Commissioner (Appeals) has wrongly
interpreted Notification No. 21/2002 by construing that "Mumbai

Metropolitan Regional Development Authority” (MMRDA) is a road construction corporation under the control of the State Government. It was argued that the MMRDA is a corporate body, incorporated under the MMRDA Act, 1974. He pointed out that condition No. 40 (ii) of Notification No. 21/2002 Sr. No. 230 grant exemption reads as under:

“A person who has been awarded a contract for the construction of roads in India by or on behalf of the Ministry of Surface transport, By National Highway Authority of India, by the Public Works Department of State Government or by a road construction corporation under the control of the government of a State Or Union Territory etc.”

It was argued that the eligible Department have been specifically named in the notification, covering only those which are part of and/or under the control of Central/State Government and Union Territories are eligible for the exemption. He argued that the notification has to be strictly read and interpreted. Learned AR relied on the decision of Tribunal in the case of *Shreeji Construction Vs. Commissioner of Customs (Import), Mumbai – 2014 (313) ELT 566 (Tri.-Mumbai)*.

3. Learned Counsel for the respondent argued that MMRDA is established under the Mumbai Metropolitan Regional Development Authority Act, 1974 and therefore a road construction corporation under the control of the State Government. He relied on the impugned order. Learned Counsel also relied on the decision of Tribunal in the case of *Patel Engineering Ltd. Vs. Commissioner of Customs (Import), Mumbai – 2013 (295) ELT 243 (Tri.-Mumbai)* which

was confirmed by Hon'ble Apex Court reported at 2016 (338) ELT A35(SC).

4. We have considered the rival submissions, we find that in the case of *Rajhoo Barot Vs. Commissioner of Customs (Mumbai) – 2017 (348) ELT 562 (Tri.-Mumbai)*, the Larger Bench of the Tribunal considered the case of *Shreeji Construction (supra)* and *Patel Engineering Ltd. (supra)* and held that the decision of Tribunal in the case of *Shreeji Construction (supra)* is directly dealing with the dispute in the present proceeding, whereas the only ancillary issue is dealt with in the case of *Patel Engineering Ltd. (supra)*. We find that the issue is decided by the Tribunal in the case of *Shreeji Construction (supra)* whereas the following has been observed:-

“5.2 A reading of the above two notifications makes it clear that prior to budget 2012 the notification specified only the following authorities, namely. National Highway Authority of India, Public Works Department of a State Government or a road construction corporation under the control of the State Government or Union Territory. However, after budget 2012, the authorities specified are: National Highway Authority of India, Public Works Department of a State Government, Metropolitan Development Authority or a road construction corporation under the control of State Government or Union Territory. From this it is clear that the Notification differentiates between a Metropolitan Development Authority and a Road construction corporation. Otherwise there was no need to specify both these agencies as the persons who can award the contract for the purpose of the Notification. If the intention was to consider Metropolitan Development Authority as a Road construction corporation, the language used would have been different - for e.g. a road construction corporation including a Metropolitan Development Authority or by way of an explanation. That has not been done in the instant case. Therefore, we are of the view that the notification considers a Metropolitan Development Authority and a Road development construction as distinct and different entities.

5.3 This view is further strengthened for the reason that in the State of Maharashtra there is a separate corporation, namely, the Maharashtra State Road Development Corporation. There are such corporations in other States also, for e.g. in Gujarat, Rajasthan and so on. If one carefully examines the creation of the road development corporations and their objectives, it can be seen that both legally and functionally, road development corporations and a metropolitan regional development authority are distinct entities. The major differences are summarized in the table below.

S. No.	Characteristics	Maharashtra State Road Development Corporation	Mumbai Metropolitan Regional Development Authority (MMRDA)
1	Nature of the organization	Created under a Resolution of the State Government as a State Govt. undertaking	Created under a separate statute as a local authority
2	Treatment under the Companies Act, 1956	Registered as a company under Section 3 of the Companies Act	Not a company - it is a “body corporate” and deemed as a “local authority”
3	Liability	Limited liability	Not specified
4	Functions/Responsibilities	Construction and maintenance of roads	Development of the metropolitan region and the major projects undertaken include transportation, water resources management, public housing, environmental management, urban land policy, industrial

			growth policy and office location policy
5	Jurisdiction	Entire State of Maharashtra	Mumbai Metropolitan Region

Note : As per information obtained from the websites of various road development corporations and MMRDA

Thus both legally and functionally, a road development corporation is distinct and different from a Metropolitan authority. Thus to equate MMRDA with a road construction corporation would be an insult both to the common sense and to the said organization, especially when one considers the vast and varied nature of the activities undertaken by the said authority.

5.4 Another argument has been made about the use of the indefinite article ‘a’ before the State Road Development Corporation which indicates that the said expression includes all corporations which undertake road development. There is no warrant in law to take such a view. In English language, the definite article “THE” is used when both the writer/speaker and the reader/listener know what is being referred to. If neither of them knows or only one of them knows what is being referred to, then the indefinite articles “A” or “AN” are used. Since there are many States/UTs in India which have their own Road Development Corporations, instead of specifying all of them individually, the expression “a State Road Development Corporation” has been used prefixed by the indefinite article “A”. That by no means expand the scope of the expression “road development corporation” to cover a “regional development authority” as contended by the ld. Counsel for the appellant.

5.5 The Hon’ble Apex Court in the case of Gammon India Ltd. v. Commissioner of Customs, Mumbai - [2011 \(269\) E.L.T. 289](#) (S.C.) was considering the scope of the said Notification 17/2001-Cus., dated 1-3-2001 which was the predecessor to Notification No. 21/2002. In that case the contract was awarded to a joint venture consisting of Gammon India Ltd. and M/s. Atlanta Infrastructure Ltd. each of them sharing financial responsibilities to the extent of 50% of the project value. The goods were imported by one of the parties to the joint venture, namely, M/s. Gammon India Ltd., who claimed exemption under Notification No. 17/2001. The Hon’ble Apex Court held that, import of the machinery by Gammon India Ltd. cannot be considered as an import by M/s. Gammon-Atlanta Joint Venture. In that context the Apex Court 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 construed 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 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. This is for the reason explained in Mangalore Chemicals and other decisions, viz., each such exception/exemption increases 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 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 or liberal construction.”

5.6 *If we apply these principles to the facts of the present case, it becomes clear that the term ‘road construction corporation’ has to be strictly interpreted and the metropolitan regional development authority, which undertakes several activities apart from road construction, cannot be construed as a ‘road construction corporation’ which is meant for construction of roads alone.*

5.7 One of the canons of statutory interpretation is “*Expressio unius est exclusio alterius*” - the express mention of one thing excludes all others. The express mention in the notification is “road construction corporation” which implies that others which are not road construction corporations stand excluded from the scope of the notification. Thus if one applies the above principle, it is evident that a Metropolitan Regional Development Authority does not come within the purview of the notification.

5.8 When the notification was re-issued in the budget 2012 to include ‘metropolitan development authority’, the same was mentioned specifically in the Finance Minister’s budget speech as also in the Explanatory Memorandum explaining the provisions of the Finance Bill. In para 187 of the Finance Minister’s Budget Speech, it was stated as follows :-

“Roads

187. Full exemption from import duty on specified equipment imported for road construction by contractors of Ministry of Road Transport and Highways, NHAI and State Governments is being extended to contracts awarded by Metropolitan Development Authorities. “

Similarly in the Explanatory Memorandum, in the portion relating to changes in Customs Duties, under section V relating to CAPITAL GOODS/ INFRASTRUCTURE, in Serial No. 6, it is explained as follows :-

“6) Full exemption from basic customs duty, CVD and SAD is being extended to equipment imported for road construction projects awarded by Metropolitan Development Authorities. “

The expression used in both the Budget Speech and the Explanatory Memorandum is “exemption is being extended”. The question of extension of exemption would arise, only when it is not available. If it is already available, there is no need for extending the exemption. Thus the legislative intention is very clear. Prior to budget 2012, customs duty exemption was not available on road construction equipment imported under a contract awarded by a Metropolitan Development Authority.

5.9 This statement given by the Government at the time of extending the benefit to the metropolitan development authority is very relevant for interpreting the notification and needs to be given due weightage and consideration, in the case of *K.P. Varghese v. Income-tax Officer* [1981] 131 ITR 597 (S.C.), the supreme Court, based on the earlier

judgment in the case of Baleshwar Bagarti v. Bhagirathi Dass [1908] ILR 35 Cal 701/703 expounded the principle of administrative construction, i.e., contemporaneous construction placed by administrative or executive officers charged with executing a statute, as follows :-

“It is a well-settled principle of interpretation that courts in construing a statute will give much weight to the interpretation put upon, it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it.”

5.10 *In the case of Collector of Central Excise, Guntur v. Andhra Sugar Ltd. - [1988 \(38\) E.L.T. 564](#) (S.C.), the Hon’ble Apex Court reiterated the same as follows :*

“It is well settled that the meaning ascribed by the authority issuing the Notification, is a good guide of a contemporaneous exposition of the position of law. Reference may be made to the observations of this Court in K.P. Varghese v. The Income Tax Officer, Ernakulam, [1982] 1 SCR 629. It is a well settled principle of interpretation that courts in construing a Statute will give much weight to the interpretation put upon it at the time of its enactment and since, by those whose duty has been to construe, execute and apply the same enactment.”

6. *In the light of the foregoing, we hold that prior to budget 2012, benefit of customs duty exemption on road construction equipment was not available in cases where the contract for such construction was awarded by a Metropolitan Development Authority. Thus the appellant in the present case is not eligible for the benefit of duty exemption under Notification No. 21/2002-Cus. Accordingly, we dismiss the appeal as devoid of merits.”*

In view of above decision it is apparent that contracts awarded by MMRDA do not qualify for the exemption. Relying in the aforesaid decision, the appeal of Revenue is allowed.

(Pronounced in Court on 18.05.2018)

(Archana Wadhwa)
Member (Judicial)

(Raju)
Member (Technical)