IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/1068/2007

[Arising out of Order-in-Original No: 05-06/CX/2007 dated 30th April 2007 passed by the Commissioner of Central Excise, Pune – III.]

For approval and signature:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	Yes
2.	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3.	Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

Spentex Industries Ltd … ***Appellant***

versus

Commissioner of Central Excise
Pune – III ***…Respondent***

Appearance:

Shri Prakash Shah, Advocate for appellant

Shri D S Chauhan, Superintendent (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing:	**12/06/2018**
Date of decision:	**12/06/2018**

ORDER NO: A/87562/2018

Per: C J Mathew

This dispute is before the Tribunal for the second time. On the former occasion, the assessee had drawn attention to the submission made before the original authority that the balance sheet did contain particulars of the sources of cotton but had not been considered in the proceedings leading to remand of the matter. The present appeal flows from the fresh decision in order-in-original no. 05-06/CX/2007 dated 30th April 2007 of Commissioner of Central Excise, Pune-III which has re-adjudicated the matter while, at the same time on request of the assessee, disposing off a second show cause notice dated 7th March 2002.

2. The issue in dispute was the entitlement for benefit of notification no. 8/97-CE available to '100% export oriented units', such as that of the appellant, operating under the eponymous scheme in the EXIM Policy (now designated as the Foreign Trade Policy) for the clearance of goods into the 'domestic tariff area' if manufactured

out of exclusively indigenous raw material; such clearances were required to discharge duties that were payable by units in the ‘domestic tariff area’ instead of being subject to levies equivalent to that liable on imported goods. According to central excise authorities, there is neither physical nor accounting mechanism to facilitate segregation of imported and indigenously procured cotton and also that the assessee had been mixing wastes/rejects with prime cotton without discriminating between those arising from use of imported and indigenous raw material. The impugned order confirming duty liability of ₹ 24,06,363 pertaining to the remanded dispute and ₹ 29,96,725 pertaining to the subsequent period from February 2001 to December 2001, along with attendant interest under section 11AB of Central Excise Act, 1944 and imposing penalty of ₹ 54,03,088 under section 11AC of Central Excise Act, 1944 is challenged on the ground of having been premised incorrect presumption and for not being in accord with the decision of the Hon’ble Supreme Court in *Commissioner of Central Excise, Surat-I v. Favourite Industries [2012 (278) ELT 145 (SC)]*.

3. We have heard Learned Counsel for appellant and Learned Authorised Representative. We take note that the order now impugned before us is dealt with the dispute that had been brought up before us on an earlier occasion as also the demand of duty for a subsequent period that was not covered by our remand order. We also take note

that the issue is one of establishing that the dutiable goods cleared into 'domestic tariff area' were manufactured exclusively from indigenously procured cotton. The remand by the Tribunal was specific in directing the original authority to consider the contents of the balance-sheet adduced by the appellant for the first time ever. It was mandated on the part of the original authority to delve into the conclusions that could be drawn from the balance sheet referred to; any other interpretation of the contents of the order would be non-contextual. It would appear that the audited balance sheet, evidencing specific quantities and values of imported and indigenously procured cotton would imply the existence of records that facilitated such segregation for statutory audit. The direction of the Tribunal was intended to that end. The original authority has failed to do so and, thereby, vitiated the impugned order.

4. It is also taken note that, in the impugned order, the original authority has drawn upon an additional ground of waste of unidentifiable provenance having been mixed with prime cotton to conclude that the strict segregation mandated in the exemption notification *supra* has been contravened. On that issue, the decision of the Hon'ble Supreme Court in *re Favourite Industries* has, in upholding the decision of the Tribunal, cleared the ambiguity thus

> *'25. The notification requires to be interpreted in the light of the words employed by it and not on any other basis. There*

cannot be any addition or subtraction from the notification for the reason the exemption notification requires to be strictly construed by the Courts. The wordings of the exemption notification have to be given its natural meaning, when the wordings are simple, clear and unambiguous. In Commissioner of Customs, Kolkata v. Rupa & Co. Ltd., (2004) 6 SCC 408 = 2004 (170) E.L.T. 129 (S.C.), this Court has observed that the exemption notification has to be given strict interpretation by giving effect to the clear and unambiguous wordings used in the notification. This Court has held thus :

> *"7. However, if the interpretation given by the Board and the Ministry is clearly erroneous then this Court cannot endorse that view. An exemption notification has to be construed strictly but that does not mean that the object and purpose of the notification is to be lost sight of and the wording used therein ignored. Where the wording of the notification is clear and unambiguous, it has to be given effect to. Exemption cannot be denied by giving a construction not justified by the wording of the notification."*

26. In Commissioner of Central Excise, Trichy v. Rukmani Pakkwell Traders, (2004) 11 SCC 801, this Court has also held :

> *"5. ... It is settled law that exemption notifications have to be strictly construed. They must be interpreted on their own wording. Wordings of some other notification are of no benefit in construing a particular notification."*

27. In Kohinoor Elastics (P) Ltd. v. Commissioner of Central Excise, Indore, (2005) 7 SCC 528 = 2005 (188) E.L.T. 3 (S.C.), this Court has held :

> *"7. When the wordings of the notifications are clear and unambiguous they must be given effect to. By a strained reasoning benefit cannot be given when it is clearly not available."*

28. In Compack (P) Ltd. v. Commissioner of Central Excise, Vadodara, (2005) 8 SCC 300 = 2005 (189) E.L.T. 3 (S.C.), this Court has observed thus :

> *"20. Bhalla Enterprises laid down a proposition that notification has to be construed on the basis of the language used. Rukmani Pakkwell Traders is an authority for the same proposition as also that the wordings of some other notification are of no benefit in construing a particular notification. The notification does not state that exemption cannot be granted in a case where all the inputs for manufacture of containers would be base paper or paperboard. In manufacture of the containers some other inputs are likely to be used for which MODVAT credit facility has been availed of. Such a construction, as has been suggested by the learned counsel for the respondents, would amount to addition of the words "only out of" or "purely out of" the base paper and cannot be countenanced. The notification has to be construed in terms of the language used therein. It is well settled that unless literal meaning given to a document leads to anomaly or absurdity, the golden rule of literal interpretation shall be adhered to."*

29. In Commissioner of Central Excise, Chandigarh-I v. Mahaan Dairies, (2004) 11 SCC 798 = 2004 (166) E.L.T. 23 (S.C.), this Court has held :

> *"8. It is settled law that in order to claim benefit of a notification, a party must strictly comply with the terms of the notification. If on wording of the notification the benefit is not available then by stretching the words of the notification or by adding words to the notification benefit cannot be conferred. The Tribunal has based its decision on a decision delivered by it in Rukmani Pakkwell Traders v. C.C.E. We have already overruled the decision in that case. In this case also we hold that the decision of the Tribunal is unsustainable. It is accordingly set aside."*

30. In Commissioner of Customs (Preventive), Gujarat v. Reliance Petroleum Limited, (2008) 7 SCC 220 = 2008 (227) E.L.T. 3 (S.C.), this Court has held :

> *"30. We are not oblivious of the proposition of law that an exemption notification should be construed directly but it is also well settled that interpretation of an exemption notification would depend upon the nature and extent thereof. The terminologies used in the notification would have an important role to play. Where the exemption*

> *notification ex facie applies, there is no reason as to why the purport thereof would be limited by giving a strict construction thereto.*
>
> *31. The comparison made by the learned Solicitor General that mobility of a person would depend upon his personal fitness and not when he is placed on a wheelchair, in our opinion, is not apposite. The purpose of grant of exemption is different. The object for grant of notification shall be considered in a broad based manner. The wordings used therein have to be given their natural meaning. The purpose must be allowed to be achieved. The words "all types of materials" should be construed widely."*

31. Moreover, a liberal construction requires to be given to a beneficial notification. This Court in Commissioner of Customs (Preventive) Mumbai v. M. Ambalal and Company, (2011) 2 SCC 74 = 2010 (260) E.L.T. 487 (S.C.), (in which one of us was the party) has observed that the beneficial notification providing the levy of duty at a concessional rate should be given a liberal interpretation :

> *"16. It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. The rule regarding exemptions is that exemptions should generally be strictly interpreted but beneficial exemptions having their purpose as encouragement or promotion of certain activities should be liberally interpreted. This composite rule is not stated in any particular judgment in so many words. In fact, majority of judgments emphasise that exemptions are to be strictly interpreted while some of them insist that exemptions in fiscal statutes are to be liberally interpreted giving an apparent impression that they are contradictory to each other. But this is only apparent. A close scrutiny will reveal that there is no real contradiction amongst the judgments at all. The synthesis of the views is quite clearly that the general rule is strict interpretation while special rule in the case of beneficial and promotional exemption is liberal interpretation. The two go very well with each other because they relate to two different sets of circumstances."*

32. In Commissioner of Sales Tax v. Industrial Coal Enterprises, (1999) 2 SCC 607, this Court has observed thus :

> *"11. In CIT v. Straw Board Mfg. Co. Ltd. this Court held that in taxing statutes, provision for concessional rate of tax should be liberally construed. So also in Bajaj Tempo Ltd. v. CIT it was held that provision granting incentive for promoting economic growth and development in taxing statutes should be liberally construed and restriction placed on it by way of exception should be construed in a reasonable and purposive manner so as to advance the objective of the provision."*

33. In Commissioner of Central Excise, Shillong v. North-Eastern Tobacco Co. Ltd., (2003) 1 SCC 161 = 2002 (146) E.L.T. 490 (S.C.), this Court has observed thus :

> *"10. The other important principle of interpreting an exemption notification is that as far as possible liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. See State Level Committee v. Morgardshammar India Ltd."*

34. In our view, the Tribunal has rightly understood the purpose and the language employed in Notification No. 8/97-C.E. and the EXIM Policy 1997-2002. Therefore, we do not see any legal infirmity in the judgment and order so passed by the Tribunal.'

5. In the light of these two aspects which are critical to ascertain duty liability, the findings in the impugned order are not sustainable in law. Accordingly, we set aside the impugned order and remand the matter back to the original authority to decide the matter afresh after considering the availability of records that segregate imported from indigenously procured cotton and in the light of the decision of the Hon'ble Supreme Court *supra*.

(Pronounced in Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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