CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 86469 OF 2014

[Arising out of Order-in-Appeal No: AV(30)310/2014 dated 7th February 2014 passed by the Commissioner of Central Excise & Customs (Appeals), Aurangabad.]

Crompton Greaves Ltd
D-2 MIDC Waluj, Aurangabad – 431 136 … ***Appellant***

versus

Commissioner of Central Excise & Customs
Town Centre, N-5, CIDCO, Aurangabad – 431 003 ***…Respondent***

APPEARANCE:

Shri Sachin Chitnis, Advocate for the appellant

Shri P K Acharya, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85112/2024

DATE OF HEARING:	25/09/2023
DATE OF DECISION:	20/02/2024

PER: C J MATHEW

In this appeal of M/s Crompton Greaves Ltd against order[1] of

[1] [order-in-appeal no. AV(30)310/2014 dated 7th February 2014]

Commissioner of Central Excise & Customs (Appeals), Aurangabad, the issue in dispute is the compliance by the appellant with the conditions prescribed in notification no. 33/2005-CE dated 8th September 2005 in relation to equipment cleared by them to M/s Lakshmi Sugar Mills Co Ltd who were in the process of setting up a facility for production of power using 'bagasse' to be executed by M/s Bharat Bijlee Ltd. In proceedings that were initiated against the appellant, it was alleged that the goods in question, carrying duty liability of ₹ 3,21,360/-, had been cleared without production of certificates prescribed in the said notification and in the absence of evidence of power purchase agreement. On that admitted fact that the clearance of the goods, though effected on 28th September 2012, had been intimated only a day after, the original authority confirmed the demand under section 11A of Central Excise Act, 1944, along with interest thereon under section 11AB of Central Excise Act, 1944, besides imposing penalty of like amount under section 11AC of Central Excise Act, 1944. The first appellate authority upheld the detriment by reiterating the belated intimation of clearance and for evidence of being in possession of certificate not having been furnished before clearance of the goods.

2. According to Learned Counsel for the appellant, the prescribed certificate dated 31st August 2012 were in their possession and that it had not been possible to submit the intimation of clearance owing to

intervening holidays. He cited the decision of the Hon'ble Supreme Court in *Commissioner of Customs (Imports), Mumbai v. Tullow India Operations Ltd [2005 (189) ELT 401 (SC)]*, of the Hon'ble High Court of Madras in *Commissioner of Central Excise, Pondicherry v. CESTAT, Chennai [2016 (335) ELT 211 (Mad.)]* and of the Tribunal in *Commissioner of Central Excise, Chennai v. Dynaspede Integrated Systems Ltd [2002 (147) ELT 541 (Tri.-Chennai)]* and in *Bajaj Tempo Ltd v. Commissioner of Central Excise, Indore [2004 (165) ELT 323 (Tri.-Del.)]* on substantive compliance with the condition.

3. Learned Authorized Representative draw our attention to the two specific conditions in notification no. 33/2005-CE dated 8th September 2005 and placed reliance on the decision of the Hon'ble Supreme Court in *Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal [2010 (260) ELT 3 (SC)]* emphasizing strict adherence to the conditions in the notification.

4. We find that the issue pertains to the production of prescribed certificate before clearance of the goods at the factory gate. The eligibility of the goods in question for the benefit of exemption notification is not in question and neither is it contended that the appellants were not in possession of the prescribed certificate. The sole issue is, therefore, about possession of the certificate and eligibility for the exemption arising thereon. Though Hon'ble

Supreme Court in *re Hari Chand Shri Gopal* has emphasized adherence to the exemption notification, we find from

> *'22. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption. In Novopan Indian Ltd. (supra), this Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave - (1996) 2 SCR 253, held 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.'*

that intendment should not have to be interpreted for grant of exemption which should follow from the exemption itself. On the other hand, a fine distinction has been drawn by the Hon'ble Supreme Court in *re Tollow India Operations Ltd* thus

> *'29. Both the Customs Department and Ministry of Petroleum and Natural Gas are departments of the Central Government. The substantive provisions which were required to be complied with for the purpose of obtaining the benefits under the said exemption notification have indisputably been complied with. It is not the case of the department that the assessee has anything to do with the grant of certificate except to pursue the matter to the best of its abilities. It is not in dispute that the importers were, but for production of the certificate, otherwise entitled to the grant of benefit in terms of the said notification.*
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> *xxxxxx*
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> *39. Furthermore, it is also well-settled that the Legislature always intends to avoid hardship. In a situation of this nature, the exemption notification cannot be construed in a way which would prove to be oppressive in nature. However, we do not intend to lay down a law that delay on the part of the authorities in granting such certificates would automatically enable an assessee to obtain refund. Each case has to be judged on its own facts.'*

5. The contents of the said certificate is not ambiguous about the goods that are entitled to exemption. The goods have been certified to be of necessary for initial setting up of the project which is eligible for exemption. Neither of the lower authorities has established a contrary position. It is also stated in the said certificate that 'power purchase

agreement' did exist between the beneficiary of the exemption notification and the energy distribution agency. This fact has also not been controverted by the lower authorities.

6. The prescribed certificate was in possession of the appellant and, consequently, entitles them to eligibility for exemption. Non-production at the time of clearance is entirely procedural and which has since been made good within a short lapse of time. We, therefore, find no reason to deny benefit of exemption notification Accordingly, the impugned order is set aside and the appeal allowed.

(Order pronounced in the open court on 20/02/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*