

Changing Methodologies- Interpreting Exemption Notification



As we all know Revenue and Taxation laws usually bristle with uncertainties and ambiguities and there was a time when the legal position was that in interpreting such provisions the benefit of doubt went to the subject i.e. assessee and tax payers. Now with the passage of time the parameters have changed and in the construction of statutes in the event of doubt the beneficiary is now the Revenue. This is termed as an interpretive technique which moderates letters of law in tune with the spirit of times. This is what has happened in the case of interpreting an exemption notification. The author in this article very critically examines the interpretative cannon to be applied in the case of an exemption notification under excise laws as on today.



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The Supreme Court has held that for availing the benefit of exemption notification under Central Excise Rules, it is mandatory to follow the procedure as laid down in those Rules. A provision especially a fiscal statute providing for an exemption, concession or exception is required to be construed strictly

and similarly an exemption notification would be required to be interpreted in the light of the words employed by it and not on any other basis. The concept of "substantial compliance" and "intended use" as propounded in the *Thermax and J.K. Synthetics* case have been distinguished by

the Apex court in case of *Harichand & Sri Gopal* and its application has been limited to a great extent. The law relating to the interpretation of fiscal statute should be restructured and restated to provide for uniformity and promotion of trade, commerce and business.

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The “whys, whens and et alls” of the exemption notification have been correctly spelled herein above.

It may not be irrelevant to point out that whenever we start thinking, writing or evaluating the verdicts of our Supreme Court, we find that it has done laudable work whenever a complicated legal proposition was required to be interpreted. It has mostly displayed a rare juristic vision although many a time it unwarrantedly unsettles the already settled legal issues.

The Constitution Bench of the Supreme Court very recently in the case of *Commissioner of Central Excise Vs. Harichand Shrigopal & ors. (2011) 1 SCC 236* unequivocally and categorically held that for availing the benefit of exemption notification under Chapter X of Central Excise Rules 1944, it is mandatory to follow the procedure laid down in that chapter. In Chapter X a detailed procedure had been laid down so as to curb and prevent the diversion and mis-utilisation of goods which are otherwise excisable under the statute. It has further been held that a provision specially a fiscal state providing for an exemption, concession or exception is required to be construed strictly. Then an exemption notification has to be interpreted in the light of words employed by it and not on any other basis. A person who

claims exemption or concession is required to establish clearly that he is covered by the provision concerned and in case of doubt or ambiguity, the benefit of it would go to the State. So far the majority position was that in the event of any doubt or ambiguity the benefit went to the assessee. Henceforth the assessee would not have a liberty to make the interpretation of fiscal statute subservient to his preconceived desire of extracting benefit in a marginal case.

On factual matrix it so happened that M/s. Gopal Jarda Udyog, M/s. Harchand Srigopal and M/s. Gopal Industries had manufactured and removed from their factories a certain quantity of preparation containing Kimam, collectively valued at several crores during the period 18.3.1994 to 15.4.1995, 16.6.1995 to 19.6.1996 and 14.6.95 to 24.9.96. The amount of duty involved was also fixed at some crores. Consequently the department. issued notices to these persons to show cause why the amounts of duties should not be demanded from them jointly and severally under Rule 9(2) of the Excise Rules read with the proviso to Section 11-1 (1) of the Tariff Act and interest thereon under the same Act besides penalty under rule 173-Q of the Excise Rules read with Section 11-AC of the Tariff Act etc. They were further asked to show cause why the land, building, plant and machinery used in their respective factories for the manufacture of Kimam should not be confiscated. The respondents filed their detailed objections disputing the subject liability and also claimed exemption under notification No. 121/94 – CE. The Commissioner (Excise) rejected the objections as filed by the respondents and determined that M/s. Gopal Jarda Udyog., M/s. Gopal Industries and M/s. Harichand Sri Gopal

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were liable to pay Central Excise Duty. The matter went before the Tribunal by way of Appeal and the Tribunal agreed with the findings of the adjudicating Commissioner. Ultimately the Commissioner rejected all the contentions of the respondents and held that the benefit of the exemption notification would be available only if the procedures laid down were complied with and that plea of substantial compliance was not substantiated and consequently the duty liability, interest and penalty was confirmed.

Now the interpretation of the exemption notification became the bone of contention and contentions were advanced for and against the compliances. At the level of the Tribunal, reliance was placed on the judgements of the Supreme Court in *Thermax (P) Ltd.*

Vs. Collector of Customs (1992) 4 SCC 440 and CC Vs. JK Synthetics (2000) 10 SCC 393. In these two cases the theory of "intended use" of the goods was invented and it was held that though there was no compliance of the procedural conditions of Chapter X even then the exemption should not be denied if the concept of "intended use" was established. The Tribunal, therefore, allowed the appeals and the Commissioner of Central Excise New Delhi preferred appeals before the Supreme Court which has conclusively laid down the law in the case referred hereinabove. It was argued on behalf of the Revenue before the Supreme Court that the respondents at the supplier's end did contravene the provisions of Rules and that mere maintenance of some record at the recipients

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end would not be enough even for the intended use or the plea of substantial compliance. It was also argued that the assessee must comply with the notification strictly and bring himself within the ambit of the notification.

The Assistant Solicitor General appearing on behalf of the Revenue cited catena of case laws amongst which some important ones are *Novopan India Ltd. Vs. CCE & Customs 1994 Supp (3) SCC 606*, *CCE Vs. Ginni Ltd. (2005) 13 SCC 789*; *CCe Vs. Mewar Bartan Nirmal Udyog (2010) 13 SCC 753*; *State of Haryana Vs. Samtel India Ltd. (2010) 13 SCC 737* and *G.P. Ceramics (P) Ltd. Vs. CTT (2009) 2 SCC 90*. On the other hand Sr. Advocate Shri Harish Salve submitted that there was documentary evidence to prove that the entire quantity of Kimam was transferred from their one unit to another and was utilised in the manufacture of branded chewing tobacco and cleared on payment of duty. His entire argument was based on the theory of "intended use" and "substantial compliance" with the procedure set out in Chapter X of Excise Rules and he cited time and again cases of *Thermax* and *J.K. Synthetics* as referred above.

The Apex court in the instant case after discussing the pros and cons of intended use and substantial compliance held that for applicability of this doctrine, a mere attempted compliance would not be sufficient but actual compliance with those factors which are considered essential was needed. This doctrine was a judicial invention, equitable in nature intended to avoid hardships in cases where party did all that could reasonably be expected of it but only failed or faulted in some minor or inconsequential aspects which could not be described as "essence" or "substance" of

the requirement. It is ruled that mandatory requirements must be obeyed and fulfilled exactly. However, a condition might be given a liberal meaning if the same was directory in nature. If mandatory requirements were complied with, it would be proper to say that the enactment had been substantially complied with, notwithstanding the non-compliance of directory requirements, which are mere technical provision. In substance it has been concluded that the doctrine of substantial compliance sought to preserve the need to comply strictly with the conditions or requirements that were important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements that were so confusingly or incorrectly written and that an earnest effort at compliance should be accepted.

The Supreme Court was, therefore, reluctant to sustain the reasoning of the Tribunal that the procedure laid down in Chapter X was meant only to establish the receipt of goods by the recipient unit and their utilisation and ultimately the benefit of exemption was declined to the parties.

The obvious reckoning of this case for the assessee of excise duty would be that they should be all cautious in complying with the mandatory requirements for availing exemption benefit and that the prevalent misconception that the benefit of doubt of inherent ambiguity in a statute would invariably go to the assessee must abate once for all. With the passage of time the interpretative technique of statutes is also undergoing changes and assuming to be Revenue-oriented by adopting a pragmatic and functional approach. The law in action is more significant than law in the book. ■