

M/S OBLUM ELECTRICAL INDUSTRIES PVT. LTD.,
HYDERABAD

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v.

COLLECTOR OF CUSTOMS, BOMBAY

SEPTEMBER 2, 1997

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[S.C. AGRAWAL AND G.T. NANAVATI, JJ.]

Customs Act 1962—Ss.12 and 25—Exemption Notification No.116/88-Cus dated March.30, 1988—Import of cryster beams as Kiln furniture by the assessee in the manufacture of Lightning Arrestors—Held, assessee entitled to exemption from payment of customs and additional duty as conditions laid down for grant of exemption in clauses (a) to (g) of the notification were fulfilled.

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Expression 'Materials required to be imported for purpose of manufacture of products' occurring in Notification No. 116/88- Cus dated March 30, 1988—To be construed as referring not only to materials used in manufacture of products but includes materials required in order to manufacture the resultant products.

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Principles of Interpretation—Exemption Notification No. 116/88-Cus dated March 30, 1988—Explanation—Construction of—Must be read so as to harmonise with and clear up any ambiguity in the main provision.

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The Appellant, a manufacturer and exporter of 'Lightening Arrestors' was awarded a Deemed Export Order (Contract) by Railway Board for supply of certain number of Metal Oxide Gapless Type Lightening arrestors under an International Development Scheme. In the manufacture of these lightening arrestors, cryster (main and gross) beams made of silicon carbide were used for 'firing' dry and hollow H.T. Porcelain bushings in the Kilns. The Appellant's application before the Chief Controller of Imports and Exports for issuance of a Special Import Licence to import various items including Cryster Beams as Kiln furniture in the manufacture of the lightening arrestors was allowed. Alongwith the said Import Licence, the Duty Exemption Entitlement Certificate was also allowed on certain terms. On import of the goods into India, the appellant claimed duty free clearance on the basis of exemption granted by Notification No.210/82 - Cus. dated September 10, 1982. The Notification issued

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A under Section 25 of the Customs Act 1962 exempted from whole of the Customs Tariff Act 1975, 'raw materials and components required for the manufacture of goods to be supplied to certain institutions / projects of certain institutions or for the replenishment of raw materials and components used in the manufacture of such goods already supplied'. The said exemption was, however, subject to conditions laid down in Clauses (1) to (5) of paragraph 1 of the said notification. The Additional Collector of Customs was of the opinion that the Kiln furniture (crystal beams) were capital goods and could not be termed as raw materials or components of the resultant products so as to qualify exemption. It was further held that the entry of the Kiln furniture in the special import licence and Duty Exemption Entitlement Certificate book did not preclude the customs authorities from deciding the issue regarding eligibility of the articles for duty exemption in terms of the Exemption Notification No.210/82 - Cus. The said view of the Additional Collector was upheld by the Customs Excise & Gold (Control) Appellate Tribunal (CEGAT).

D In the present appeal filed by the Appellants, it was contended by them that they were entitled to exemption from payment of customs duty on crystal beams imported by them on the strength of Notifications Nos. 210/82 - Cus. as well as Notification No. 116/88 dated March 30, 1988 as crystal beams was to be treated as components required for the manufacture of the lightning arrestors. Notification No. 210/82 - Cus. contained the expression 'raw materials and components required for the manufacture of goods' and 'or for the replenishment of raw materials and components used in the manufacture of such goods'; whereas Notification No.116/88 - Cus. used the expression 'materials required to be imported for the purpose of manufacture of products (resultant products) or replenishment of materials used in the manufacture of resultant products or both'.

G On the other hand, Revenue urged that to avail exemption, it was necessary that the materials must be required for use in the manufacture of resultant products.

Allowing the appeal, this Court

H HELD : 1.1. The Appellant had fulfilled the conditions laid down for grant of exemption contained in Clauses (a) to (g) of Notification No.

116/88 Cus. dated March 30, 1988 and was, therefore, entitled to exemption from customs duty and additional duty on the import of the crystal beams. [690-B] A

1.2. Crystal beams imported by the appellant are materials, which though not used in the manufacture of H.T. Porcelain Insulators required for Lightning Arrestors, are materials which are required for producing the insulators in the kilns. [689-D] B

2. The object and purpose of Notification No. 116/88 - Cus. is to encourage exports by granting exemption to deserving people on fulfilling of conditions contained in Clauses (a) to (g) of the Notification. Words in the notification have to be construed keeping in view the object and purpose of the exemptions. In the Notification, two different expressions have been used, namely, 'materials required to be imported for the purpose of manufacture of products' and 'replenishment of materials used in the manufacture of resultant products'. These expressions have not been used in same sense. The expression 'materials required to be imported for the purpose of manufacture of products' cannot be construed as referring only to materials which are actually used in the manufacture of the products. The said expression must be given its natural meaning to include materials which though not used in the manufacture of the resultant products, are required in order to manufacture the resultant products. [688-F-G, 689-A-C] C D E

3. It is a well settled principle of statutory construction that the Explanation must be read so as to harmonise with and clear up any ambiguity in the main provision. The definition of the expression 'materials' defined in Clause (viii) of the Explanation to the Notification has to be read in consonance with the main part of the Notification. The definition must, therefore, be so construed as not to eliminate the distinction between the words 'materials required for the purpose of manufacture of products' and the words 'materials used in the manufacture of the resultant products' in the main part of the definition. [689-F] F G

Bihta Co-operative Development Cane Marketing Union Ltd. & Anr. v. The Bank of Bihar & Ors., [1967] 1 SCR 848, relied on.

The Tata Oil Mills Co. Ltd. v. Collector of Central Excise, (1989) 43 ELT 183, referred to. H

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 789 of 1993.

From the Judgment and Order dated 5.11.92 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in A. No. C/2154/91-C.

B S. Ganesh and K.J. John for the Appellant.

A. Subba Rao, Kishore Kumar Patel and V.K. Verma for the Respondent.

The Judgment of the Court was delivered by

C **S.C. AGRAWAL, J.** The appellant is a manufacturer and exporter of 'Lightening Arrestors' which are supplied to electricity boards, railways and other public sector undertakings. The appellant was awarded a Deemed Export Order (Contract) by the Railway Board for supply of 937 numbers of Metal Oxide Gapless Type Lightening Arrestors (hereinafter referred as 'Lightening Arrestors'). The said contract was entered into under an International Development Scheme. For the manufacture of Lightening Arrestors, Porcelain housings (H.T. Insulators) are required and these insulators are produced in a ceramic kilns. Crystar (main and Gross) Beams made of Silicon Carbide are used for 'firing' dry and hollow **D** H.T. Porcelain bushings in the kilns and are fitted inside the kilns. The beams are susceptible to breakage and damage and have to be continuously replaced in the course of manufacture. **E**

The appellant submitted an application before the Chief Controller of Imports and Exports on March 29, 1990 for issuance of a Special Imprest **F** Licence to import various items required for the manufacture of Lightening Arrestors. The said items included Crystar Beams as Kiln Furniture. The Deputy Chief Controller of import and Export issued the Special Import Licence on April 24, 1990 for import of various items including crystar beams. Alongwith the said import license, the Duty Exemption Entitlement **G** Certificate (hereinafter referred as 'DEEC') was also issued in the following terms :

"Material imported against advance Licence No. P/L 3234451/CXX/16/W/90 dated 24.4.90 issued by Deputy Chief Controller of Imports & Exports, Hyderabad to the above importer and covered by the list of Materials specified under Part 'C' of this **H**

Certificate would be eligible for exemption from Import duty subject to the conditions specified in the Notification of the Government of India, Ministry of Finance, Department of Revenue and 116/88-Cus. On 30.3.88." A

On import of goods into India, the appellant claimed duty free clearance on the basis of exemption granted by Notification No. 210/82 Cus dated September 10, 1982. B

By Notification No. 210/82-Cus dated September 10, 1982 issued under Section 25 of the Customs Act, 1962, the Central Government has exempted from whole of the customs duty and additional duty leviable under the Customs Tariff Act, 1975, "raw materials and components required for the manufacture of goods to be supplied to International Development Association or International Bank for Reconstruction and Development or bilateral and Multilateral aided projects or Asian Development Bank or United Nations Organisation or under the Aid Programme of the United Nations or for the replenishment of raw materials and components used in the manufacture of such goods already supplied". The said exemption was, however, subject to the conditions laid down in clauses (1) to (5) of paragraph 1 of the said Notification. The case of the appellant is that the conditions laid down in the said Notification were fulfilled in the present case and, therefore, the appellant was entitled to exemption from duty on the Crystar Beams imported by it and reliance was placed on the DEEC granted by the Import Control Authorities while granting the import licence for importing the said articles. The Additional Collector of Customs has, however, held that the entry of Kiln Furniture (Crystar Beams) in the special import licence and DEEC book does not preclude the customs authorities from deciding the issue regarding eligibility of the articles for duty exemption in terms of exemption Notification No. 210/82-Cus. The Additional Collector further held that the said exemption is only in respect of raw material and components of the resultant product to be supplied to the project authorities specified in the said exemption Notification No. 210/82-Cus. itself and that the item in question are admittedly utilised as supporting structures for manufacturing Bushings and on account of bearing heavy loads and extremely high temperatures undergo high rate of wear and tear and that they are capital goods and cannot be termed as raw materials or components of the said resultant product. The said view of the Additional Collector has been C
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A upheld by the Customs Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as 'the Tribunal') by the impugned judgment dated November 5, 1992. The Tribunal has held that the question regarding exemption from duty and the interpretation of the notification issued under Section 25 of the Customs Act has to be decided by the customs authorities alone and the fact that the import of the goods was covered by a specific mention in Part C of the DEEC has no bearing on the jurisdiction of the customs authorities because exemption from duty is one aspect while validity of import under the import license is another aspect. The Tribunal has also agreed with the view of the Additional Collector that the expression "raw materials and components required for the manufacture of the goods to be supplied" in Notification No. 210/82-Cus read with Notification No. 116/88 dated March 30, 1988 cannot be extended to include within its scope raw materials and components required for a Kiln or a furnace in which the goods to be supplied are manufactured. Hence this appeal.

D Shri S. Ganesh, the learned counsel for the appellant, has urged that the appellants are entitled to exemption from payment of customs duty on Crystar Beams imported by them both on the basis of Notification No. 210/82-Cus as well as Notification No. 116/88 dated March 30, 1988. As noticed earlier, Notification No.210/82- Cus dated September 10, 1982 contained the expression "raw materials and components required for the manufacture of goods" and "or for the replenishment of raw materials and components used in the manufacture of such goods".

F In Notification No. 116/88 dated March 30, 1988 there is slight difference in language. The material part of the said Notification is as under :

G "In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the Notification of the Government of India in the Ministry of Finance, (Department of Revenue) No. 44/87- Customs [G.S.R. 101(E)], dated the 19th February, 1987, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods imported into India against an Advance Licence issued under the Imports (Central) Order, 1955, being materials required to be imported for the purpose of manufacture of products (hereinafter referred to as the resultant products) or

replenishment of materials used in the manufacture of the resultant products, or both, or for export as mandatory spares alongwith the resultant products, for execution of one or more export orders, from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty leviable thereon under Section 3 of the said Customs Tariff Act,"

Notification No. 116/88-Cus uses the expression "materials required to be imported for the purpose of manufacture of products (hereinafter referred to as the resultant products) or replenishment of materials used in the manufacture of resultant products or both."

Shri Ganesh submits that on a proper construction of the language used in Notification No. 210/82-Cus dated September 10, 1982 Crystar Beams should be treated as components required for the manufacture of Lightning Arrestors and would fall within the ambit of the exemption granted under the Notification No. 210/82- Cus dated September 10, 1982. The learned counsel has contended that the words "required for the manufacture" in the said notification would include material which though not directly used in the manufacture of product is necessary for the purpose of manufacturing the product. Shri Ganesh has also urged that in any event Crystar Beams would fall within the ambit of the expression "materials required to be imported for the purpose of manufacture of products" contained in Notification No. 116/88- Cus. dated March 30, 1988 because the words "for the purpose of manufacture" in the said notification have the effect of enlarging the ambit of the exemption that has been granted. In this context Shri Ganesh has pointed out that in the DEEC reference has been made to Notification No. 116/88-Cus. dated March 30, 1988.

Shri Subba Rao, the learned counsel appearing for the Revenue, has placed reliance on the definition of the expressions "exempt materials" and "materials" contained in clauses (iii) and (viii) of the explanation to Notification No. 116/88 dated March 30, 1988. The said clauses provide as follows :

"(iii) 'Exempt materials' means the materials imported and specified in Part "C" of the said Certificate and eligible for exemption from duty under this notification;

A (viii) 'materials' means goods which are raw materials, components, intermediate products or consumables used in the manufacture of resultant products and their packings, or mandatory spares to be exported alongwith the resultant products;"

B Shri Subba Rao has laid emphasis on the words "used in the manufacture of" in clause (viii) and has urged that for availing the exemption it is necessary that the material must be required for use in the manufacture of resultant products. Shri Subba Rao has also invited our attention to the decision of this Court in *The Tata Oil Mills Co. Ltd. v. Collector of C. Ex.*, (1989) 43 ELT. 183, wherein in the matter of interpretation of a notification granting exemption from payment of duty this Court has said :

C "But, in trying to understand the language used by an exemption notification, one should keep in mind two important aspects : (a) the object and purposes of the exemption and (b) the nature of the actual process involved in the manufacture of the commodity in relation to which exemption is granted."

D Having regard to the fact that in DEEC specific reference has been made to Notification No. 116/88-Cus. dated March 30, 1988, we will consider the claim of the appellant for exemption for duty on the basis of the said notification.

E A perusal of Notification No. 116/88-Cus. shows that the object and purpose of the said notification is to encourage exports by granting exemption from customs duty on materials that are required to be imported for the purpose of manufacture of the resultant products or for replenishment of the material used in the manufacture of the resultant products, or both or for export as mandatory spares alongwith the resultant products. The manufacture of the resultant products has to be for execution of one or more export orders. In order to ensure that the exemption is availed only by deserving people, conditions have been laid down in clauses (a) to (g), which must be fulfilled for availing the exemption. One such condition, as laid down in clause (a), is that the material imported must be covered by a Duty Exemption Entitlement Certificate issued by the licensing authority. Under Clause (c) it is required that the goods corresponding to the resultant products and the mandatory spares should be exported within the time specified in the DEEC or such extended period as may be granted by

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H the licensing authority. The wordings in the notification have to be con-

strued keeping in view the said object and purpose of the exemption. In the notification two different expressions have been used, namely, 'materials required to be imported for the purpose of manufacture of products' and 'replenishment of materials used in the manufacture of resultant products' which indicates that the two expressions have not been used in the same sense. The expression 'materials required to be imported for the purpose of manufacture of products' cannot be construed as referring only to materials which are used in the manufacture of the products. The said expression must be given its natural meaning to include materials that are required in order to manufacture the resultant products. On that view, the exemption cannot be confined to materials which are actually used in the manufacture of the resultant product but would also include materials which though not used in the manufacture of the resultant product are required in order to manufacture the resultant product. Crystar Beams imported by the appellant are materials, which though not used in the manufacture of H.T. Porcelain Insulators required for Lightning Arrestors, are materials which are required for producing the insulators in the kilns.

It is true that in clause (viii) of the Explanation to the Notification expression 'materials' has been defined to mean goods which are raw materials, components, intermediate products or consumables used in the manufacture of resultant products and their packings or mandatory spares to be exported in the resultant products. But the said definition in the Explanation has to be read in consonance with the main part of the notification. It is a well settled principle of statutory construction that the Explanation must be read so as to harmonise with and clear up any ambiguity in the main provision. (See : *Bihta Cooperative Development Cane Marketing Union Ltd. & Anr. v. The Bank of Bihar & Ors.*, [1967] 1 SCR 848 at p. 854). The definition of "materials" in clause (viii) of the Explanation must, therefore, be so construed as not to eliminate the distinction between the words 'materials required for the purpose of manufacture of products' and the words 'materials used in the manufacture of the resultant products' in the main part of the definition.

On a proper construction the definition of "materials" in clause (viii) of the Explanation must be confined in its application to the word "materials" in the expression 'replenishment of materials used in the manufacture of the resultant products' in Notification No. 116/88-Cus.

A dated March 30, 1988.

It is not disputed that appellant had fulfilled the conditions laid down for grant of exemption contained in clause (a) to (g) of the Notification No. 116/88 dated March 30, 1988. In the circumstances, it must be held that the appellant was entitled to exemption from customs duty and additional duty under Notification No. 116/88 dated March 30, 1988 on the import of Crystar Beams. The appeal is, therefore, allowed, the judgment of the Tribunal dated November 5, 1992 as well as the order of Additional Collector (Customs) dated March 8, 1981 are set aside and it is held that the appellant is entitled to exemption from payment of customs duty and additional duty on the import of Crystar Beams required for the purpose of manufacture of Lightning Arrestors. No order as to costs.

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R.D.

Appeal allowed.