IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF DECEMBER, 2025

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CIVIL PETITION NO. 1142 OF 2003

BETWEEN:

THE PRINCIPAL COMMISSIONER OF CUSTOMS,
AIRPOST AND AIR CARGO COMMISSIONERATE,
DEVANAHALLI,
BANGALORE-560300.

...PETITIONER

(BY SRI. AKASH.B.SHETTY, ADVOCATE)

AND:

1. M/S. LUCKY EXPORTS
REPRESENTED BY ITS AUTHORIZED SIGNATORY,
8, ARADHANA COLONY,
R K PURAM, SECTOR 13,
NEW DELHI-110066.

2. H R GOPINATH
PARTNER, LUCKY EXPORTS,
8, ARADHANA COLONY,
R K PURAM, SECTOR 13,
NEW DELHI-110066.

3. DIWAKAR MISHRA
PARTNER, LUCKY EXPORTS,
8, ARADHANA COLONY,
R K PURAM, SECTOR 13,
NEW DELHI-110066.

4 . AASHISH OBEROI
PARTNER, LUCKY EXPORTS,
8, ARADHANA COLONY,
R K PURAM, SECTOR 13,
NEW DELHI-110066.

5. ASHOK MURTHY
PARTNER, ERKADI,
INTERNATIONAL 451,
9TH CROSS, J.P NAGAR,
2ND PHASE, BANGALORE 78

…RESPONDENTS

(BY SRI. LAKSHMIKUMARAN AND SRIHARAN, ADVOCATE)

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THIS C.P IS FILED U/S. 130A OF THE CUSTOMS ACT, 1962 ARISING OUT OF ORDER DATED:10.1.2003 PASSED IN APPEAL NO. C/25 TO 28/02, C/85/2 PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO WHETHER IN THE FACTS AND CIRCUMSTANCES OF THE CASE THE HON'BLE TRIBUNAL WAS RIGHT IN INTERPRETING AND OBSERVING THAT THE FACTS OF THE PRESENT CASE CANNOT BE DIFFERENTIATED FROM THOSE OF M/S. TITAL MEDICAL SYSTEMS AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 22.09.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, ***HON'BLE MR. JUSTICE D K SINGH.,*** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV ORDER

(PER: HON'BLE MR. JUSTICE D K SINGH)

The present Civil Petition has been filed impugning the final order passed by the Central Excise and Gold Appellate Tribunal (for short '***the CEGAT***') in Appeal No.C/25 to 28/02, C/85/02. dated 10.01.2003, whereby the Tribunal has set aside the Order-in-Original No.5/02-COMMR/Cus.Adjn dated 30.01.2002 passed by the Commissioner of Customs, Bangalore.

2. The following questions of law have been framed in the petition by the Petitioner/Commissioner of Customs, which reads as under :-

> *"1) Whether in the facts and circumstances of the case the Hon'ble tribunal was right in Interpreting and observing that the facts of the present case cannot be differentiated from those of M/s. Titan Medical Systems?*
>
> *2) Whether the tribunal has right in relying on the ratio of the Judgment of the Supreme Court in the case of M/s. Titan Medical Systems when the goods in the*

present case were unpacked, tested, calibrated and exported as such and when the judgment is clearly distinguishable?

3) *Whether the Tribunal was correct in considering and interpreting the above activity as manufacture within the ambit of Para 3.31 of the Export Import Policy 1997-2002?*

4) *Whether the Tribunal was right in allowing the benefit of exemption notification on the pretext that the licencing authorities have no objection as regards misrepresentation of facts?*

5) *Whether the Tribunal was right in discarding the elaborate legal submissions and the ratios of several judgments of the Hon'ble Supreme Court made by the department and in arriving at a decision which is set with an apparent error in law?*

6) *Whether the Tribunal has travelled beyond the settled position of law and consistent judicial opinion in the matter of interpretation of exemption notifications?"*

3. Brief facts relevant for the purposes of deciding the present Civil Petition are stated as under :-

(i) The First Respondent herein, a partnership firm was engaged at the relevant time in the export of medicines, engineering goods, medical equipment and agro products. As a Government recognized export house, they used to execute export orders mainly to Russia. The Ministry of Defence of the Government of Russia entered into a contract with the First Respondent for the supply of 255 Nos. of Complete Electronic Ventilation System to be used as life saving devices in the Hospitals in Russia. The First Respondent entered into a contract with M/s NOVO LLC, USA, for supply of equipments relating to the ventilator and also placed Purchase Orders with the fifth Respondent.

(ii) Pursuant to the same on a Application to the DGFT for grant of advance licence for the import of certain components, a licence was issued with the condition that the technical specification of the components imported should conform to those utilized in the manufacture of the resultant product and should be reflected in the export documents.

(iii) Subsequently, the First consignment was imported and was exported in December 2000. When the second consignment of the imports arrived the same were not allowed by the DRI and were seized to conduct certain enquiries.

4. The 1st respondent herein was a Partnership Firm engaged in Export of Medicines, Engineering Goods, Medical Equipments and Agro Products. It was a government recognized Export House and they used to execute their export orders mainly to Russia. The Ministry of Defence of the Government of Russia entered into a contract with the first respondent for the supply of 255 numbers of Complete Electronic Ventilation System to be used as life-saving devices in the Hospitals in Russia. To fulfil this export obligation to Russia, the first respondent entered into contract with M/s. NOVO LLC USA for supply of equipment relating to the ventilator and also placed Purchase Orders with the 5th respondent-Mr. Ashok Murthy, a Partner of M/s. Erkadi International, Bangalore.

5. Pursuant to the same, an application was made to the Directorate General of Foreign Trade (for short '***the***

DGFT') for grant of advance licences for import of certain components, a licence was issued by the DGFT with the condition that the technical specification of the components imported should conform to those utilised in the manufacture of resultant product and should be reflected in the export documents. The first consignment was imported and was exported in December 2000. When the second consignment of imports arrived, the same were not allowed by the Directorate of Revenue Intelligence (for short ***'the DRI'***) and they were seized to conduct certain enquiries.

6. The Directorate of Revenue Intelligence in its investigation found that the respondent instead of importing components (as declared by them under DEEC scheme), in effect actually imported complete equipment in CKD-SKD condition and the further processing, manufacture claimed to have been carried out in India was essentially a facade. It was found by the DRI that the supporting manufacturer had no manufacturing facilities to say the least.

7. The show-cause notice dated 30.07.2001 was issued alleging that the Assembly and testing undertaken on the goods imported by the first respondent was not adequate to constitute 'Manufacture'. It was only done to substantiate the value addition declared to the licensing authority and a comparison of the packing list of the imported goods and of the export goods reveal that except for the addition of locally purchased items, the goods imported were dispatched in their original packing, which would reveal that no manufacturing was done to enhance the intrinsic value of the goods exported. It was also said that the 1st respondent had intentionally misrepresented and made untrue declaration to the Joint Director of Foreign Trade (for short ***'the JDGFT'***) while obtaining the advance license.

8. The show-cause notice was adjudicated by the Commissioner of Customs vide the Order-in-Original No.5/2002 dated 30.01.2002. The Commissioner noted that Sri Ashish Oberoi, one of the Partners of the 1st respondent - M/s. Lucky Exports Firm admitted that the

consignment in question imported under Bill of Entry No.03581 dated 30.01.2001 was on provisional release after payment of customs duty, transported by Air to New Delhi and from the records furnished by M/s. Lucky Exports, New Delhi, the goods imported under the Bill of Entry were made Export worthy by utilising the services of M/s. General Medical Equipments, B15, Sector 6 Noida, Uttar Pradesh. This admission of one of the Partners of the respondent Firm would show that no manufacturing facility existed with the supporting manufacturer, M/s. Ardent, Mechatronics Bangalore, as declared in the DEEC Book. This also clearly demonstrates that M/s. Lucky Exports, New Delhi, represented by their Partners, Sri. Aashish Oberoi and Sri. Diwakar Mishra and Sri.H.R. Gopinath, the supporting manufacturer and Sri. Ashok Murthy, Partner of M/s. Erkadi International**,** together among themselves, planned for their own gains, to misrepresent JDGFT in taking the import licence of the goods by evading payment of customs duty. Sri. Aashish Oberoi had admitted that the supporting manufacturer

declared to JDGFT i.e., M/s.Ardent Mechatronics was not financially sound, and had no technical experience in manufacture of medical 1equipments and hence they intended to look out for a supporting manufacturer, which would satisfy the said criteria, in and around New Delhi.

9. The JDGFT, had issued Policy Circular No.50 (RE-99)/ 99-2000 dated 28.01.2000 laying down the guidelines for export of goods with value addition under paragraph 11.7 of the EXIM Policy against Rupee payment and while drawing attention to paragraph 11.7 of EXIM policy 1997-2002, it was said that the policy provided for export of goods against payment in Indian Rupees subject to a minimum value addition of 33% with conditions specified there under. The customs authorities had brought to notice of JDGFT that several imports were made in freely convertible currency, and subsequently permission was sought by importers from the customs for export of the same goods directly to Russia against Rupee payment under the above proviso of EXIM policy and with a view to

fulfilling the criteria of value addition, export documents were manipulated to increase the FOB value on paper.

10. As there was no value addition to say upto 33% for export of goods against payment in Indian Rupee as mandated in paragraph 11.7 of the EXIM Policy, the imports and exports were in violation of the EXIM Policy. The Commissioner held that the goods were liable for confiscation under Section 113(b) of the Customs Act, 1962 and penalty under Section 114 of the Customs Act, 1962 on the Partners of Export Firms i.e. respondents and supporting manufacturer and Sri. Ashok Murthy.

11. It was further held that As Sri Aashish Oberoi, Partner, M/s. Lucky Exports, New Delhi had misrepresented facts and misled JDGFT authorities while submitting the application for grant of advance duty free advance licence (DEECA licence) and thereby enabling respondent to import goods without payment of customs duty, the goods would attract provisions under Section 112 of the Customs Act, 1962 and rendering the goods

liable for confiscation under the provisions of Section 111(m) and Section 111(o) of the Customs Act,1962.

12. In view of the aforesaid finding the Commissioner of Customs, Bangalore, passed the Order-in-Original No.5/2002 for confiscation of the goods valued at Rs.5,87,92,657/- under Section 111(m) and Section 111(o) of the Customs Act, 1962, and passed the following orders:-

a. Confiscation of goods valued at Rs.5,87,92,657/- under Section 111(m) and 111(0) of Customs Tariff Act, 1962 of the 1st respondent;

b. Demanded duty of Rs.1,40,84,474/- under Section 28(1) of the Customs Tariff Act, 1962, in respect of the goods already cleared by the first respondent on 06.12.2000;

c. Demanded duty of 1,75,55,383/- under Section 28 of the CTA in respect of the goods cleared on 30.01.2001;

d. Appropriated duty of Rs.1,75,55,383/- paid by the first respondent towards duty liability;

e. Demanded interest on the above;

f. Bank guarantee of Rs.1.25 crore was to be enforced towards adjudicated levies;

g. Imposed penalty of Rs.3,16,40,251/- on the first respondent under Section 114-A of CTA;

h. Imposed a penalty of Rs.15,00,000/- on the 3rd respondent ie., Sri. Divakar Misra;

i. Imposed penalty of Rs.15,00,000/- on the 4th respondent i.e, Sri. Ashish Oberoi;

j. Imposed a penalty of Rs.7,00,000/- each on 1st respondent-M/s. Lucky Exports and 5th respondent-Sri. Ashok Murthy Partner of M/s. Erkadi International.

13. Aggrieved by the said order passed by the Commissioner of Customs in Order-in-Original No.5/2002 dated 30.01.2002 as mentioned above, the respondents filed appeal before the CEGAT in Appeal Numbers C/25 to 28/02, C/85/02. The Tribunal by the impugned Final Order Nos.30 to 34 dated 10.01.2003 had allowed the appeal, filed by the respondents mainly relying on the judgment of

the Supreme Court in M/s. Titan Medical Systems (P) Ltd., Vs. Collector of Customs, New Delhi.

14. Initially the Civil Petition came to be dismissed by a Division Bench of this Court vide order dated 10.04.2015 on the ground that under the provisions of Section 130A of the Customs Act, the appeal would not be maintainable, in view of the judgment in the case of ***COMMISSIONER OF CUSTOMS, BANGALORE-1 VS. M/S. MOTOROLA INDIA LTD***., reported in ***2012 (275) E.L.T 53 (KAR),*** as to whether the goods were covered by any exemption notification or not would not be a dispute, which would fall within the jurisdiction of the High Court under Sections 130 or 130A of the Act.

15. Against the said judgment dated 10.04.2015 passed in this Civil petition, Civil Appeal No.9245/2015 was filed by the Department before the Supreme Court. The said Civil Appeal along with Civil Appeal No.10083/2011 and other connected Civil Appeals came to be decided by the Supreme Court vide Judgment and Order dated 05.09.2019. The Supreme Court has been of the view

that the only question involved in the case is that whether the assessee had breached the conditions, which were imposed by the Notification for getting exemption from payment of the customs duty or not. The case would not involve any question of law of general public importance, which would be applicable to a class or category of the assessee as a whole. The question is purely inter se between the parties and is required to be adjudicated upon the facts available. The Supreme Court held that the High Court was not justified in holding that the appeals were not maintainable under Section 130 of the Customs Act, but were tenable before the Supreme Court under Section 130E of the Customs Act. The Supreme Court allowed the appeals and set aside the order passed by this Court dismissing the appeal in limine on the ground of maintainability and remitted back the civil petition to the High Court for de novo consideration of the appeals on their own merits. Paragraphs 16, 17 and 18 of the said judgment are extracted herein below:-

"16. We are of the considered view that the Legislature has carved out only following categories of cases to which it has intended to give a special treatment of providing an appeal directly to this court.

"(i) determination of a question relating to a rate of duty;

(ii) determination of a question relating to the valuation of goods for the purpose of assessment;

(iii) determination of a question relating to the classification of goods under the Tariff and whether or not they are covered by an exemption notification;

(iv) whether the value of goods for purposes of assessment should be enhanced or reduced having regard to certain matters that the said Act provides for."

17. Reverting to the present case, it could clearly be seen that the only question that is involved is whether the assessee had violated the conditions of the exemption notification by not utilizing the imported materials for manufacturing of the declared final product and was, therefore, liable for payment of duty, interest and penalty. Neither any question with regard to determination of rate of duty arises nor a question relating to valuation of goods for the purposes of assessment arises in the present case. The appeals also do not involve determination of any question relating to the classification of goods, nor

do they involve the question as to whether they are covered by the exemption notification or not. Undisputedly, the goods are covered by the said notification. The only question is as to whether the assessee has breached the conditions which are imposed by the notification for getting exemption from payment of the customs duty or not. The appeals do not involve any question of law of general public importance which would be applicable to a class or category of assessees as a whole. The question is purely inter-se between the parties and is required to be adjudicated upon the facts available.

18. In that view of the matter, we find that the High Court was not justified in holding that the appeals are not maintainable under Section 130 of the Customs Act but are tenable before this Court under Section 130E of the Customs Act."

16. Thus on remand, the matter has been taken up for hearing on a number of dates. However, the parties have either taken adjournment or have not appeared. This Court dismissed this petition for non-prosecution vide order dated 20.08.2025. The said order came to be recalled vide order dated 22.09.2025, and the matter was heard on merit, as we did not intend to adjourn the

matter, which has been pending on the files of this Court, since 2003.

17. The only question which requires for consideration before this Court is that "Whether the import effected by the respondents under the licenses issued by DGFT and the export obligations carried out by them were in violation of the license conditions and policy decision of the DGFT or not.

18. The JDGFT with Policy Circular No.50(RE-99)/99-2000, dated 28.01.2000 gave guidelines for export of goods with value addition under paragraph 11.7 of the EXIM Policy against Rupee Payment. While drawing attention to paragraph 11.7 of EXIM Policy 1997-2002, it was stated that the said policy, provides for export of goods against payment in Indian Rupees subject to a minimum value addition of 33% with conditions specified thereunder. (Emphasis supplied)

19. The said Policy Circular further stated that the value addition norm had been formulated in Chapter VII

of the EXIM Policy relating to duty exemption scheme. This would be implicit that the value addition had to be achieved by subjecting the imported goods with some kind of tangible processing or manufacturing process so as to add to its intrinsic value in a realistic manner and only, an increase in FOB value of exportable goods on paper without any increase in its intrinsic value would be against the policy. It was also clarified that Rupee Debt Payment Scheme was envisaged to increase export of Indian goods to Russia. If switch-trade of the form described above takes place, the entire mechanism of repayment of rupee debt to Russia by way of export of Indian goods would be jeopardised. In the light of the above facts, it was clarified that the minimum value addition of 33% for export of goods against payment in Indian Rupee under paragraph 11.7 of the EXIM Policy Should be achieved by effecting an increase in intrinsic value of export products and not mere increase in FOB value of the export.

20. The Commissioner from the Bank documents noticed that the bankers of M/s. Lucky Exports, New Delhi, M/s. Syndicate Bank, Foreign Exchange Branch, F-40, Connaught Place, New Delhi-110 001, vide their letter dated 27.01.2001 have clarified that the original export L/C No.0115 dated 09.08.2000 for INR 62,45,82,465/-, opened by BEFA Moscow, Russia for its Government Party State Company Foreign Economic Association (GOSCONSIM) in favour of M/s. Lucky Exports for import of medical equipments for their Government Hospitals. The irrevocable letter of credit was established for export against payment in Indian Rupees, on 09.08.2000 i.e., well after the deadline fixed by JDGFT that is 28.01.2000.

21. The Commissioner having examined the evidence and statements recorded by the Directorate of Revenue inteligence, held that the goods imported were subsequently exported without any intrinsic value addition, and merely the FOB value of the goods was

backed up to show the value addition. In the light of the clarification issued to paragraph 11.7 of the EXIM Policy 1997-2002, some of the goods were liable for confiscation under Section 113(d) of the Customs Act, 1962 and penalty under Section 114 of the Customs Act, 1962, on the partners of exporter firm and the supporting manufacturer and Sri.Ashok Murthy.

22. Against the Order-in-Original, the appeals were filed before the Tribunal as noted above. The Tribunal considered the definition of 'Manufacture' as provided in paragraph 3.31 of the EXIM Policy for the period 1997-2002, which defined 'Manufacture' as under :-

> *"Manufacture" means to make, produce, fabricate, assemble, process or bring into existence by hand or by machine, a new product having a distinctive name, character or use and shall include processes, such as refrigeration, repacking, polishing, labeling and segregation. Manufacture, for the purpose of this Policy, shall also include agriculture, aquaculture, animal husbandry, floriculture,*

horticulture, pisciculture, poultry, sericulture, viticulture and mining."

23. The Tribunal held that the definition of "Manufacture" in the case of exports, would be wide in its application, which would be evident from Rule 12 and 13 of the Central Excise Rules, 1944, as they existed prior to 01.07.2001, which defined a process of manufacture for the purpose of exports, as including the process of blending of any goods or making alterations or any other operation thereon. The liberal interpretation of 'Manufacture' in the case of export would be required to be given which was evident from the Circular No.314/30/97-CE dated 06.05.1997 issued by the Central Board of Excise and Customs, while interpreting the benefit of Notification No.1/95-CE dated 04.01.1995, applicable in the case of 100% Export Oriented Units (E.O.Us).

24. The Tribunal had noted the activities undertaken by the respondent before exporting the goods in paragraph B1 to B10 which would read as under :-

> *"B.1 The imported material and the indigenous raw material on receipt at the premises at No.5, Ist Floor, Anjanadri Plaza, Girinagar 1 Phase, Bangalore-85, were subjected to inspection.*
>
> *B.2 The frame for the base unit consisted of pneumatic and electromechanical components. The pneumatic elements which figured at St. Nos. 2.3 & 4 of the invoice of ADVO LLC included Oxygen Regulator, Oxygen Regulator Pressure Transducer and Oxygen Solenoid Assembly. The PCBs figured at Sl Nos. 5 to 8 of the said invoice and included the PCB Controller. PCB Pressure Solenoid, PCB Battery backup, and PCB Ul display. While the pneumatic elements performed all the basic functions of the ventilator, the electronic components viz., populated PCBs performed the operation of measuring, controlling and regulating the functions of the ventilator. All the components mentioned above were assembled to make the base unit. The process of assembly involved the integration of items mentioned above to the Base Unit*
>
> *B.3 The other items mentioned at Sl. Nos. 9 to 22 of the invoice of NOVO LLC were 8.3 items which were*

in the nature of parts and accessories of the ventilator. The items included filters, power cords, humidifier system, humidifier chamber, adapter etc. These items were also assembled on to the Base Unit.

B.4 The next process involved replacing the EPROMs loaded with the Russian software that were contained in the components imported and replacement with the EPROMs that were loaded with the English language version of the software in the Controller PCB.

B.5 The next process involved the testing of the electrical and pneumatic parameters as per the system specifications in which the consumables like oxygen gas, purified air etc., were used as also a system testing which consisted of verification of the modes of ventilation, Set Alarm conditions, pressure volume etc. These tests were carried out using general purpose, and custom-built test equipment like digital multimeter, oscilloscope etc.

B.6 In the next process, the assembly of locally procured material was done in which the communication panel of the Base Unit was removed from the Base Unit and connector cutouts were made using drilling machines. The cutouts were then connected with the cables to transmit the analog signals from the controller PCB of the Base Unit to the display monitor. After testing the signals,

the display monitor was assembled to Base Unit. Thereafter, the Base Machine, the display monitor and the humidifier unit was fitted on to the trolley and various tests were then carried out to check the display functions like wave form of the flow volume and pressure, the loops and communication with the Base Machine etc.

B.7 The process of calibration which was then carried out, involved the meas of the timing and analysis of the signals, measurement of the set values of sa parameters at the designated output points since the basic function of a ventilate essentially the delivery of the air-oxygen mixture at pre-set pressure, volume and particular mode,

B.8 The ventilator became a complete system only after completion of all the above processes.

B.9 After completion of the assembling, testing and calibration processes, the Russian language software was then reintroduced in the EPROMs in the Base Unit.

B.10 After completion of the above process, the parts and accessories were dismantled for packing. While the Base Unit along with some parts and accessories were packed in one box, the display monitor with some imported as well as local parts and acessories were packed in another box. The trolley was packed in a third box."

25. The Tribunal itself noted that the actual value addition that took place in India was only 5.18%. The value of one unit for a ventilator after import was Rs.12,91,926/-. The value of locally procured goods and services was only Rs.67,000/-, and therefore, the percentage of value addition was only 5.18%. However, the rupee value of the exported machine was Rs.24,49,393/- which was on account of the Rupee-Rouble agreement, and would not constitute an intrinsic value addition. The increase had come about because the supplier quoted his price in US Dollars, which was converted to roubles by Russian byer, anud in turn paid in rupees under rupee-rouble agreement.

26. Despite the aforesaid finding, the Tribunal passed the impugned order. Paragraph 11 of the impugned order reads as under :-

> *"11. We have considered the submissions and find:*
>
> *a) The facts in the Titan Medical System's case and in the present case cannot be differentiated, the attempts being made by the SDR not withstanding*

Therefore following the law laid down by the Apex Court, we would set aside the present order and the Show-cause notice and allow the appeal with consequential benefits to all the appellants.

b) In the present case we find that M/s GE Medical Systems has provided for the certification by Central Excise Officers of manufacture having taken place in their premises. The DRI Officers have permitted exports on and after verification. This would indicate following the BPL case, that manufacture in this case did take place and there was no case or cause to have issued the Show-cause Notice.

c) Since no duty demands and show cause notice is being upheld, there is no case for penalty on any appellant."

27. When the value addition was only 5.18% as recorded by the Tribunal, which was much below 33% for export of goods against payment in Indian Rupee under paragraph 11.7 of the EXIM policy, it could not be said that there was any increase in the intrinsic value of the export product by the respondent.

28. The Supreme Court in ***EAGLE FLASK INDUSTRIES LTD., Vs. COMMISSIONER OF CENTRAL EXCISE, PUNE,*** reported in ***(2004 SCC 7 377)*** as well as in the ***STATE OF***

JHARKHAND AND OTHERS VS. AMBAY CEMENTS AND ANOTHER reported in ***[(2005) 1 SCC 368]*** has held that if an exemption is available on complying with certain conditions, the conditions have to be strictly complied with. The exemption provision in a taxing Statute should be construed strictly and it is not open to the Court to ignore the conditions prescribed in the EXIM Policy and the exemption notification.

29. In the ***STATE OF JHARKHAND AND OTHERS Vs. LA OPALA R.G. LTD.,*** reported in ***(2014) 15 SCC 136*** it has been held that it is for the assesse to establish clearly that it is covered by the exemption notification and in case of doubt, benefit must be given to the State. Strict and liberal interpretation can be invoked at different stages of interpreting it. The strict approach requires to be adopted in determining its applicability to the assessee. Eligibility clauses mentioned in the exemption notification have to be interpreted in terms of its language. Paragraphs 15 to 19 of the said judgment are extracted hereunder :-

"15. We do not concur with the proposition put forth by Shri S.D. Sanjay, learned Senior Counsel that a notification which grants tax incentives should to be liberally construed in support of his submission. It is settled rule of construction of a notification that at the outset a strict approach ought to be adopted in administering whether a dealer/manufacturer is covered by it at all and if the dealer/manufacturer falls within the notification, then the provisions of the notification be liberally construed.

16. Literally speaking, an exemption is freedom from any liability, payment of tax or duty. It may assume different applications in a growing economy such as provisioning for tax holiday to new units, concessional rate of tax to goods or persons for a limited period under specific conditions and therefore, in Union of India v. Wood Papers Ltd, this Court has observed that construction of an exemption notification or an exemption clause in contrast with the charging provision has to be tested on different touchstone and held that the eligibility clause in relation to an exemption notification is given strict meaning and the notification has to be interpreted in terms of its language, however, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed literally. This Court has explained the

rationale of adopting the said approach as under: (SCC p. 260, para 4)

"4. … In fact an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction."

17. This Court in Gammon (I) Ltd. v. Commr. of Customs [Gammon (I) Ltd. v. Commr. of Customs, while rejecting the plea of the appellant that the exemption notification should receive a liberal construction to further the object underlying it relied upon the decision of a three-Judge Bench of this Court in Novopan India Ltd., which stated the

aforesaid principle and the object behind adopting literal interpretation in determining eligibility for claiming exemption or exception from tax as follows: [Gammon (I) Ltd. case SCC p. 509, para 32]

"32. … '16. … 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. CCE and Customs 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.' (Novopan India Ltd. case, SCC p. 614, para 16)"

(emphasis supplied)

18. In CCE v. Mahaan Dairies this Court has observed that: (SCC p. 800, para 8)

"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."

19.CCE v. Bhalla Enterprises laid down a proposition that notification has to be construed on the basis of the language used. A similar view has been expressed by a Division Bench of this Court in TISCO Ltd. v. State of Jharkhand, Kartar Rolling Mills v. CCE, Eagle Flask Industries Ltd. v. CCE, Govt. of India v. Indian Tobacco Assn., Collector of Customs (Preventive) v. Malwa Industries Ltd. and CCE v. Rukmani Pakkwell Traders.

30. In ***SANGHVI RECONDITIONERS PRIVATE LIMITED Vs. UNION OF INDIA AND OTHERS ((2010) 2 SCC 733)*** it has been held that an assessee claiming benefit of

exemption notification must show that he satisfies the conditions of exemption as prescribed in the exemption notification. The exemption notification has to be strictly construed being the foundation for availing the benefits to the exemption notification, the conditions prescribed therein had to be strictly complied with.

31. Thus, from the aforesaid judgments, it is evident that when an assessee is claiming the benefit of exemption notification, the assessee must show that he has satisfied all the conditions of exemption as prescribed in the notification. In the present case, the exemption from payment of customs duty on import was on the condition of value addition at the minimum rate of 33% made before the exports could have been effected. As noted above, the value addition was only upto 5.18% and there was no change in the intrinsic value of the imported goods. Therefore, the respondent-assessee was not entitled for exemption of payment of customs duty under the exemption Notification No.1/95-CE dated 04.01.1995 on imported items.

32. The 1st respondent-Ms/.Lucky Exports had misrepresented the JDGFT for the grant of an advance license in terms of Chapter VII of the Handbook. The FOB value of the exports was Rs.55,00,00,000/- as against the CIF value of import of Rs.32,59,88,430/- and indicated that the value addition would be to an extent of 68.71%. However, in actual even as per the impugned order passed by the Tribunal, the value addition was only up to 5.18%.

33. Section 111(m) and 111(o) of the Customs Act would provide that any goods which do not correspond in respect of value or any other particular, with the entry made under this Act or in the case of baggage with the declaration made under Section 77 would be liable for confiscation. Sub-section (4) of Section 111 of the Customs Act, provides that any goods exempted subject to any condition from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observation of the condition was sanctioned by the proper officer would be liable for

confiscation. As the condition imposed under the JDGFT licence and the exemption Notification 51/2000 dated 27.04.2000 were not complied with and in fact they had misrepresented the JDGFT in obtaining the advance license.

34. In view of the aforesaid discussion, we are of the considered view, that the view taken by the CEGAT cannot be sustained, and hence the instant Civil Petition is ***allowed,*** we set aside the impugned order dated 10.01.2003 passed in C/25 to 28/02, C/85/02.

Sd/-
(D K SINGH)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

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