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C.A.No. 1125 OF 2000

ITEM No.102

Court No.5

SECTION III

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No.1125/2000

M/S. EXCON BLDG. MATERIAL MFG. CO. P. LTD.Appellant (s)

VERSUS

COMNR. OF CENTRAL EXCISE, BOMBAYRespondent (s)

(With office report)

Date : 03/03/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA  
HON'BLE DR. JUSTICE AR. LAKSHMANAN  
HON'BLE MR. JUSTICE S.H. KAPADIA

For Appellant (s)Mr. A.K. Ganguli, Sr. Adv.  
Mr. Ashok Kumar Gupta, Adv.  
Mr. N. Vishwanathan, Adv.  
Mr. Farrukh Rasheed, Adv.  
Ms. Barnai Basak, Adv.

For Respondent (s)Mr. K. Swami, Adv.  
Mr. P. Parmeswaran, Adv.  
Mr. B. Krishna Prasad, Adv.

UPON hearing counsel the Court made the following  
O R D E R

The Appeal stands dismissed in terms of the signed order. There will be no order as to costs

(K.K. Chawla)  
Court Master

(Jasbir Singh)  
Court Master

[Signed order is placed on the file]  
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1125 OF 2000

M/S. EXCON BLDG. MATERIAL MFG. CO. P. LTD.Appellant (s)

VERSUS

COMNR. OF CENTRAL EXCISE, BOMBAYRespondent (s)

O R D E R

This Appeal is against the Order of the Tribunal dated 23rd November, 1998.

Briefly stated the facts are as follows:

The Appellants manufacture cement, concrete, hollow and solid blocks which are classifiable under Tariff Item No.68.07. They filed a classification list and claimed benefit of Notification No.64/88 dated 1st March, 1988.

The said Notification reads as follows:-

"Notification No.64/88 dated 1.3.1988

"Effective rates of duty on certain specified goods".

In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise, Rules, 1944, the Central Government hereby exempts goods of the description specified in column (3) of the Table hereto annexed and falling within chapters or heading Nos. of the schedule to the Central Excise Tariff Act, 1985 (5 of 1986) specified in column (2) of the said Table, from so much of the duty of excise specified in the said schedule as in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said table.

Sl.No.Sub-Heading Description Rate of Duty

368.07 Blocks, slabs, lintels,

concrete beams and stairs

constituted intermediates

and components of

pre-fabricated buildings

falling under heading

No.94.06.

5% ad-valorem"

Show cause notice was issued to them in which it was specifically stated that the goods manufactured by them do not constitute intermediate or components of pre-fabricated buildings and that the wording of the Notification showed that concessional rate of duty is only available if the goods fall under Tariff Item No.68.07 and constitute intermediate and components of pre-fabricated buildings.

In reply to the show cause notice the Appellants never claimed that their blocks could be used in pre-fabricated buildings or that they were intermediate or components of pre-fabricated buildings. They only claimed that the benefit of the Notification was available even to blocks, slabs, and lintels falling under Tariff Item No.68.07 even though such blocks, slabs and lintels did not constitute an intermediary or component of a pre-fabricated building.

The Assistant Collector granted only provisional approval. This order was subject to the Appellants executing a bond to pay the differential amount of duty. The Appellants filed an Appeal before the Collector (Appeals) who allowed the Appeal and remitted the matter back to the Assistant Collector. The Assistant Collector then approved the classification list. Against the order of the Assistant Collector the Revenue filed an appeal before the Collector (Appeals). The Collector (Appeals) held in favour of the Appellants. The Revenue then filed an Appeal before the Tribunal. The Tribunal has by the impugned Judgment held that the Appellants are not entitled to the benefit of the above Notification.

It is well settled that where the wording of a Notification are clear then the plain language of the Notification must be given effect to. An interpretation which is not borne out by the plain wordings of the Notification cannot be given. A reading of the Notification makes it clear that the concessional rate of duty is only available to blocks, slabs, lintels, concrete beams and stairs which constitute an intermediary or component of pre-fabricated buildings. We are unable to accept the submission that it is only the concrete beams and stairs which must constitute an intermediary or component of the pre-fabricated buildings. We are unable to accept the submission that blocks, slabs and lintels by themselves also are entitled to the benefit of this Notification. If the intention was to make a difference between blocks, slabs and lintels on the one hand and concrete beams and stairs on the other they would have specifically done so. Then the words blocks, slabs and lintels would have had to be segregated from the concrete beams and stairs which constitute intermediary or components of pre-fabricated buildings. The fact that no such distinction has been made shows that all the items mentioned in the third column must constitute an intermediary or component of pre-fabricated buildings.

Great reliance was placed upon the order of the Collector, who has held in favour of the Appellants, on the following reasoning.

"The only condition is that such blocks, slabs, etc. should be used as intermediates and components of pre-fabricated buildings under heading 94.06. This is not the case of the department

that the blocks, slabs, etc. manufactured by the respondent are not used in pre-fabricated buildings. The Respondent have also IS : in para 0.3 of the Foreword to the Indian Standard Specification for Concrete Masonry Units, it has been stated that Concrete Masonry Construction "is also economical because fewer joints result in considerable saving in mortar as compared to normal masonry construction also in increasing the strength of the wall" . This should prove that masonry work is a must for any pre-fabricated buildings. The blocks are being manufactured according to the ISI Specification and would thus be entitled to exemption under Notification No.64/88 dated 1.3.88. In view of the discussions above, there is no merit in the departmental application and is rejected."

In our view, the Collector has erred in holding that it was not the case of the Department that the blocks and slabs manufactured by the Respondents are not used in pre-fabricated buildings. A perusal of the show cause notice shows that it was the specific case of the Department that the goods manufactured by the Appellants were not intermediates or components of pre-fabricated buildings. The Collector has omitted to note that it was not the case of the Appellants that their goods could be used in pre-fabricated buildings or that they constituted intermediaries of components of a pre-fabricated building. The Collector has also erred in relying upon the Indian Standard Specification for Concrete Masonry Units and concluding that the blocks which are being manufactured according to the ISI Specification would become entitled to the benefit of the Notification. As has been mentioned earlier it is only such blocks as are intermediaries or components of pre-fabricated buildings that get the benefit of the Notification. Merely because some block, which is not a component or intermediary of a pre-fabricated building, has an ISI specification does not mean that block gets the benefit of Notification. The Order of the Collector was therefore entirely erroneous and has been rightly set aside by the Tribunal.

In our view, there is no infirmity in the order of the Tribunal. We thus see no reason to interfere. The Appeal stands dismissed. There will be no order as to costs.

.....J.  
[S.N. VARIAVA]

.....J.  
[Dr. AR. LAKSHMANAN]

.....J.  
[S.H. KAPADIA]  
New Delhi.  
March 03, 2005.