

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.2495 OF 2001

JINDAL DYE INTERMEDIATE LTD.
t(s)

Appellan

VERSUS

COLLECTOR OF CUSTOMS, MUMBAI
nt(s)

Responde

(with office report)

Date: 18/04/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s)

Mr. Joseph Vellapally, Sr. Adv.

Mr. Jay Savla, Adv.

Mr. Ragvesh Singh, Adv.

Ms. Reena Bagga, Adv.

For Respondent(s)

Mr. Pramod Swarup, Adv.

Mr. Rupesh Kumar, Adv.

Mr. P.Parmeswaran, Adv.

UPON hearing counsel the Court made the following

O R D E R

The Appeal is allowed. Parties to bear their own costs.

(Parveen Kr. Chawla)

Court Master

(Phoolan Wati Arora)

Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2495 OF 2001

JINDAL DYE INTERMEDIATE LIMITED

APPELLANT

VERSUS

COLLECTOR OF CUSTOMS, MUMBAI

RESPONDENT

O R D E R

This is a Statutory Appeal filed under Section 130E of the Customs Act,

1962 (for short 'the Act') against the Final Order bearing No. C-

1/377/WZB/2001 dated 12.2.2001 passed by the Customs, Excise and Gold

(Control) Appellate Tribunal, Mumbai (hereinafter referred to as 'the Tribunal') in

Appeal No. C/107/94-Bom. whereby the Tribunal has rejected the appeal filed by

the appellant-assessee and confirmed the demand of duty imposed by the Collector of Customs.

Appellant is a company registered under the Companies Act, 1956 and is manufacturer of Aromatic Chemicals and Natural Essential Oils and is a Trading House. Appellant is the exporter of various Dyes and Dye Intermediate etc. Between May, 1993 and October, 1993 the appellant imported various Aromatic Chemicals and Natural Essential Oils against advance licences granted to it by the Licensing Authorities i.e. Joint Chief Controller of Import and Export and Joint Director General of Foreign Trade. All these licenses were quantity based advance licenses issued under the Duty Exemption Scheme contained in Chapter XIX of the Import and Export Policy, 1993 and Chapter VII of the Import and Export Policy 1992-97 in respect of the export products (i) Flavoured Shivalik Mentha Base; (ii) Methyl Hydroxy; and (iii) Flavoured Aromatic Menthol Base. Under the Scheme, quantity based advance licences are issued by the Licensing Authority on the recommendation of a Regional Advance Licensing Committee who then scrutinizes the applications and decides the quantity and

value of goods that can be imported against specified quantity and value of any export product.

A facility is given to the Importer either to first import and utilise the imported goods in the manufacture of the export product or to export the goods after the application for the licence is made. In the later case, the exports can be used in discharging the export obligation specified in the licence. After the export obligation is completed, export proceeds realised and LUT redeemed, the imported goods became freely transferable.

Prior to 30th June, 1962, the provisions of the Hand Book of Procedures

1992-1997 issued on 1.5.1992 required that the first licence holder has to co-

relate the goods imported with those utilised in the export product. After the

deletion of the requirement of co-relation, the first licence holder became free to import any goods covered by the licence issued.

When the appellant applied for the clearance of the goods by filing Bills

of Entry and complying with all formalities, the Customs Authorities did not

permit clearance of the goods saying that they were investigating the matter. By

an order of provisional assessment passed by the Collector of Customs on 12.7.1993 and communicated to the appellant by the Assistant Collector of

Customs vide order dated 15.7.1993, the appellant could clear the goods against

submitting a P.D. Bond for the full duty amount involved and 25% Bank Guarantee. The appellant promptly complied with this order. Further

provisional assessment order dated 4.8.1993 was passed by the Assistant

Collector of Customs and it was alleged that in view of the fact that the Joint

Director General of Foreign Trade has issued a show cause notice for cancellation

of the advance licences issued to the appellant, the respondent directed that the

goods imported would be allowed clearance on payment of appropriate duty

applicable in each case. This order was challenged by the appellant by filing Writ

Petition in the Bombay High Court. The High Court while granting leave and

pending the final disposal of the said petition allowed, clearance of the two

consignments imported by the appellant on the appellant's furnishing P.D. Bond

for the duty amount involved and Bank Guarantee for 25% of the duty amount,

which the appellant had already furnished in pursuance to the order of Collector

of Customs dated 15.7.1993.

The appellant having completed their export obligation, realised export proceeds and got LUT redeemed, imported 26 consignments of Aromatic Chemicals and Natural Essential Oils in accordance with the licences issued to the appellant. The goods were imported and arrived in India between May 1993 and October 1993.

In the meantime 24 more consignments of goods covered by advance licences were imported by the appellant. Again, the Customs Authorities refused to clear the same and the appellant filed Writ Petition No.1865 of 1993

challenging the actions of the Customs Authorities in not clearing the said goods.

The High Court directed that those 24 consignments be also cleared on the same terms i.e. on the appellant's furnishing P.D. Bond for the duty amount involved and Bank Guarantee of 50% instead of 25%.

In the notice issued, it was alleged that what was exported by appellant, the export being prior to the import of the exempted material, was shown on test to be Plain Menthe Oil and therefore the Natural Essential Oil and Aromatic Chemical were not part of the export product. It was also alleged that at no

manufacture of the export product had taken place at the premises of the

Earnest and Co. at Indore. It recorded that the advance licence and DEEC

certificates issued to the appellant had been cancelled. The notice proposed

denial of the exemption contained in Notification 159/90, confiscation of the

goods under clause (d) of Section 111 and penalties.

In the order in original, the Collector denied the benefit of Notification

Nos. 159/90-Cus and 204/92-Cus for the reasons that it has not been shown

that the condition in the notification that the imported goods were identical in

terms of quality and technical characteristics with those used in the export

product. It was found that since the Natural Essential Oil and Aromatic

Chemicals imported by the appellant were entitled to be cleared under an

advance licence issued to it under the Import Export Policy in the year 1990-93.

That the goods were not liable for confiscation and the penalty was not leviable

on the importer. The assessee as well as the Department, being aggrieved, filed

appeals. The appeals filed by the Department were dismissed and no further

appeal has been carried to this Court. Hence, to that extent the order of the

Tribunal has become final.

In the appeal before the Tribunal, the appellant contended that it was

entitled to the benefit of exemption Notification No.159/90-Cus and in the

alternative exemption Notification No.204/92-Cus, which came into force with

effect from 19.5.1992. For getting the benefit of the said notifications, appellant

relied upon a judgment of the Tribunal, South Zonal Bench, Madras in the case

of Jayant R. Patel vs. Commissioner of Customs, Hyderabad reported in 1997

(89) ELT 164(Tribunal), wherein the Tribunal after referring to the earlier decision

of the Tribunal in the case of M/s Nitco Marble & Granite Pvt. Ltd. vs. Collector

reported in 1996 (63) ECR 111, held:

".....A perusal of this decision clearly go to show that if the licensing authority is satisfied that no advance licence can be granted under the DEEC scheme in regard to the obligation which is said to have been performed, it is open to the authority to decline to grant advance licence. It was also held in that decision that at the third stage in relation to chain, namely, the stage of import, neither the exporter nor the transferee of the licence would be required to be called upon to satisfy the customs authorities once

again that the duty free import entitlement was legitimate. It was, therefore, held in that decision that irrespective of whether further examination or formation of opinion is permissible in the ordinary course, the importer cannot be required to prove once again the eligibility for duty free import of the permitted goods. This is what exactly the department is now asking the appellant to do. Therefore, the abovesaid decision squarely comes to the aid of the appellant and accordingly, we hold that the appellant is entitled for the benefit of Notification No. 159/90. Alternatively, it was contended that the appellant is also entitled for the benefit of Notification No. 204/92. It is now seen that the appellants have filed the bill of entry after this notification was issued by the Govt. on 19.5.1992. Therefore, it is a relevant notification which has to be considered. As per Clause 4 of Chapter 1 of EXIM Policy 1992-97, it is made clear that licences issued before the commencement of this Policy shall continue to be valid for the import/export of the items permitted thereunder. It is to be seen that whether this licence is a quantity based licence and the quantity based licence shall specify the names and descriptions of items to be imported and the quantity of each item to be imported and the c.i.f. value of imports. In the present licence, the quantity as well as the value descriptions are clearly mentioned and therefore it is a quantity based advance licence. This licence issued for the previous policy period will continue to be valid for the present period also in view of the transitional arrangements as contained in Para 4 of Chapter 1 of EXIM Policy 1992-97. This argument of the learned representative is therefore having force and we accept the same. Therefore the

alternative argument of the learned representative is that benefit of Notification No. 204/92 applies to the appellant. In this notification Hyderabad is also included as one of the place wherein the import can be made. On this count also, the appellants should get the benefit. Therefore, we are of the view that the import of the goods is permissible and denying the benefit of these two notifications in the impugned order is not in accordance with law. We set aside the same and hold that the appellants are entitled for the benefit of these notifications in respect of the goods which are covered by the licence and not with respect to the goods which are found in excess."

As per this order, the appellant became entitled to the benefit of exemption under Notification No.159 of 1990 or in the alternative under Notification No. 204 of 1992.

The Tribunal declined to follow this judgment of the Tribunal, Bench at Madras holding as under:

"9. With respect, it appears to us that significant issues which would have a bearing upon the availability of 204/92 were not urged before the Madras Bench and thus not considered by it. Doubtless, the importer could lay a claim on the benefit of notification, before it was in force when the bill of entry was filed. However, notification 204/92 is not a successor to notification 159/90. It continues

to be in force after 1992, when 204/92 was promulgated. The two notifications ran side by side. There are also differences in the nature of the two notifications. We have noted the condition contained in 159/90 with regard to goods permitted to be imported only of identical characteristics or specifications as used in the exported product. This condition is not present in notification 204/92. Transferability of goods in 204/92 is subject to less stringent condition as of notification 159/90. Another factor which the Commissioner relied upon that the DEEC book itself mentions that one of the conditions in the notification that the goods must be covered by a DEEC book specified in the schedule to the notification. The Schedule specifies the number of the notification. All these lead us to conclude that there are significant differences in the two notifications. While each of them serve the general purpose of export promotion, the manner in which they are worded and administered differs significantly. The arguments of the departmental representative before the Madras Bench, recorded in paragraph 6 of its order, do not refer to any of these considerations. We are quite satisfied if these points had been urged, a very different result might have arisen. We are therefore unable with respect, to treat that decision as binding. For the reasons it will also be clear that it is not possible to extend the benefit of notification 204/92."

Instead of referring the matter to a larger Bench in order to maintain

the judicial propriety in decision-making, the Tribunal took it upon itself to

disagree with the aforesaid decision in Jayant R. Patel (supra) in refusing to follow the same.

This Court in the case of Jayaswals Neco Ltd. vs. Commissioner of Central Excise, Nagpur reported in 2006 (195) ELT 142(SC), in the similar circumstances, held that in order to maintain the judicial propriety in decision-making, the Tribunal wherever it differs with the decision of the co-ordinate

Bench should refer the matter to a larger Bench. It was observed:

"9. Assuming even if it were to disagree with the test laid down in Hindustan Gas & Industries case (supra), in order to maintain the judicial propriety in decision-making, the Tribunal ought to have referred the matter to a larger Bench, which it did not do. If a Bench of co-ordinate jurisdiction does not agree with a Bench of the same strength, then it should refer the matter to a larger Bench and refrain from taking upon itself not to follow such decision and take a contra view. This inevitably leads to uncertainty and creates confusion. This practice must be deprecated at all costs."

Against the judgment in Jayant R. Patel (supra), the Revenue had filed Appeal in this Court along with an application for condonation of delay

under Section 5 of the Indian Limitation Act, 1963 to condone the delay in

filing the appeal. The appeal was dismissed on the ground of delay.

The said decision in Jayant R. Patel (supra) of the Madras Bench of

the Tribunal was followed in Commissioner of Customs, Chennai vs. Salem

Stainless Steel reported in 2001 (131) ELT 30 against which the Revenue did

not file any appeal in this Court. Similarly, the decisions taken by different

Benches of the Tribunal on the same lines as the Madras Bench of the

Tribunal in the case of Jayant R. Patel (supra), in Commissioner vs. Alfa Exim

& Sandeep Impex Pvt. Ltd. reported in 1997 (95) ELT 366(T); Commissioner of

Customs, Mumbai vs. Aditya International Pvt. Ltd. reported in 2001 (135) ELT

667; and Jay Engineering Works Ltd. vs. Commissioner of Customs, Chennai

reported in 2003 (162) ELT 680 (T-Bang.) were not appealed against by the

Revenue.

Since the Customs Department has accepted the above judgments

and the same has become final, the Revenue is precluded from taking a

different stand in the present appeals as per law laid down by this Court in a

catena of cases. See Collector of Central Excise, Pune vs. Tata Engineering &

Locomotives Co. Ltd. reported in (2003) 11 SCC 193; Berger Paints India Limited vs. Commissioner of Income Tax, Calcutta reported in (2004) 12 SCC 42; Birla Corporation Limited vs. Commissioner of Central Excise reported in (2005) 6 SCC 95 = 2005 (186) ELT 266(SC); and Jayaswals Neco Limited vs. Commissioner of Central Excise, Nagpur reported in 2006(195) ELT 142(SC).

For the reasons stated above, we accept this appeal, set aside the

order of the Tribunal with consequential reliefs and hold that the appellant-

assessee is entitled to the benefit of the Exemption Notification Nos. 159/90-

Cus and 204/92-Cus. Parties shall bear their own costs.

..J.

.....
[ASHOK BHAN]

NEW DELHI;

APRIL 18, 2006 [MARKANDEY KATJU]