REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1288 OF 2005

M/S. SPORTS & LEISURE APPAREL LTD. .....APPELLANT(S)

VERSUS

COMMISSIONER OF CENTRAL EXCISE, NOIDA .....RESPONDENT(S)

W I T H

CIVIL APPEAL NO. 1752 OF 2006

CIVIL APPEAL NO. 1753 OF 2006

CIVIL APPEAL NO. 1856 OF 2006

CIVIL APPEAL NO. 2267 OF 2006

CIVIL APPEAL NO. 2856 OF 2006

CIVIL APPEAL NOS. 6036-6038 OF 2008

CIVIL APPEAL NO. 4612 OF 2010

CIVIL APPEAL NO. 4886 OF 2010

CIVIL APPEAL NOS. 6749-6769 OF 2010

CIVIL APPEAL NOS. 7247-7281 OF 2010

CIVIL APPEAL NO. 8186 OF 2010

CIVIL APPEAL NOS. 8187-8189 OF 2010

CIVIL APPEAL NOS. 9145-9164 OF 2010

CIVIL APPEAL NO. 2260 OF 2011

CIVIL APPEAL NO. 5473 OF 2013

CIVIL APPEAL NO. 5474 OF 2013

J U D G M E N T

A.K. SIKRI, J.

All these appeals are taken up together for hearing as the issue involved in these appeals is identical, though divergent view is taken by the different Benches of the Tribunal. Issue pertains to grant of benefit of exemption under Notification No. 14/02-CE and 15/02-CE both dated 01.03.2002. These notifications give the benefit of concessional rate or nil rate of duty to the knitted garment manufacturers on certain conditions. One of the conditions is for full exemption is that knitted garments are exempt if manufactured out of knitted fabrics on which appropriate duty of excise has been paid and no cenvat credit of duty paid on inputs or capital goods has been taken. If Cenvat credit is taken, the duty is at concessional rate.

2. The Revenue has taken the position that the benefit of these notifications is available only when the garments have been manufactured from the duty paid fabrics and in those cases where the fabrics has not suffered excise duty, it cannot be said that the appropriate duty of excise has been paid thereon and consequently the benefit of notifications would not be available. The stand taken by the assessees, on the other hand, is that Explanation II to the exemption

notifications creates a legal fiction, specifying that for the purpose of conditions of this notification, textile yarn or fabrics shall be deemed to have been duty paid even in the absence of production of documents evidencing payment of duty. They also relied upon condition No. 3 of this notification. Many Benches of the Custom Excise and Service Tax Appellate Tribunal (for short 'CESTAT') has accepted the plea of the assessees holding that benefit of exemption notification would be admissible. Many other Benches of the Tribunal have taken a contrary view, thereby accepting the plea of the Revenue and holding that Condition No. 4 is not satisfied. That is the precise reason for filing two sets of appeals, preferred both by the Revenue as well as those assessees.

3. In order to state the precise question of law that falls for consideration and the backdrop in which it arises for discussion, we would take note of the facts appearing in Civil Appeal No. 1288 of 2005 which is preferred by an assessee.

4. Assessee is an integrated textile apparel manufacturer. Assessee purchases excise duty paid yarn from the market on payment of excise duty. Assessee does not take any MODVAT credit of the duty paid on the yarn. Assessee manufactures the knitted fabrics in its factory out of the duty paid yarn. The knitted fabric is entirely captively consumed in the manufacture of knitted apparels. The apparels are thereafter cleared outside the factory.

5. Vide Union Budget 2002, a new excise duty scheme for textile sectors was introduced. Under this scheme, vide Notification Nos. 14/2002-CE and 15/2002-CE dated 01.03.2002, fabric manufacturers and garment manufacturers were given an option to operate under two different schemes. Under one scheme, where the manufacturers of the fabric or garment wants to avail the MODVAT credit of the duty paid on the inputs or the capital goods, excise duty @ 75% of the normal rate of duty of 12% was levied. Under another scheme, where the manufacturers do not want to avail of the MODVAT facility, complete exemption from excise duty to the fabrics and garments was granted. The various Sl. Nos. of Notification Nos. 14/2002-CE and 15/2002-CE prescribed these two alternative schemes.

6. Notification No. 15/2002-CE vide Sl. No. 14 prescribed Nil rate of excise duty for "Articles of apparel, knitted or crocheted" falling under Heading 61.01, subject to the following condition:

> "If made from knitted or crocheted textile fabrics, whether or not processed on which appropriate duty of excise leviable under the First Schedule to the said Central Excise Tariff Act, and the Additional Duties of Excise (Goods of Special Importance) Act read with any notification for the time being in force or the Additional duty of Customs leviable under Section 3 of the Customs Tariff Act, 1975, as the case may be, has been paid and no credit of the duty paid on inputs or capital goods has been taken under Rule 3 or Rule 11 of the CENVAT Credit Rules, 2002."

Explanation to Notification No. 15/2002-CE provided as under:

> "For the purposes of conditions specified below, textile yarns or fabrics shall be deemed to have been duty paid

> even without production of documents evidencing payment of duty thereon"

7. Notification No. 15/2002-CE, as is evident from the preamble thereto, grants exemption from whole of duty of excise leviable on knitted garments falling under heading 61.01 subject to the satisfaction of Condition No. 4 of this notification. As per Condition No. 4 of the notification, knitted garments are exempt provided these garments are manufactured out of knitted fabrics on which appropriate excise duty has been paid and no cenvat credit of duty paid on the inputs or capital goods has been taken.

8. Show cause notice dated 27.03.2003 was issued by the Commissioner of Central Excise, proposing to deny the benefit of Notification No.15/2002-CE to the apparels and demanding excise duty in respect of the clearances made between 01.03.2002 to November, 2002. The assessee submitted its reply. After considering the reply filed by the assessee, Commissioner of Central Excise, Noida passed order-in-original dated 31.07.2003 confirming the duty demand imposing equivalent amount of penalty. On 20.01.2004, assessee filed appeal No. E/251/03-A before the Tribunal against the above order of the Commissioner. In that appeal, the Tribunal passed the impugned final Order Nos. 1239-1240/04-NB(A) upholding the order of the Commissioner on the aspect of denial of Notification No. 15/2002-CE to the apparels. However, the Tribunal has set aside the penalty imposed

on the assessee.

9. A perusal of the order of the Tribunal would reveal that for coming to this conclusion, the Tribunal has referred to and relied upon the judgment of this Court in ***CCE, Vadodara*** v. ***Dhiren Chemical Industries***[1]. In that case, exemption notification came up for consideration and interpreting the phrase "on which the appropriate amount of duty of excise has already been paid", the Court held that in order to avail the benefit of the notification, it was incumbent upon the manufacturer to actually pay the duty, in the following words:

> "An exemption notification that uses the said phrase applies to goods which have been made from duty paid material. In the same phrase, due emphasis must be given to the words "has already been paid". For the purposes of getting the benefit of the exemption under the notification, the goods must be made from raw material on which excise duty has, as a matter of fact, been paid, and has been paid at the "appropriate" or correct rate. Unless the manufacturer has paid, the correct amount of excise duty he is not entitled to the benefit of the exemption notification."

10. The Tribunal has also rejected the contention of the assessee predicated on Explanation II to the notification by observing that the said explanation only dispenses production of documents evidencing payment of duty and does not waive the condition of payment thereof.

11. Challenging the aforesaid rationale adopted by the Tribunal in arriving at the impugned decision, the learned counsel for the Revenue made his submission on two fronts. In the first instance, it was argued that the

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1 (2002) 2 SCC 127

Tribunal erred in relying upon the judgment of this Court in ***Dhiren Chemical Industries*** case, which is a judgment of December, 2001 wherein earlier notification was interpreted by the Court. He submitted that the position changed dramatically thereafter inasmuch as in order to overcome the condition of actual excise duty, Explanation II was specifically inserted in Notification No. 15/02 thereby creating a fiction of deemed duty paid insofar as manufacturers of knitted textile are concerned. For this purpose, he has taken us through the Budget Speech/Explanatory Notes concerning the Notification Nos. 14 and 15/2002. He, thus, argued that judgment in ***Dhiren Chemical Industries*** case was not applicable having regard to the aforesaid provision specifically incorporated in the new notifications. In this very hue, his second attempt was to argue that Explanation II of the notification was not correctly interpreted by the Tribunal, thereby defeating the very purpose for which this notification was issued.

12. Learned counsel for the assessees, on the other hand, argued on the same lines on which the Tribunal has rested its decision.

13. We have considered the respective submissions and are of the view that the stand taken by the assessees warrants to succeed.

14. We have already reproduced the relevant portion of Notification No. 15/2002, in particular Condition No. 4 contained therein as well as Explanation II thereof. As pointed out above, in the Union Budget 2002,

a new excise duty scheme for textile sector was introduced, as per which manufacturers of the fabric or garments were given choice to opt under one of two schemes. Normal rate of duty is 12%. The two notifications provided exemption and concessional rates respectively. Those who wanted to avail the MODVAT credit of the duty paid on the inputs or the capital goods, were supposed to pay excise duty at concessional rate i.e. 75% of the normal rate of duty. Under the other scheme, full exemption from payment of duty was granted to those who did not wish to avail the MODVAT credit facility. These two schemes were explained in the Budget Explanatory Notes issued by the Central Government, relevant portion whereof is extracted below:

> "In the case of processed knitted fabrics of cotton, which were hitherto exempt from duty, an optional levy of 12% [8% Cenvat + 4% AED(ST)] has been prescribed. That is, if the manufacturer wants to avail cenvat credit of the duty paid on inputs (either on deemed basis or actual basis) and capital goods (on actual basis), he will be required to pay duty at 12% adv. [8% cenvat + 4% AED(ST)]. If he does not want to avail any credit on inputs and capital goods, he is not required to pay any duty. The rates of deemed credit for processed knitted fabrics of cotton are the same as applicable to woven fabrics.
>
> Notification Nos. 14/2002-CE and 15/2002-CE, both dated 01.03.2002 prescribes effective rates of duty of 'nil' or 12% adv. in the case of textile fabrics subject to the condition that the goods should have been made from textile yarns or fabrics on which the appropriate excise duty or CVD has been paid. It may, however, be noted that Explanation II to the notification makes it abundantly clear that all fibres and yarns are deemed to have been duty paid even without production of documents evidencing payment of duty. Therefore, the manufacturer is eligible for the rates prescribed in the notification. The only condition that has to be satisfied is with regard to availment or non-availment of cenvat credit, as the case may be.

> It is thus made clear that the benefit of the rate of duty should be allowed without insisting upon any documentary proof for payment of duty. However, if the manufacturer wants to avail cenvat credit of duty paid on inputs or capital goods on actual basis, he will be required to produce duty paying documents as prescribed under the Cenvat credit rules."

15. A reading of the aforesaid Explanatory Note makes it clear that those who did not want to avail MODVAT facility were allowed to clear the goods without payment of any excise duty. It is in this context that the authorities were asked not to insist upon any documentary proof for payment of duty and this was transported into the notification, in the form of Explanation II. It, therefore, becomes clear that when Explanation II states that the duty shall be deemed to have been paid even without production of documents evidencing payment of duty thereon, it was clearly meant that no duty was required to be paid by the manufacturers of knitted garments. Such an intention is clearly reflected in the Government's own Budgetary Notes extracted above. We, thus, hold that Explanation II to the said exemption Notification Nos. 14/2002 and 15/2002 create legal fiction and that was the precise purpose for which this explanation was added. It is trite law that a fiction created by a provision of law is to be given its due play and it must be taken to its logical conclusion (***Union of India*** v. ***Jalyan Udyog***[2]).

16. It would be pertinent to mention here that Condition No. 3 which uses the words "read with any notification for the time being in force" was put

2 (1994) 1 SCC 318

in place to overcome the interpretation that was given by this Court in ***Dhiren Chemical Industries*** case.

17. Learned counsel for the assessees has brought to our notice another pertinent development. He submitted that because of conflicting views of the Tribunal, the matter was referred to a larger Bench of the Tribunal which has answered the reference by detailed judgment rendered on 29.10.2014, accepting the plea of the assessees and rejecting the stand of the Revenue. In any case, we have independently examined the issue and for the reasons stated above, we are of the opinion that benefit of exemption notification would be available to all these assessees.

18. As a result, appeals filed by the assessees are allowed and those appeals preferred by the Revenue are dismissed. There shall be no order as to costs.

.....J.
(A.K. SIKRI)

.....J.
(ROHINTON FALI NARIMAN)

NEW DELHI;
MARCH 04, 2016.

REVISED

ITEM NO.302 COURT NO.12 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(s). 1288/2005

M/S. SPORTS & LIESURE APPAREL LTD. Appellant(s)

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(With Appln. for permission to file additional documents)

WITH
C.A. No. 1752/2006

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(With Office Report for direction)

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(With Office Report for direction)

C.A. No. 2267/2006
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C.A. No. 2856/2006
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C.A. No. 4479/2006
(With Office Report for direction)

C.A. No. 6036-6038/2008
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(With Office Report)

C.A. No. 5473/2013
(With Office Report)

C.A. No. 5474/2013
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Date : 04/03/2016 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s) **Mr. K. Radhakrishna, Sr. Adv.**
Mr. Rupesh Kumar, Adv.
Ms. Nisha Bagchi, Adv.
Mr. Ritin Rai, Adv.
Mr. Jitin Singhal, Adv.
Mr. Pratik Raoka, Adv.
Ms. Rukhmini Bobde, Adv.
Ms. Pooja Sharma, Adv.
Mr. Ritin Rai, Adv.
Mr. B. Krishna Prasad,Adv.

Mr. Balbir Singh, Sr. Adv.
Mr. Rupender Singh Mar, Adv.
Mr. Rajesh Kumar,Adv.

Mr. V. Sridharan, Sr. Adv.
Ms. L. Charnya, Adv.
Mr. Hemant Bajaj, Adv.
Mr. Aditya Bhattacharya, Adv.
Mr. Anandh. K., Adv.
Mr. M. P. Devanath,Adv.
Mr. Rajesh Kumar, Adv.

Mr. Ajay Aggarwal, Adv.
Mr. Rajan Narain,Adv.
Mr. Gautam Chugh, Adv.

For Respondent(s) **Mrs. Anil Katiyar,Adv.**

Mr. M.H. Patil Adv.
Mr. Sandeep Narain, Adv.
Mr. T. Chandran Nair, Adv.
Mr. P.K. Shetty, Adv.
For M/s. S. Narain & Co.

Mr. Jay Savla,Adv.
Ms. Renuka Sahu, Adv.
Mr. Prabhati K.C., Adv.

Mr. Abinav Sharma, Adv.

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

C.A No.1288/2005, C.A. No. 4612/2010, C.A. No. 4886/2010, C.A. No. 6749-6769/2010, C.A. No. 7247-7281/2010, C.A. No. 8186/2010, C.A. No. 8187-8189/2010, C.A. No. 9145-9164/2010 & C.A. No. 2260/2011 are allowed and C.A. No. 1752/2006, C.A. No. 1753/2006, C.A. No. 1856/2006, C.A. No. 2267/2006, C.A. No. 2856/2006, C.A. No. 6036-6038/2008, C.A. No. 5473/2013 & C.A. No. 5474/2013 are dismissed in terms of the signed judgment.

Application(s) pending, if any, shall stand disposed of accordingly.

C.A. No. 4479 of 2006 is de-tagged.

(Ashwani Thakur)
COURT MASTER

(Tapan Kr. Chakraborty)
COURT MASTER

(Signed reportable judgment is placed on the file)

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(Tapan Kr. Chakraborty)
COURT MASTER

(Signed reportable judgment is placed on the file)