

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2055 OF 2008

M/S. ESSILOR INDIA PVT. LTD. ... APPELLANT

(S)

VS.

COMMISSIONER OF CUSTOMS BANGALORE ... RESPONDENT

T(S)

WITH

CIVIL APPEAL NOS.5718/2009, 1022-1041/2011,
1656-1854/2011 & 2480-2535/2015

O R D E R

The appellant herein had imported certain spectacle lenses which were treated by the Department as these "semi-finished spectacles lenses". In respect of imports the appellants filed Bill of Entry classifying the same under Customs Tariff Heading 9001.40.90 & 9001.50.00, depending upon the nature of material of the said lenses. While classifying these lenses under the aforesaid heading, the appellant also sought exemption from payment of CV duty equivalent to Central Excise Duty under Notification No.6/06CE dated 1st March,2006. The assessing authority however classified the goods under the Chapter Heading 9001.90.90 of the Customs tariff and further denied the

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ANITA MALHOTRA
Date: 2016.05.03
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Reason: benefit of Notification No.06/06 CE dated 1st March, 2006 on the ground that the goods were to be treated as

semi-finished spectacle lenses whereas the Notification dated 1st March, 2002 provided for exemption only in respect

of finished spectacle lenses.

The appeal filed by the appellant was dismissed confirming the order of the adjudicating authority.

Further, appeal before the CESTAT has met the same fate.

Two aspects need to be taken note of while determining as to whether the appellant would be entitled to the benefit of Notification dated 1st March, 2006. The first pertains to the historical background under which such goods were treated till the Notification dated 1st March, 2006 and on that basis the determination will be made as to whether Circular dated 25th February, 2005 by which the Notification dated 24th February, 2005 giving re-alignment of new 8 digit headings was introduced in spite of earlier 6 digit headings.

It is not in dispute that the spectacle lenses have already been attracting nil duty. This was so fixed in the tariff schedule itself till 2004. In the year 2004 spectacle lenses, intra-ocular lenses and contact lenses in respect of 8% duty was prescribed in the tariff schedule. Simultaneously with effect from the same date, general exemption notification No.6/2002-CE dated 1st March,2002 as amended on 9th July, 2004, the aforesaid spectacle lenses intra-ocular lenses and contact lenses were given exemption

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from payment of any duty. It is also an admitted fact that the appellant was not paying any CV Duty equivalent to Central Excise Duty by virtue of tariff entry which was there prior to 2004 and even this position continued even for the period of 2004-2005 as the appellant was given benefit of general exemption notification No.52, read with Notification dated 6 of 2002 as amended by Notification 23 of 2004.

As pointed out above, with effect from 28th February, 2005 i.e. by Notification No.1/2005-CE dated 24 th February,

2005, 8 digit headings were introduced in respect of tariff entries. However, this was only for the purpose of facilitating the information about state-wise revenues and insofar as tariff regime is concerned it did not undergo any change. This was so stated and clarified by the Department itself in its circular dated 25th February, 2005, Para 3 whereof reads as under:-

"3. Notification No.3/2005-C.E., dated 24th February 2005 has been issued to preserve the existing duty rates on specified commodities where effective rates were built into the six-digit tariff, but are now subject to different tariff rates in the 8-digit code. This is subject to any subsequent changes."

This is so stated even in Notification No.1/2005

CE dated 24th February, 2005 in the following words:-

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"This notification intends to take care of the technical changes adopted in the numbering scheme for Central Excise classification through the Central Excise Tariff (Amendment) Act, 2004 (5 of 2005). These amendments do not involve any substantive changes in the existing notifications. Hence, the particulars of the individual notification are not indicated.

There is no change in the tariff rate or in the nomenclature of various entries in the earlier notifications which were of tariff heading of 8 digits. As a consequence, when the product in question i.e. spectacle lenses which were imported by the appellant were given the benefit of exemption as per the exemption notification No.6/6 dated 1st March, 2006, the said position continued even thereafter and therefore the appellant was entitled to the benefit of this notification even for the period in question.

We may mention here that adjudicating authority as well as the CESTAT have been influenced by the fact that the goods in question were re-classified as "semi-finished spectacle lenses" and on that basis it is held that since

these were semi-finished spectacle lenses and not finished one, the benefit of exemption notification which is available only in the case of spectacle lenses, i.e., that is finished spectacle lenses, would not be available to the appellant herein. This approach of the authorities below was clearly erroneous. It is the power lenses which were

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imported by the appellant herein. They were treated as semi-finished only because of the reason that while fitting these lenses for a particular customer, i.e., before customizing according to the prescription, they were to be finished lenses. For the aforesaid reason, the goods could not be treated as "semi-finished" and it could be appropriately described as "to be finished spectacle lenses". Therefore, such lenses would clearly be treated as spectacle lenses and were not entitled to exemption notification which view was taken by even the department itself for earlier years.

We set-aside the impugned judgment of the CESTAT holding that the goods in question were entitled to exemption as per notification No.6/06 CE dated 1st March, 2006. The appeals are allowed with consequential benefits.

.....J.
[A.K. SIKRI]

.....J.
[ROHINTON FALI NARIMAN]

New Delhi;
22nd April, 2016.

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ITEM NO.302

COURT NO.10

SECTION III

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

Civil Appeal No.2055/2008

M/S ESSILOR INDIA PVT.LTD.

Appellant(s)

VERSUS

COMMISSIONER OF CUSTOMS BANGALORE Respondent(s)
(With appln. For permission to file additional documents
and office report)

WITH C.A.Nos.5718/2009, 1022-1041/2011, 1656-1854/2011 and
2480-2535/2015-(With Office Report)

Date : 22/04/2016 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. V. Lakshmi Kumaran,Adv.
Mr. S. Vasudevan,Adv.
Mr. Vasu Nigam,Adv.
Mr. M.P. Devanath,Adv.

Mr. R. Parthasarathy,Adv.

For Respondent(s) Mr. K. Radha Krishnan,Sr.Adv.
Mr. Rupesh Kumar,Adv.
Ms. Rashmi Malhotra,Adv.
For Mr. B. Krishna Prasad,Adv.

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

The appeals are allowed in terms of the signed
order. Pending applications stand disposed of.

(Anita Malhotra)
Court Master

(Tapan Kumar Chakraborty)
Court Master

(Signed order is placed on the file)