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Exemption Notifications must be interpreted strictly: SC

A Constitution Bench (Bench of Five Judges) of the Hon'ble Supreme Court of India ("SC") in one of the landmark case of **Commissioner of Customs (Import) Mumbai Vs. M/s Dilip Kumar and Company and Ors [2018-TIOL-302-SC-CUS-CB]** has overruled the Three-Judge judgment in the case of **Sun Export Corporation, Bombay Vs. Collector of Customs, Bombay [2002-TIOL-118-SC-CX-LB]** ("Sun Export case") to firmly hold that:

- In case of ambiguity in a charging provision, benefit must necessarily go in favour of assessee but the same is not true for an exemption notification. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

We are discussing herewith gist of this landmark judgment of the Hon'ble SC for your easy digests along with analysing the wide ramifications this judgment will entail – not just in the times to come but also on previous disputed litigations and settled jurisprudence.

Issue:

What is the interpretative rule to be applied while interpreting a tax exemption provision/notification when there is an ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied?

Facts of the case:

M/s Dilip Kumar and Company and Ors ("**the Respondents**") imported a consignment of Vitamin-E50 powder (feed grade) under Bill of Entry No. 8207, dated August 19, 1999. They claimed the benefit of concessional rate of duty at 5%, instead of standard 30%, as per the Customs Notification No. 20/1999 and classified the product under Chapter 2309.90 which admittedly pertains to prawn feed. They relied on the ratio in Sun Export case and claimed the benefit of exemption. The benefit of Customs Notification No. 20/1999 was, however, denied to the Respondents on the plea of the department that the goods under import contained chemical ingredients for animal feed and not animal feed/prawn feed, as such, the concessional rate of duty under the extant notification was not available. The department classified the consignment under Chapter 29 which attracts standard rate of Customs duty.

While the adjudicating authority distinguished Sun Export case and accepted the plea of the department to deny the concessional rate, the Commissioner of Customs (Appeals)

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reversed the order and came to the conclusion that Sun Export Case was indeed applicable which was also upheld by the CESTAT. Being aggrieved, the present appeal was filed by the Revenue.

Judgment in case of Sun Exports case:

Sun Export Case was against the judgment of the High Court of Judicature, Bombay. It was concerned with the interpretation of tax exemption notification No. 234/1982-CE, dated November 1, 1982. The Bombay High Court decided, in the affirmative, in favour of the taxpayers. The case then landed in this Court. This Court indeed countenanced the plea, namely, whenever there is ambiguity as to whether the subject matter was included or not, then the benefit of the same should be conferred on the assessee.

Matter referred to Constitution Bench:

When the matter was placed before a three Judge Bench, the Bench reiterated the view for reconsideration of the Sun Export Case (supra) and placed the matter, before the Hon'ble Chief Justice of India for constitution of an appropriate Bench, considering the fact that Sun Export Case was decided by a Bench comprising of three learned judges of this Court. Hence, this matter came to be placed before this Bench of Five Judges.

Important excerpts from the judgment of the Constitution Bench of Hon'ble SC:

- An Act of Parliament/Legislature cannot foresee all types of situations and all types of consequences. It is for the Court to see whether a particular case falls within the broad principles of law enacted by the Legislature. Here, the principles of interpretation of statutes come in handy.
- It is well accepted that a statute must be construed according to the intention of the Legislature and the Courts should act upon the true intention of the legislation while applying law and interpreting law. If a statutory provision is open to more than one meaning, the Court has to choose the interpretation which represents the intention of the Legislature.
- Having observed general principles applicable to statutory interpretation, it is now time to consider rules of interpretation with respect to taxation. Insofar as taxation statutes are concerned, Article 265 of the Constitution prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be interpreted strictly because State cannot at their whims and fancies burden the citizens without authority of law. In other words, when

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competent Legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the Legislature.

- Indeed, it is well settled that in a taxation 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. Equity has no place in interpretation of a tax statute. Strictly one has to look to the language used; there is no room for searching intendment nor drawing any presumption. Furthermore, nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute.

After thorough examination of various SC rulings, the Constitution Bench held as under:

- **Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.**
- **When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.**
- **The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export Case stands overruled.**

Accordingly, the Revenue's appeal was allowed.

Our Comments:

Undoubtedly, this is one of its kind judgment in legal jurisprudence which will somewhat unsettle the practice of adopting liberal interpretation of exemption notifications to the benefit of assessee when ambiguity persists considering the overall intent of the legislature.

With regard to the interpretation and construction of a notification granting exemption, by far, based on many SC rulings, it is understood that at the first instance, strict interpretation would apply, that is to say in the case of ascertaining its applicability. Thereafter, the Court may adopt the liberal approach within the particulars of the said notification.

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But the Constitution Bench in extant case has firmly concluded that exemption notification should be interpreted strictly and the burden of proving applicability would be on the assessee. Unlike taxing provisions where benefit of doubt goes to assessee, for ambiguity in exemption notification, it must be interpreted in favour of Revenue.

This judgment will now set as the new precedent for examining applicability of exemption notification and wide ramifications will follow in both pre-GST and GST regime. As categorically stated by the Hon'ble Bench that all the decisions which took similar view as in Sun Export Case stands overruled, it is time now to look into the pending disputes of taxpayers as well as pending department's appeal against the orders decided in favour of assessee as well as limitation period for filing appeal by the department if favourable order was based on liberal interpretation of exemption notification.

It will be interesting to see how the Department will apply this judgment to disallow any benefit of exemption till the time parameters of the same are strictly complied by the assessee. Whether condonation of even a procedural lapse or inadvertent error in applying exemption notification will be allowed or not, time will suggest.

Nonetheless, assessee are now required to be more vigilant while claiming benefit of exemption notification even in GST regime. Being a new taxation law, things are yet to settle completely in GST and lot of interpretational issues are involved. In case of any doubt to even drop level while claiming exemption, certainty must be obtained through any alternative mechanism as available either by way of representation to the Board, Advance Ruling mechanism, etc.

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