CASE NO.:
Appeal (civil) 3556 of 1984

PETITIONER:
NOVOPAN INDIA LTD., HYDERABAD

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE AND CUSTOMS, HYDERABAD

DATE OF JUDGMENT: 14/09/1994

BENCH:
B.P. JEEVAN REDDY & SUHAS C. SEN & K.S. PARIPOORNAN

JUDGMENT:
JUDGMENT

1994 SUPPL. (3) SCR 549

The Judgment of the Court was delivered by

B.P. JEEVAN RKDDY, J. This appeal is preferred against the judgment and order of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi dismissing the appeal preferred by the appellant- manufacturer.

The appellant is engaged in the manufacture of particle boards. It commenced the production in the year 1979. The first clearances were made in the March of that year. The appellant sought to take advantage of the Exemption Notification No. 55 of 1979 issued by the Central Government under Rule 8(1) of the Central Excise Rules, 1944. This Notification exempted "plywood and boards specified in column (2) of the table hereto annexed and falling under Item No. 16-B of the First Schedule to the Central Excise and Salt Act, 1944 (1 of 1944) from so much of the duty of excise leviable thereon as is in excess of the duty specified against the corresponding entry in column (3) of the said table." The table appended to the said Notification reads as follows:

TABLE

S.No. (1) Description (2) Rate of Duty (3)

1. Commercial plywood Twenty per cent ad valorem.

2. Batten boards and block boards (including flush doors) having both faces of commercial plywood and veneered shocks and panels made up of strips of woods flued between two outer veneers. Twenty per cent ad valorem.

3. Insulation boards and hard boards. Ten per cent ad valorem.

4. Marine plywood and aircraft plywood. Ten per cent ad valorem.

5. Veneered particle boards excluding particle boards with decorative veneers on one or both faces. Twenty per cent ad valorem.

6. Unveneered particle boards. Nil

7. (Omitted as unnecessary)’

The appellant’s case was that the particle boards manufactured by it are ’unveneered particle boards’ within the meaning of Item No. 6 of the aforesaid table and, therefore, totally exempt from duty. This case was accepted by the department. A few months later, the appellant started manufacturing what are described as "melamine faced particle boards". The

appellant claimed the benefit of the aforesaid Exemption Notification with respect to melamine faced particle boards as well, to which the authorities did not agree. According to them, the product fell and was dutiable under Tariff Item-68. The appellant accepted the said position and accordingly a classification list was filed and approved on January 9, 1980. On June 17, 1980, the Collection of Central Excise issued a notice under Section 35-A of the Act proposing to revise the order to the Assistant Collector dated January 9, 1980. According to him, the melamine faced particle boards (M.F.P.Bs.) were classifiable under Tariff Item 16-B but were not entitled to the benefit of exemption provided by the Notification No. 55 of 1979 aforesaid - with the result that the said boards became liable to a duty higher than the one prescribed under Tariff Item-68. The appellant showed cause whereupon the Collector dropped the proceedings. He held that the MFPBs fell under Tariff Item 68 and not under Tariff Item 16-B. On this occasion, however, the appellant questioned the order to the Collector by filing a revision before the Central Government wherein he put forward a composite claim. According to it, MFPBs were no doubt classifiable under Tariff Item 16-B but at the same time, they were entitled to the benefit of the Exemption Notification No.55 of 1979 aforesaid. The idea evidently was to obtain total exemption from tax in this manner. The Tribunal examined the said claim but rejected it. The Tribunal agreed with the Collector that MFPBs were properly classifiable and dutiable under Tariff Item-68.

The short question in this appeal is whether MFPBs can be called 'unveneered particle boards' within the meaning of, Item-6 of the table appended to Notification No. 55 of 1979? The process of manufacture of particle boards is set out in the order of the Tribunal in the following words:

The manner of manufacture of particle boards by the petitioner is as follows :-

(i) Wood is received in the form of logs of approximately 1 mtr. length. The logs are fed into a chipping machine where they are cut into small particles or flakes. These flakes are dried and rifted into the fractions of definite dimension, one forming the core layer and the other for the two face layers. The two fractions of wood particles are independently mixed with U.F. resin and additives in specially designed gluing machines. The glued particles are then spread into a form of mat, forming two face layers and one Central core. The mat thus formed is conveyed to the Hydraulic press where it is subjected to heat and pressure. The boards remain in the press for a predetermined time after which they are taken out and cooled at room temperature. The surface of the board is then sanded in sanding machine, which also calibrates the board to the required thickness."

The Tribunal has pointed out that the very same process is set out in the two affidavits of 'experts' filed by and relied upon by the appellant. The Tribunal then referred to the process of manufacture of MFPBs as described in brochure Exh.-II, According to the brochure, the appellant was carrying on "a unique process where the resin impregnation takes place in an integrated process and this melamine facing is a part of this process, and not what could be a simple gluing of a material subsequently". The said process was described in the brochure as "pre-lamination which implies that lamination takes place before fully manufactured particle board, in its marketable condition, conies into existence".

The learned counsel for the appellant also placed before us pieces of particle board, veneered particle board, melamine faced particle board and commercial plywood. This has indeed assisted us in deciding the issue.

To decide whether MFPBs. can be called 'unveneerd particle boards' within the meaning of Item (6) of the table appended to Notification No, 55 of 1979, the test is whether MFPBs. are understood and dealt with as unveneered particle boards in the relevant commercial circles and in common parlance. In Plasmac Machine Manufacturing Co, Pvt. Ltd. v. Collector of

Central Excise, Bombay, [1991] Suppl. 1 S.C.C, 57, it was held by this Court :

"It is an accepted principle of classification that the goods should be classified according to their popular meaning or as they are understood in their commercial sense and not as per the scientific or technical meaning. Indo International Industries v. CST, [1981] 2 SCC 528 and Dunlop India Ltd. v. Union of India, [1976] 2 SCC 241 have settled this proposition. How is the product identified by the class or section of people dealing with or using the product is also a test when the statute itself does not contain any definition and commercial parlance would assume importance when the goods are marketable as was held in Anul Glass Industrial (Pvt.) Ltd. v. CCE, [1986] 3 SCC 480 and Indian Aluminium Cables Ltd. v. Union of India, [1985] 3 SCC 284. In Asian Paints India Ltd. v. CCE, [1988] 2 SCC 470 which was a case of emulsion paint, at para 8, it was said :

"It is well settled that the commercial meaning has to be given to the expressions in tariff items. Where definition of a word has not been given, it must be construed in its popular sense. Popular sense means that sense which people conversant with the subject matter with which the statute is dealing, would attribute lo it."

There is no dispute about the above proposition.

We have already set out the process of manufacture of particle boards and the MFPBs. It is difficult to say from the said process that MFPBs are unveneered particle boards. Actually, veneered particle boards mean particle boards on both sides of which plywood is pasted. Un-veneered particle boards is, what we may call, raw particle board. The melamine facing gives it a smooth polished surface. It looks as if the particle board had been laminated on both sides. (We are told by the lamed counsel for the appellant that in same cases the melamine facing is done only on one side and not on both the sides.) It is thus difficult to say that the melamine faced particle boards can be described as 'unveneered particle boards'. Nobody in the trade circles or in the market would consider both the products as one and the same. From whichever way one looks at them, they appear to be different products. As stated hereinbefore, even the process of manufacturing is different. It is not a case of mere processing of particle boards for giving it strength. It is a case of manufacturing an altogether different product.

Learned counsel for the appellant relied upon the following passage occurring under the heading "Particle Boards' at page 175 of Encyclopedia Britannica (15th Edn.) Vol. 9:

"Particle board, construction material consisting of flakes, shavings, or splinters of wood glued together in the form of sheets. The particles are mixed with resin, water repellants, and mildew in-hibitors, formed into mats, hot-pressed, trimmed to the appropriate size and shape, and finally sanded. Particleboard was developed in the 1940s, when suitable synthetic resins became available; it has made possible the use of residues from lumber production and logging. Particleboard is usually manufactured in thicknesses of 6-25 mm (1/5-1 inch) and in three grades of density. It may be covered with resinimpregnated paper, plastics, or other finishes."

On the basis of the last sentence in the above extract, the learned counsel sought to contend that melamine faced particle board is the same as the particle board and that merely covering the particle boards with resin-impregnated paper, with a view to lend them strength and a smooth and attractive surface do not make MFPBs a different product. We do not think that the said description in Encyclopedia is of any assistance in the matter of classification where the test is the one indicated hereinbefore, viz., whether they are commercially different goods. The Tribunal has held that they are not and no material has been brought to our notice to take a different view.

Learned counsel for the appellant sought to rely upon the affidavits of experts filed by him before the Tribunal which according to him prove that, commercially speaking, particle boards and MFPBs are one and the same product. The tribunal has declined to place any reliance on these affidavits for more than one reason. So far as Dr. Joseph, one of the 'experts' is concerned, the Tribunal has pointed out, and rightly in our opinion, that he has been associated with the appellant-company from the beginning, as admitted by the said person himself. The other person Sri A.C. Shekhar was also found to be associated with the appellant-company. Both of them deposed before the Tribunal that they did not witness the process of manufacture nor were they able to comment upon the process of manufacture contained in the brochure referred to hereinabove. From a reading of their affidavits, the Tribunal concluded that they are not independent experts and that their affidavits were prepared with a view to bolster the appellant's case in these proceedings. The said experts, the Tribunal observed, did not also try to support their opinions with reference to any technical literature or authority on the subject. For all the above reasons, the Tribunal declined to accept their bare assertion that MFPBs can be described as 'unveneered particle boards'. We cannot say that the reasons given by the Tribunal for rejecting the said affidavits are either irrelevant or unsustainable. The said affidavits, therefore, do not advance the appellant's case in any manner.

The learned counsel for the appellant then contended that since there is an ambiguity about the meaning and purport of item-6 of the table appended to the Exemption Notification, the benefit of such ambiguity should go to the assessee manufacturer and the entry must be construed as taking in the MFPBs as well. It is not possible to agree with this submission.

In Mangalore Chemicals & Fertilizers Ltd.. v. Deputy Commissioner of Commercial Taxes & Ors., [1992) Suppl. 1 S.C.C. 21, a Bench of this Court comprising M.N. Venkatachaliah, J. (as the learned Chief Justice then was) and S.C Agrawal, J. stated the relevant principle in the following words :

"Shri Narasimhamurty again relied on certain observations in CCE v. Parle Exports (P) Ltd, [1989] 1 SCC 345, in support of strict construction of a provision concerning exemptions. There is support of judicial opinion to the view that exemptions from taxation have a tendency to increase the burden on the other unexempted class of tax payers and should be construed against the subject in case of ambiguity. It is an equally well known principle that a person who claims an exemption has to establish his case. Indeed, in the very case of Parle Exports (P) Ltd. relied upon by Shri Narasim-hamurthy, it was observed :

"While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided."

The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the legislature manifest on the statutory language. Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. It the words are plain and clear and directly convey the meaning, there is no need for any interpretation. It appears to us the true rule of construction of a provision as to exemption is the one stated by this Court in Union of India v. Wood Papers Ltd., [1990] 4 SCC 256 :

"..... Truly speaking liberal and strick construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls is the notification then full

play should be given to it and it calls for a wider and liberal construction...."

This was also the view expressed in The Commissioner of Inland Revenue v. James Forrest, (1890) 15 A.C. 334 where Lord Halsbuty, L.C. observed: "all exemptions from taxation to some extent increase the burden on other members of the community.....," and in Littman v. Barron (Inspector of Taxes, [1951] 2 A.E.R. 393, a decision of the Court of Appeal where Cohen, LJ. said : "the principle that in case of ambiguity a taxing statute should be construed in favour of a taxpayer does not apply to a provision giving a taxpayer relief in certain cases from a section clearly imposing liability".

It is true that in some decisions a contrary view appears to have been expressed. In Caroline M. Armytage & Ors. v, Frederick Wilkinson, (1878) 3 A.C. 355, a decision of the Privy Council, it was observed :

"Their Lordships have now to consider whether the decision of Mr. Justice Molesworth upon the merits of the application to him is correct.

They must begin by expressing their dissent from the principle which seems to have influenced Mr. Justice Moleswarth in this and some of the earlier cases, viz., that the provisions of the 24th section, because they establish an exception to the general rule, are to be construed strictly against those who invoke their benefit. That principle is opposed to the rule expressed by Loard Ellenborough's in Warrington v. Furbor, (8 East 242) and followed and confirmed in Hobson v. Neale, (17, Beav. 185). Lord Ellenborough's words are : - "I think that when the subject is to be charged with a duty, the cases in which it is to attach ought to be fairly marked out, and we should give a liberal construction to words of exception confining the operation of the duty." It is only, however, in the event of there being a real difficulty in ascertaining the meaning of a particular enactment that the question of strict-ness or of liberality of construction need arise."

To the same effect is the view expressed by Sir Raymond Evershed in Routledge v. McKay & Ors., [1954] 1 A.E.R. 855. The learned Master of Rolls observed : "on the authorities, that exemption, as I understand, should be liberally interpreted."

We are, however, of the opinion that, on principle, the decision of the Court in Mangalore Chemicals - and in Union of India v. Wood Papers, referred to therein - represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in Mangalore Chemicals and other decisions, viz., each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in Hansraj Gordhandas V.H.H, Dave, (1969) 2 S.C.R, 253 that such a Notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing 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, i.e., by the plain terms of the exemption.

Applying the above principles, we must hold that the words 'un-veneered particle boards' in Item-6 of the table appended to the Exemption Notification cannot and do not take in melamine faced particle boards.

Indeed, the learned counsel for the Revenue contends, and is our opinion rightly, that the said entry does not admit of any doubt, that it is dear and specific and that it covers only unveneered particle boards and nothing else.

For the above reasons, the appeal fails and is dismissed with costs. Advocate's fee Rs. 10,000 consolidated.

It is brought to our notice that by an interim order dated July 30, 1986, this Court directed stay of recovery of arrears of duty on condition that the appellant deposits 50% of the demand within three months from the date of the order and furnishes bank guarantee for the balance. The order reads as follows :

"In the facts and circumstances of this particular case, we direct under Article 142 of the Constitution that the recovery of the demand which is to the tune of nearly a crore of rupees shall remain stayed on a condition that the appellant deposits 50% of the demand within three months from today and furnishes the bank guarantee for the balance within that time.

Dr. Chitale, learned counsel for the appellant states that the appellant has already furnished bank guarantee for much larger amount. If that be so, the existing bank guarantee may be cancelled and a fresh bank guarantee to cover the remaining 50% of the demand shall be furnished. The bank guarantee shall, however, be kept renewed from time to time till the disposal of this appeal. The appellant will pay the interest @ 18% per annum on 50% of the demand in the event of the appeal being dismissed. If the appeal is allowed, the amount of 50% deposited by the appellant shall be refunded with the same rate of interest.

The C.M.P. is disposed of accordingly."

It is obvious that on the dismissal of this appeal, the aforesaid order comes to an end. The appellant has to pay the arrears of duty due according to law. It shall also be open to the respondents to encash the bank guarantees for the said purpose.