

M/S. GAMMON INDIA LTD.

v.

COMMISSIONER OF CUSTOMS, MUMBAI
(Civil Appeal No. 5166 of 2003)

JULY 6, 2011

[D.K. JAIN AND H.L. DATTU, JJ.]

Customs Act, 1962: Exemption Notification No. 17/2001-cus dated 1.3.2001 – As per Condition 38 of the Notification, a person who has been awarded a contract for the construction of roads in India by or on behalf of the NHAI is entitled to exemption from basic customs duty and additional customs duty in respect of specified machines – Appellant and another company entered into a joint venture agreement for submitting a bid for award of a contract for construction of road on National Highway – Contract given to the said joint venture company – Import of machinery specified in the Notification by appellant – Claim by appellant for exemption under the Notification – Entitlement for – Held: Not entitled – Contract was granted to joint venture company and not to the appellant – Import of the specified machine by appellant could not be considered to be an import by joint venture company “a person who has been awarded a contract for construction of the roads in India”, so as to fulfill Condition No.38, laid down in Exemption Notification No.17/2001/Cus – Therefore, neither appellant nor joint venture company fulfilled the requisite requirement stipulated in Condition No.38 of the Exemption Notification No. 17/2001/Cus..

Joint venture: Connotation of – Discussed.

Interpretation of statutes: Taxing statutes – Strict construction – Held: A provision providing for an exemption has to be construed strictly.

- A **Judicial discipline: Precedents – Binding effect – Held:** *If a Bench of a Tribunal, in identical fact-situation, is permitted to come to a conclusion directly opposed to the conclusion reached by another Bench of the Tribunal on earlier occasion, that would be destructive of the institutional integrity itself – If*
- B *a Bench of the Tribunal wishes to take a view different from the one taken by the earlier Bench, the propriety demands that it should place the matter before the President of the Tribunal so that the case is referred to a larger Bench, for which provision exists in the Act itself – A subordinate court is bound by the enunciation of law made by the superior courts – A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench – It can only refer it to a larger Bench if it disagrees with the earlier pronouncement.*

- D **The appellant-company (Gammon) and M/s Atlanta entered into a joint venture agreement on 18th September, 2000 for the purpose of submitting a bid to the National Highways Authority of India (NHAI) for award of a contract for construction of 31.40 Kilometers of road on National Highway-5. The joint venture was named and styled as “Gammon Atlanta JV”. In terms of the agreement, each of the said parties was to share financial responsibilities in the form of guarantees, securities etc. to the extent of 50% of the project value and the venture**
- E **was to be managed by setting up of a management board consisting of a Chairman and one Director to be nominated by Gammon and a Joint Chairman and another Director to be nominated by Atlanta. Although Gammon was to be designated as the lead partner to the**
- F **venture but both the companies were to be jointly and severally liable to NHAI for due execution of the contract.**

- G **The bid tendered by the said joint venture was accepted by NHAI and agreement dated 20th December, 2000 was executed between NHAI as the “Employer” on**
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the one part and M/s Gammon-Atlanta JV as the "contractor", on the other. On behalf of Gammon-Atlanta JV, the agreement was signed by the representatives of both the companies, i.e. Gammon and Atlanta. On 1st March, 2001, an Exemption notification no.17/2001 cus was issued exempting from basic customs duty and additional customs duty certain goods required for construction of roads. Gammon imported the specified "Concrete Batching Plant" from Germany and filed Bill of Entry for its clearance at nil rate of duty under the Notification. The Department rejected the claim on the ground that the exemption was available only if the goods were imported by "a person who has been awarded the contract" by NHAI for construction of roads in India by or on behalf of Ministry of Surface Transport and since the goods were imported by Gammon to whom no contract was awarded by the authorities, the appellant was not entitled to the benefit of exemption notification in their capacity as a partner in the joint venture, to whom the contract had been awarded. The appellate authority, however allowed the appeal filed by Gammon holding that Gammon having been nominated as the lead partner in the joint venture for due performance of the contract awarded by NHAI, with authority to incur liabilities and to receive instructions for and on behalf of the joint venture, and the machine having been imported on behalf of the joint venture for the purpose of road construction, the benefit of the said exemption notification could not be denied to it. On appeal, the Tribunal held that the benefit of Exemption Notification cannot be availed of by a joint venture because it was nothing more than an association of two persons, having no identity in law.

The question which arose for determination in the instant appeal was whether import of the specified machine by Gammon could be considered to be an import "by a person who has been awarded a contract

A for construction of the roads in India”, so as to fulfill Condition No.38, laid down in Exemption Notification No.17/2001/Cus dated 1st March, 2001.

Dismissing the appeal, the Court

B HELD: 1.1. Though under agreement dated 18th September, 2000, Gammon was notified as the lead partner but agreement dated 20th December, 2000 executed between NHAI as the “employer” and Gammon-Atlanta JV as “contractor” was signed by the
C representatives of both the companies viz. Gammon and Atlanta, meaning thereby that so far as NHAI was concerned, for them the contractor was Gammon-Atlanta JV and not Gammon or Atlanta individually. [Para 14] [209-E-G]

D 1.2. Joint venture connotes a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some
E commercial enterprise wherein all contribute assets and share risks. It requires a community of interest in the performance of the subject-matter, a right to direct and govern the policy in connection therewith, and duty,
F which may be altered by agreement, to share both in profit and losses. In view of that M/s Gammon-Atlanta JV, the joint venture could be treated as a ‘legal entity’, with the character of a partnership in which Gammon was one of the constituents. [Paras 17, 18] [211-F-H; 212-D-E]

G *New Horizons Limited & Anr. v. Union of India & Ors.* (1995) 1 SCC 478: 1994 (5) Suppl. SCR 310 – relied on.

H 1.3. The import of “Concrete batching plant 56 cum/hr” by Gammon cannot be considered as an import by M/s Gammon-Atlanta JV, “a person” who had been awarded contract for construction of the roads in India.

It was not the case of the appellant before the Adjudicating Authority or before the Appellate Authority or before this court nor it was suggested by the documents viz. the supply order or the bill of entry, that the import of the machine was by or on behalf of the joint venture. On the contrary, the Tribunal recorded in its order that when questioned, the appellant clarified that correspondence with the supplier of goods and placement of order was done by Gammon and not by the joint venture or on their behalf and that the payment for the machine had not been made from the joint venture account but from the funds of Gammon. Therefore, neither Gammon Atlanta JV nor Gammon fulfill the requisite requirement stipulated in Condition No.38 of the Exemption Notification No. 17/2001/Cus dated 1st March, 2001. [Paras 20, 21] [213-A-E]

2. It is well settled that a provision providing for an exemption has to be construed strictly. Since in the instant case the language of condition No.38 in the Exemption Notification is clear and unambiguous, there is no need to resort to the interpretative process in order to determine whether the said condition is to be imparted strict or liberal construction. [Paras 22, 23] [213-F-G; 214-F]

Novopan India Ltd., Hyderabad v. Collector of Central Excise & Customs, Hyderabad 1994 Supp (3) SCC 606—relied on.

3.1. The two Benches of the Tribunal while deciding appeals in the cases of *IVRCL Infrastructures & Projects Ltd.* and *Techni Bharathi Ltd.* noticed the decision of a co-ordinate Bench and still proceeded to take a view totally contrary to the view taken in the earlier judgment, thereby creating a judicial uncertainty with regard to the declaration of law involved on an identical issue in

A respect of the same Exemption Notification. If a Bench of
 a Tribunal, in identical fact-situation, is permitted to come
 to a conclusion directly opposed to the conclusion
 reached by another Bench of the Tribunal on earlier
 occasion, that will be destructive of the institutional
 integrity itself. What is important is the Tribunal as an
 institution and not the personality of the members
 constituting it. If a Bench of the Tribunal wishes to take
 a view different from the one taken by the earlier Bench,
 the propriety demands that it should place the matter
 before the President of the Tribunal so that the case is
 referred to a larger Bench, for which provision exists in
 the Act itself. [Para 24] [214-G-H; 215-A-C]

*IVRCL Infrastructures & Projects Ltd. v. C.C., Chennai
 (Sea) 2004 (166) E.L.T. 447 (Tri.-Del.); Techni Bharathi Ltd.
 v. Commissioner of Customs, Mumbai-II 2006 (198) E.L.T.
 33 (Tri.-Bang) – referred to.*

3.2. Precedents which enunciate rules of law form the
 foundation of administration of justice under our system.
 This is a fundamental principle which every presiding
 officer of a judicial forum ought to know, for consistency
 in interpretation of law alone can lead to public
 confidence in our judicial system. Precedent law must be
 followed by all concerned; deviation from the same
 should be only on a procedure known to law. A
 subordinate court is bound by the enunciation of law
 made by the superior courts. A Coordinate Bench of a
 Court cannot pronounce judgment contrary to
 declaration of law made by another Bench. It can only
 refer it to a larger Bench if it disagrees with the earlier
 pronouncement. [Para 24] [215-F-H; 216-A-B]

*Sub-Inspector Rooplal & Anr. v. Lt. Governor & Ors.
 (2000) 1 SCC 644: 1999 (5) Suppl. SCR 310 – relied on.*

H 4. The decision of the Tribunal, holding that the

appellant was not entitled to the benefit of Exemption notification No. 17/2001-Cus dated 1st March, 2001, cannot be flawed. [Para 25] [216-D]

Ganpati RV-Talleres Alegria Track Private Limited Vs. Union of India & Anr. (2009) 1 SCC 589: 2008 (17) SCR 215; Commissioner of Customs (Preventive), Mumbai Vs. M. Ambalal & Co. (2011) 2 SCC 74: 2010 (15) SCR 937; C.K. Gangadharan & Anr. Vs. Commissioner of Income Tax, Cochin (2008) 8 SCC 739: 2008 (11) SCR 52; Sub-Inspector Rooplal & Anr. Vs. Lt. Governor & Ors. (2000) 1 SCC 644: 1999 (5) Suppl. SCR 310 – referred to.

Case Law Reference:

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|-----------------------------------|-------------|---------------------------|
| 1994 (5) Suppl. SCR 310 | referred to | Para 8,9,15, 16, 17,18,20 |
| 2008 (17) SCR 215 | referred to | Para 9 |
| 2004 (166) E.L.T. 447 (Tri.-Del.) | referred to | Para 9,24 |
| 2006 (198) E.L.T. 33 (Tri.-Bang) | referred to | Para 9, 24 |
| 2010 (15) SCR 937 | referred to | Para 9 |
| 1994 Supp (3) SCC 606 | relied on | Para 11, 22 |
| 2008 (11) SCR 52 | referred to | Para 9 |
| 1999 (5) Suppl. SCR 310 | referred to | Para 9 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5166 of 2003.

From the Judgment & Order dated 4.4.2003 of the Customs, Excise and Gold (Control) Appellate Tribunal, West Zonal Bench, Mumbai in Appeal No. C/298/02-Mum.

J.S. Sinha, Braj Kishore Mishra, Vikas Malhotra, Aparna Jha, Abhishek Yadav, M.P. Sahay, Vikram Patralekh for the Appellant.

A Harish Chander, Kiran Bhardwaj, A. Deb Kumar, B. Krishna Prasad for the Respondent.

The Judgment of the Court was delivered by

B **D.K. JAIN, J.** 1. This Civil Appeal, under Section 130-E(b) of the Customs Act, 1962 (for short "the Act"), is directed against order dated 4th April, 2003 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, as it then existed, (for short "the Tribunal"), in Appeal No. C/298/02-Mum. By the impugned order, the Tribunal has allowed the appeal preferred C by the Commissioner of Customs, Mumbai, holding that the appellant is not entitled to claim the benefit of Exemption Notification No. 17/2001/Cus (General Exemption No. 121), issued by the Ministry of Finance, Government of India on 1st March, 2001.

D 2. Briefly stated, the facts, material for adjudication of the issue arising in this appeal, are as follows:

E The appellant namely, M/s Gammon India Ltd. (for short "Gammon") and one M/s Atlanta Infrastructure Ltd., Mumbai, (for short "Atlanta") both incorporated as Public Limited Companies, entered into a joint venture agreement on 18th September, 2000. The joint venture was named and styled as "Gammon Atlanta JV". The agreement was entered into for the purpose of submitting a bid to the National Highways Authority F of India (for short "NHAI") for award of a contract for construction of 31.40 Kilometers of road on National Highway-5. The terms of the agreement, *inter-alia*, provided that: each of the said parties would share financial responsibilities in the form of guarantees, securities etc. to the extent of 50% of the project G value; the venture would be managed by setting up of a management board consisting of a Chairman and one Director to be nominated by Gammon and a Joint Chairman and another Director to be nominated by Atlanta. Although Gammon was to be designated as the lead partner to the venture but both

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the companies were to be jointly and severally liable to NHAI for due execution of the contract. A

3. The bid tendered by the said joint venture was accepted by NHAI and an agreement dated 20th December, 2000 was executed between NHAI, referred to as the "Employer" on the one part and M/s Gammon-Atlanta JV, referred to as the "contractor", on the other part. On behalf of Gammon-Atlanta JV, the agreement was signed by the representatives of both the companies, i.e. Gammon and Atlanta. B

4. On 1st March, 2001, in exercise of the powers conferred by sub-section (1) of Section 25 of the Act, the Central Government, issued the afore-noted Exemption Notification, *inter alia*, exempting the goods of the description specified in Column (3) of the Table given thereunder, read with the relevant List appended thereto and falling within the Chapter, Heading no. or sub-heading no. of the First Schedule to the Customs Tariff Act, 1975, as specified in the corresponding entry in Column (2) of the said Table. Serial No. 217 of the said Table granted full exemption from basic Customs duty and additional Customs duty, on the goods falling under Chapter 84 specified in List 11, required for construction of roads. However, the said exemption was subject to certain conditions, enumerated in the said notification. Condition No. 38, relevant for this case, reads as follows: C
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"38. If,- F

(a) the goods are imported by-

- (i) the ministry of Surface Transport, or
- (ii) a person who has been awarded a contract for the construction of roads in India by or on behalf of the Ministry of Surface Transport, by the National Highway Authority of India, by the Public Works Department of a State Government or by a road construction corporation under the control of the G
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- A Government of a State or Union Territory; or
- (iii) a person who has been named as a sub-contractor in the contract referred to in (ii) above for the construction of roads in India by or on behalf of the Ministry of Surface Transport, by the National Highway Authority of India, by Public Works Department of a State Government or by a road construction corporation under the control of the Government of a State or Union Territory;
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- C (b) the importer, at the time of importation, furnishes an undertaking to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, to the effect that he shall use the imported goods exclusively for the construction of roads and that he shall not sell or otherwise dispose of the said goods, in any manner, for a period of five years from the date of their importation; and
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- E (c) in case of goods of serial nos. 12 and 13 of List 11, the importer, at the time of importation of such goods, also produces to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, a certificate from an officer not below the rank of a Deputy Secretary to the Government of India in the Ministry of Surface Transport (Roads Wing), to the effect that the imported goods are required for construction of roads in India.”
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- G 5. It appears that the appellant approached NHAI for issue of the certificate, as contemplated in para (c) of Condition no.38, for import of one ‘Concrete batching plant 56 cum/hr’ covered under Item No. 13 of List 11, referred to at Serial No. 217 in the said Exemption Notification. Vide letter dated 3rd
- H August, 2001 NHAI forwarded a Certificate, issued by the

Deputy Secretary, Government of India, Ministry of Road Transport and Highways, addressed to the Assistant Commissioner of Customs, Mumbai, certifying that the said equipment was required for construction of roads and recommending its duty free import. A

6. Equipped with the said certificate, Gammon, the appellant herein, imported the specified Concrete Batching Plant from Germany and filed Bill of Entry (for home consumption) for its clearance at 'nil' rate of duty under Notification No.17/2001-cus, dated 1st March, 2001. The Deputy Commissioner of Customs, by his order dated 5th October, 2001 rejected the claim of the appellant for exemption from payment of Customs duty on the ground that the appellant had failed to comply with the conditions stipulated at Serial No. 38 appended to the exemption notification. According to the Adjudicating Authority, as per the said condition, the exemption is available only if the goods are imported by "a person who has been awarded the contract" by NHAI for construction of roads in India by or on behalf of Ministry of Surface Transport, but in the present case the goods have been imported by Gammon to whom no contract had been awarded by the authorities specified in the notification. Admittedly, the contract had been awarded in the name of joint venture - M/s Gammon-Atlanta JV. Thus, the adjudicating authority came to the conclusion that the appellant was not entitled to the benefit of exemption notification in their capacity as a partner in the joint venture, to whom the contract had been awarded. B
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7. Aggrieved thereby the appellant preferred an appeal to the Commissioner of Customs (Appeals). The Commissioner (Appeals) was of the view that Gammon having been nominated as the lead partner in the joint venture for due performance of the contract awarded by NHAI, with authority to incur liabilities and to receive instructions for and on behalf of the joint venture, and the machine having been imported on behalf of the joint venture for the purpose of road construction, G
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- A the benefit of the said exemption notification could not be denied to the appellant. *Inter-alia*, observing that the appellant was not an outsider and perhaps due to some technical reasons the machine had been imported in the name of the appellant, the Commissioner held that outright denial of the benefit of the
- B said notification was not warranted. Accordingly, he allowed the appeal.

8. Being dissatisfied with the decision of the Commissioner (Appeals), the revenue carried the matter in further appeal to the Tribunal. As aforesaid, by the impugned
- C order the Tribunal has allowed the said appeal. Distinguishing the case of *New Horizons Limited & Anr. Vs. Union of India & Ors.*¹, relied on behalf of the importer, the Tribunal has come to the conclusion that the benefit of Exemption Notification cannot be availed of by a joint venture because it is nothing
- D more than an association of two persons, having no identity in law. The Tribunal has gone on to observe that had such a bill of entry been filed even by a joint venture, the department would have been justified in rejecting it on the ground that the identity of the real importer was not known. Aggrieved, Gammon is
- E before us in this appeal.

9. We have heard learned counsel for the parties.

10. Mr. J.S. Sinha, learned counsel appearing on behalf of the appellant, strenuously urged that in light of the decision
- F of this Court in the case of *New Horizons* (supra), wherein the concept of a joint venture has been explained and the same has been subsequently followed in *Ganpati RV-Talleres Alegria Track Private Limited Vs. Union of India & Anr.*², the view taken by the Tribunal is clearly erroneous. It was contended that
- G since a joint venture is a legal entity with all the trappings of a partnership under the Indian Partnership Act, 1932, the general principles of the said Act were applicable to the joint venture

1. (1995) 1 SCC 478.

H 2. (2009) 1 SCC 589.

and, therefore, any one of the two partners of the joint venture, viz. Gammon and Atlanta was competent to import the subject machinery for and on behalf of the contractor viz. the joint venture for execution of the road project under contract between the joint venture and NHAI. It was argued that the eligibility certificate dated 3rd August 2001, issued by the Ministry of Road Transport and Highways, stating that the subject machine would be imported by the appellant herein, will sustain the eligibility of the joint venture in view of the law laid down by this Court in *New Horizons* (supra). It was submitted that in view of an inclusive definition of the word "person" in the Export and Import policy for the years 1997-2002, which includes a "legal person", the import of machinery by the appellant for and on behalf of the joint venture is as good as an import by the joint venture who has been awarded the contract for construction of roads, thus fulfilling condition No.38 of the Exemption Notification. Learned counsel asserted that since in identical fact situations in the cases of *IVRCL Infrastructures & Projects Ltd. Vs. C.C., Chennai (Sea)*³ and *Techni Bharathi Ltd. Vs. Commissioner of Customs, Mumbai-II*,⁴ when machinery for a road project was imported by one of the constituents' of the joint venture, the benefit of the same Exemption Notification had been granted by the Tribunal. It was argued that the said orders of the Tribunal having been accepted by the revenue, it cannot be permitted to take a different stand on the same point in the case of the appellant. Lastly, relying on the decision of this Court in *Commissioner of Customs (Preventive), Mumbai Vs. M. Ambalal & Co.*,⁵ learned counsel submitted that a beneficial and promotional exemption notification has to be construed liberally.

11. *Per contra*, Mr. Harish Chander, learned senior counsel appearing on behalf of the revenue, supporting the decision of the Tribunal, submitted that the joint venture and Gammon being

3. 2004 (166) E.L.T. 447 (Tri-Del.)

4. 2006 (198) E.L.T. 33 (Tri-Bang.)

5. (2011) 2 SCC 74: 2010 (260) E.L.T. 487 (S.C.).

A two independent entities, the eligibility certificate dated 3rd August, 2001 issued in favour of the latter was of no consequence in so far as the Exemption Notification was concerned because the contract for construction of roads had not been awarded to Gammon, who had imported the machine

B but to the joint venture. It was stressed that Gammon, on their own, were not entitled to import any goods for the execution of road works under the contract awarded to the joint venture by NHAI. Placing reliance on the decision of this Court in *Novopan India Ltd., Hyderabad Vs. Collector of Central Excise & Customs, Hyderabad*⁶,

C learned counsel contended that the Exemption Notification has to be construed strictly. Responding to the allegation of pick and choose policy adopted by the revenue, learned counsel urged that non-filing of an appeal in a similar case does not operate as a bar for the revenue to prefer an appeal in another case. In support, learned counsel

D commended us to the decision of this Court in *C.K. Gangadharan & Anr. Vs. Commissioner of Income Tax, Cochin*⁷. It was thus, asserted that the decision of the Tribunal did not warrant any interference and the appeal deserved to be dismissed.

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12. The short question for determination is whether import of the specified machine by Gammon can be considered to be an import "by a person who has been awarded a contract for construction of the roads in India", so as to fulfill Condition

F No.38, laid down in Exemption Notification No.17/2001/Cus dated 1st March, 2001?

13. In order to appreciate the contentions advanced on behalf of the parties on the question in issue, it would be expedient and useful to once again notice the salient features of agreement dated 18th September, 2000 entered between

G Gammon and Atlanta.

6. 1994 Supp (3) SCC 606.

H 7. (2008) 8 SCC 739 : (2008) 228 ELT 497.

14. Agreement dated 18th September, 2000 provided that: A
financial responsibilities of each of the parties to be shared
equally in the form of guarantees, securities, etc. of the joint
venture would be 50% of the project value; the Management of
the joint venture would be subject to the overall control of the
Management Board, consisting of a Chairman, to be nominated B
by Gammon, a Joint Chairman to be nominated by Atlanta and
one Director each to be appointed by both of them; joint venture
bank account would be operated under joint signatures of the
authorized representatives of Gammon and Atlanta and neither C
party would be entitled to borrow for or on behalf of the joint
venture or to acknowledge any liability without express prior
consent in writing of the other party except to the extent of its
share of work; Gammon being most experienced party would
be the lead partner of the joint venture for the performance of
the contract; the partner-in-charge would be authorized to incur D
liabilities and to receive instructions for and on behalf of the
partners of the joint venture, whether jointly or severally, and
entire execution of the contract including receiving payment
would be carried out exclusively through the partner-in-charge
but any financial commitment required by the lead partner, on
behalf of the joint venture, would always be previously discussed
and agreed upon by the parties. As stated above, though under
agreement dated 18th September, 2000, Gammon was notified
as the lead partner but agreement dated 20th December, 2000
executed between NHAI as the "employer" and Gammon-
Atlanta JV as "contractor" was signed by the representatives F
of both the companies viz. Gammon and Atlanta, meaning
thereby that so far as NHAI was concerned, for them the
contractor was Gammon-Atlanta JV and not Gammon or
Atlanta individually.

15. According to the adjudicating authority, it was clear
from both of the said agreements that the contract of
construction of roads in India was awarded to the joint venture
and, therefore, Gammon was not entitled to avail of the benefit
of the Exemption Notification as an independent entity. On the G
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A contrary, the Commissioner (Appeals) allowed the benefit of the
 Exemption Notification to the appellant on the ground that the
 Exemption Notification should be given a liberal interpretation
 and that the revenue should not try to take advantage of
 ignorance of law and procedure on the part of Gammon. It is
 B the Tribunal which has dealt with the issue in detail by taking
 into consideration certain factual aspects pertaining to the
 import of machine like placement of the supply orders by
 Gammon and not by the joint venture and its payment by
 Gammon from its own account and not from the joint venture
 C account provided for in the joint venture agreement. Rejecting
 the plea of the appellant that in light of the decision of this Court
 in *New Horizons* (supra) wherein it has been held that a joint
 venture is a legal entity in the nature of a partnership, the import
 of the machinery by Gammon is to be considered as having
 D been done on behalf of the joint venture, the Tribunal has
 allowed revenue's appeal.

16. Since the stand of the appellant is that the issue arising
 in the present appeal stands concluded in their favour by the
 decision of this Court in *New Horizons* (supra) and a
 E subsequent decision of this Court as also of the Tribunal, in
 which the said decision has been relied upon, it would be
 necessary to discern the ratio of the decision in *New Horizons*
 (supra).

F 17. In *New Horizons* (supra), a joint venture company,
 consisting of a few Indian companies (with 60% share capital)
 and a Singapore based company (with 40% share capital), had
 participated in tender proceedings floated by the Department
 of Telecommunications for printing and binding of telephone
 G directories of Delhi and Bombay. The tender submitted by New
 Horizons Ltd; (for short "NHL") was not accepted by the tender
 evaluation committee, apparently, on the basis of the fact that
 the successful party had more technical experience than any
 one of the constituent companies of NHL. Aggrieved by the
 H said decision, NHL filed a writ petition in the Delhi High Court

against the decision of the Department of Tele-communications. A
The said writ petition was dismissed rejecting the plea of the
NHL that the technical experience of the constituents of the joint
venture was liable to be treated as that of the joint venture. NHL
brought the matter to this Court. Explaining the concept of joint
venture in detail, it was held that a joint venture is a legal entity B
in the nature of a partnership engaged in the joint undertaking
of a particular transaction for mutual profit or an association of
persons or companies jointly undertaking some commercial
enterprise wherein all contributed assets and shared risks. It
was observed that a joint venture could take the form of a C
Corporation wherein two or more persons or companies might
join together. Accordingly, the appeal of NHL was allowed and
it was held that it was a joint venture company in the nature of
a partnership between the Indian group of companies and
Singapore based company which had jointly undertaken the D
commercial venture by contributing assets and sharing risks.
Applying the principle of "lifting the corporate veil", it was held
that the joint venture companies' technical experience could only
be the experience of the partnering companies and the
technical experience of all constituents of NHL was liable to be E
cumulatively reckoned in the tender proceedings and any one
of the constituents was competent to act on behalf of the joint
venture company. Highlighting the concept of joint venture, the
Court observed thus:

"24. The expression "joint venture" is more frequently used F
in the United States. It connotes a legal entity in the nature
of a partnership engaged in the joint undertaking of a
particular transaction for mutual profit or an association of
persons or companies jointly undertaking some
commercial enterprise wherein all contribute assets and G
share risks. It requires a community of interest in the
performance of the subject-matter, a right to direct and
govern the policy in connection therewith, and duty, which
may be altered by agreement, to share both in profit and
losses. (*Black's Law Dictionary*, 6th Edn., p. 839) H

A According to *Words and Phrases*, Permanent Edn., a joint
venture is an association of two or more persons to carry
out a single business enterprise for profit (p.117, Vol. 23).
A joint venture can take the form of a corporation wherein
two or more persons or companies may join together. A
B joint venture corporation has been defined as a
corporation which has joined with other individuals or
corporations within the corporate framework in some
specific undertaking commonly found in oil, chemicals,
electronic, atomic fields. (*Black's Law Dictionary*, 6th Edn.,
C p. 342).....”

18. In short, *New Horizons* (supra) recognises a joint
venture to be a legal entity in the nature of a partnership of the
constituent companies. Thus, the necessary corollary flowing
from the decision in *New Horizons* (supra), wherein the
D partnership concept in relation to a joint venture has been
accepted, would be that M/s Gammon-Atlanta JV, the joint
venture could be treated as a 'legal entity', with the character
of a partnership in which Gammon was one of the constituents.
In that view of the matter, the next question for consideration is
E whether being a legal entity i.e. a juridical person, the joint
venture is also a "person" for the purpose of Condition No.38
of the Exemption Notification, stipulating that the goods should
be imported by "a person" who had been awarded a contract
for construction of goods in India by NHAI?

F 19. In support of his submission that the joint venture is a
"person" as contemplated in the Exemption notification, learned
counsel for Gammon had relied on the definition of the word
"person" as given in para 3.37 of the Export and Import policy
for the year 1997-2002. It reads thus:

G "3.37-"Person" includes an individual, firm, society,
company, corporation or any other legal person".

H 20. The argument was that since a joint venture has been
declared to be a legal entity in *New Horizons* (supra), it squarely

falls within the ambit of the said definition of the word "person". A
We are of the opinion that even if the stated stand on behalf of
the appellant is accepted, mercifully, on stark facts at hand, it
does not carry their case any further. Neither was it the case
of the appellant either before the Adjudicating Authority or
before the Appellate Authority or before us, nor is it suggested B
by the documents viz. the supply order or the bill of entry, that
the import of the machine was by or on behalf of the joint
venture. On the contrary, the Tribunal has recorded in its order
that when questioned, learned counsel for the appellant clarified
that correspondence with the supplier of goods and placement C
of order had been done by Gammon and not by the joint
venture or on their behalf. He also admitted that payment for
the machine had not been made from the joint venture account,
which had been provided for the contract but from the funds of
Gammon. D

21. Thus, the inevitable conclusion is that import of
"Concrete batching plant 56 cum/hr" by Gammon cannot be
considered as an import by M/s Gammon-Atlanta JV, "a
person" who had been awarded contract for construction of the
roads in India and therefore, neither Gammon Atlanta JV nor E
Gammon fulfill the requisite requirement stipulated in Condition
No.38 of the Exemption Notification No. 17/2001/Cus dated 1st
March, 2001.

22. As regards the plea of the appellant that the Exemption
Notification should receive a liberal construction to further the
object underlying it, it is well settled that a provision providing
for an exemption has to be construed strictly. In *Novopan India*
Ltd. (supra), dealing with the same issue in relation to an
exemption notification, a three-Judge Bench of this Court, stated
the principle as follows: G

"16. We are, however, of the opinion that, on principle, the
decision of this 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 H

A 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* 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.”

23. Applying the above principles, we are of the opinion that since in the instant case the language of condition No.38 in the Exemption Notification is clear and unambiguous, there is no need to resort to the interpretative process in order to determine whether the said condition is to be imparted strict or liberal construction.

24. Before parting, we wish to place on record our deep concern on the conduct of the two Benches of the Tribunal deciding appeals in the cases of *IVRCL Infrastructures & Projects Ltd.* (supra) & *Techni Bharathi Ltd.* (supra). After noticing the decision of a co-ordinate Bench in the present case, they still thought it fit to proceed to take a view totally contrary to the view taken in the earlier judgment, thereby

creating a judicial uncertainty with regard to the declaration of law involved on an identical issue in respect of the same Exemption Notification. It needs to be emphasised that if a Bench of a Tribunal, in identical fact-situation, is permitted to come to a conclusion directly opposed to the conclusion reached by another Bench of the Tribunal on earlier occasion, that will be destructive of the institutional integrity itself. What is important is the Tribunal as an institution and not the personality of the members constituting it. If a Bench of the Tribunal wishes to take a view different from the one taken by the earlier Bench, the propriety demands that it should place the matter before the President of the Tribunal so that the case is referred to a larger Bench, for which provision exists in the Act itself. In this behalf, the following observations by a three Judge Bench of this Court in *Sub-Inspector Rooplal & Anr. Vs. Lt. Governor & Ors*⁸. are quite apposite :

“At the outset, we must express our serious dissatisfaction in regard to the manner in which a Coordinate Bench of the Tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same Tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid

8. (2000) 1 SCC 644.

- A down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement.”
- B

- C We respectfully concur with these observations and are confident that all the Courts and various Tribunals in the country shall follow these salutary observations in letter and spirit.

- D 25. In view of the foregoing discussion, the decision of the Tribunal, holding that the appellant was not entitled to the benefit of Exemption notification No. 17/2001-Cus dated 1st March, 2001, cannot be flawed. The appeal being bereft of any merit is dismissed accordingly, with costs, quantified at Rs. 50,000/-.

D.G.

Appeal dismissed.