

A COMMISSIONER OF CENTRAL EXCISE, VADODARA

v.

INDIAN PETROCHEMICALS CORPN. LTD. & ANR.

(Civil Appeal Nos. 3623-3624 of 2005)

B

MAY 12, 2015.

[A.K. SIKRI AND R. F. NARIMAN, JJ.]

Central Excise Tariff Act, 1985:

C

Chapter heading 27.11 – Petroleum gases and other gaseous hydrocarbons – Notification No. 6/2000-C.E. dated 01.03.2000 – Interpretation of – Partial exemption from payment of duty, in terms of Notification No. 6/2000-C.E. dt 01.03.2000 – Entitlement to – Assessee manufacturing petrochemical, C4 Raffinate – Department classifying the product under Chapter Heading 2711.12 as butylenes, issued show cause notice to assessee demanding differential 8% duty – Assessee's case that product classified under chapter sub-heading 2711.19 and as per the Notification, 50% of the duty of excise specified in the First Schedule, was payable – Demand of 8% differential duty by the Department – In appeal, tribunal upholding the case of assessee – Interference with – Held: Not called for – Sl. No. 24 of Notification No. 6/2000-C.E., dated 1-3-2000 confers partial exemption to 'Liquefied Petroleum gases and other gaseous hydrocarbons other than natural gas, ethylene, propylene, butylene and butadiene' – There is no comma after the words 'gaseous hydrocarbons' – Expression 'other than' appearing after the words 'gaseous hydro carbons' and before the words 'natural gas' would qualify only the words 'natural gas' – Thus, the following goods are covered (i) Liquefied petroleum gas and other gaseous hydrocarbons with exclusion of natural

D

E

F

G

H

COMMNR. OF CENTRAL EXCISE, VADODARA v. INDIAN1047
PETROCHEMICALS CORP. LTD.

gas, (ii) Ethylene, (iii) Propylene, (iv) Butylene and (v) Butadiene – Even if C-4 Raffinate is treated as Butylene, the Notification would be applicable, specification of butylenes in the said Sl. No. 24 is not for the purpose of its exclusion, but for its specific enumeration and inclusion – Further, even if the description of goods against Sl. No. 24 of Notification No. 6/2000-C.E., is interpreted to mean that ethylene, propylene, butylenes and butadiene are also excluded, then C-4 Raffinate is not excluded since it is not exclusively a or any 'butylene' but is a mix of 'butylenes' – However, since C-4 Raffinate is liquefied petroleum gas it is covered by the description of 'Liquefied Petroleum gases and other gaseous hydrocarbons' under the Notification.

Chapter heading 27.11 – Petroleum gases and other gaseous hydrocarbons – Assessee manufacturing petrochemical propylene – Partial exemption from payment of duty, in terms of Notification No. 6/2000 dated 01.03.2000 – Entitlement to – Held: Propylene is one of the products which qualifies for partial exemption from payment of duty by the said Notification.

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3623-3624 of 2005 etc.

From the Judgment and Order dated 27.01.2005 in Appeal No. E/3616,3617/03 passed by the Customs, Excise and Service Tax Appellate Tribunal, Circuit Bench, Ahmedabad.

WITH

C.A. NO. 1034 OF 2007

C.A. NOs. 262-263 OF 2010

C.A. NO. 4264 OF 2011

Yashank Adhyaru, K. Radhakrishnan, Nisha Bagchi,

A Rupesh Kumar, Arijit Prasad, Sujeeta Srivastava, Pooja Sharma, B. Krishna Prasad for the Appellant.

S. K. Bagaria, V. Lakshmikumaran, M.P. Devanath, Vivek Sharma, L. Charanaya, R. Ramchandran, Aditya Bhattacharya,
B Hemant Bajaj, Anandh K., Ambarish Pandey, Abhinav Agrawal, Mahesh Agarwal, Rishi Agrawala, E.C. Agrawala, Rohit Jolly for the Respondents.

The Judgment of the Court was delivered by

C **A. K. SIKRI, J.** 1. These batch of appeals pertain to Indian Petrochemical Corporation Limited (in short 'IPCL') and in the fourth appeal, the assessee is Indian Oil Corporation.

D 2. IPCL is engaged in the manufacture of various types of
D petrochemicals, falling under Chapter 27 and 29 of Central
Excise Tariff Act, 1985. It holds valid Central Excise registration
under Rule 174 of the Central Excise Rules 1944. One of the
products which is manufactured by IPCL is C4 Raffinate. On
E this, the IPCL has been paying 8 per cent duty, as it has been
claiming the benefit of Notification No. 6/2000 dated
01.03.2000. We may mention that the normal rate of duty of
the aforesaid product is 16 per cent. However, by virtue of the
aforesaid notification, in respect of certain products duty is
F halved. The question arose as to whether the IPCL is entitled
to the benefit of the aforesaid notification and in that context,
the issue of classification of this product fell for consideration.
The IPCL has classified the product under chapter sub-heading
2711.19. Chapter Heading Entry 27.11 reads as under: -

G 27.11 Petroleum gases and other gaseous
hydrocarbons

- *Liquefied* :

H

COMMNR. OF CENTRAL EXCISE, VADODARA v. INDIAN1049
PETROCHEMICALS CORP. LTD. [A. K. SIKRI, J.]

2711.11 - Natural gas A

2711.12 - Ethylene, propylene, butylene and butadiene

2711.19 - Other

—*In gaseous state:* B

2711.21 - Natural gas

2711.29 - Other

3. As per the Department, the aforesaid product should have been classified under Chapter Heading 2711.12 as butylene. On that basis, show cause notice was issued demanding excise duty at the rate of 16 per cent *ad valorem* and asking the IPCL to pay the differential duty as duty paid by IPCL was at the rate of 8 per cent. The IPCL replied to the show cause notice sticking to its position that the as per the aforesaid exemption Notification, 50 per cent of the duty of excise specified in the First Schedule, was payable. C
D

4. In the Order-in-Original passed by the Commissioner, the demand of duty as claimed in the show cause notice was confirmed rejecting the contention of the IPCL. However, in an appeal filed before the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as 'CESTAT'), IPCL has emerged successful inasmuch as its contention is accepted. E
F

5. On going through the order of the Commissioner as well as the CESTAT, we find that both the authorities below have entered into the various facets of the dispute and gone into the entire gamut of controversy. Many of the findings of the Commissioner in his order have not found favour with the CESTAT in the impugned decision rendered by it. We have heard learned counsel for the parties on all the aspects and H

A have gone through the orders minutely through which we were taken by the learned counsel appearing for the parties. We are, however, of the opinion that it is not necessary to even advert to all those aspects of the matter inasmuch as the fulcrum of the dispute pertains to the interpretation which is to be

B accorded to the language used in Notification No. 6/2000 which confers, as mentioned above, partial exemption. It reads as under: -

C	Chapter or heading No. or sub-heading No.	Description of goods	Rate under the First Schedule	Rate under the Second Schedule	Condition No.
D	27.11	Liquefied Petroleum Gases and other gaseous hydrocarbons other than natural gas, ethylene, propylene, butylene and butadiene	Fifty per cent of the duty of excise specified in the First Schedule	-	-

E

6. The basic contention of Mr. Yashank Adhyaru, learned senior counsel appearing for the appellant, was that the aforesaid notification exempts liquefied petroleum gases (LPG) as well as other gaseous hydro carbons and excludes specifically natural gases, ethylene, propylene, butylene and butadiene. On the other hand, learned counsel appearing for the respondents have argued that the words "other than" qualify only natural gases and according to him, if read in this manner, the products which would fall within the exempted category for

G payment of concessional rate of excise duty would be LPG, other gaseous hydro carbons excluding natural gas, ethylene, propylene, butylene and butadiene.

H 7. We find that the construction as sought to be given by IPCL appears to be correct. This aspect has been dealt with

COMMNR. OF CENTRAL EXCISE, VADODARA v. INDIAN1051
PETROCHEMICALS CORP. LTD. [A. K. SIKRI, J.]

by the CESTAT in para 5.5 of the judgment and since we are agreeing with the said interpretation given by the Tribunal, we reproduce hereunder the said para in its entirety: -

"5.5 As regards the eligibility to the Notification Sr. No. 24 thereof, it is found -

(i) Sl. No. 24 of Notification NO. 6/2000-C.E., dated 1-3-2000 confers partial exemption to "*Liquefied Petroleum gases and other gaseous hydrocarbons other than natural gas, ethylene, propylene, butylene and butadiene*". (emphasis supplied)

In the aforesaid Sl. No. 24 of Notification No. 5/2000, there is no comma after the words 'gaseous hydrocarbons'. Therefore, the expression "other than" appearing after the words "gaseous hydro carbons" and before the words "natural gas" would qualify only the words "natural gas". In other words, the following goods are covered by the aforesaid Sl. Nos.

(i) Liquefied petroleum gas and other gaseous hydrocarbons with exclusion of natural gas,

(ii) Ethylene,

(iii) Propylene,

(iv) Butylene and

(v) Butadiene.

The above submissions is reinforced by a comparison with Sl. No. 30 of Notification No. 75/84-C.E., dated 3-3-1984 as introduced by Notification No. 120/86-C.E., dated 1-3-1986 which stood in the manner, during the entire period from 1-3-1986 to 28-2-1994.

A F.5 The said Sl. No. 30 of Notification No. 75/84 reads thus:

B “Liquefied petroleum gases and other gaseous hydrocarbons, other than natural gas, ethylene, propylene, butylene and butadiene”.

as in the above Notification No. 75/84, there was a comma after gaseous hydrocarbons, unlike present Notification No. 6/2000, Sl. No. 24 thereof.

C Therefore, even if C-4 Raffinate is treated as Butylene Sl. No. 24 of Notification No. 6/2000-C.E., would be applicable, specification of butylenes in the said Sl. No. 24 is not for the purpose of its exclusion, but for the purpose of its specific enumeration and inclusion.

D (ii) Even if the description of goods against Sl. No. 24 of Notification No. 6/2000-C.E., is interpreted to mean that ethylene, propylene, butylenes and butadiene are also excluded, then C-4 Raffinate is not excluded since it is not exclusively a or any ‘butylene’ but is a mix of ‘butylenes’. In view of the findings arrived in paras supra. However, since C-4 Raffinate is liquefied petroleum gas it is covered by the description of the “Liquefied Petroleum gases and other gaseous hydrocarbons” under Sl. No. 24 of the above notification, Raffinate, even if it is assumed as butylene is not excluded from coverage of Sl. No. 24 of the Notification No. 6/2000, but would stand included in the first part of the Notification as liquefied petroleum gases.

G (iii) The order of the Commissioner on the question of availability of exemption Notification No. 6/2000-C.E., dated 1-3-2000 and No. 3/2001-C.E., dated 1-3-2001 is purely based on the intention of the legislature on the basis

H

COMMNR. OF CENTRAL EXCISE, VADODARA v. INDIAN1053
PETROCHEMICALS CORP. LTD. [A. K. SIKRI, J.]

of the Finance Minister's speech. However, it is well settled legal position that the notification has to be interpreted on the basis of plain meaning of words and intention behind the notification cannot be a basis to interpret the notification. Commissioner has not refuted any of the submissions made by the appellants, on the interpretation of the notification. If the interpretation of the department on Sr. No. 24 of Notification No. 6/2000-C.E., dated 1-3-2000 and Sr. No. 34 of Notification No. 3/2001-C.E., dated 1-3-2001 is accepted then the simple way of giving the description of the goods under the said Sr. Nos. of the Notifications, would have been "goods falling under sub-heading 2711.19", if the Government wanted to extend the concessional rate of duty in respect of liquefied petroleum gas and other hydrocarbons except natural gas. Hence the interpretation as adopted by the Commissioner based on the intention of the legislature on the basis of Finance Minister's speech is wholly incorrect."

8. Insofar as Indian Oil Corporation is concerned, the only difference is that it is manufacturing a product known as propylene. Since it is also one of the products which qualifies for partial exemption from payment of duty by Notification No. 6/2000 dated 01.03.2000, result in both the cases would be the same.

9. Consequently, all these appeals preferred by the Department are hereby dismissed.

Nidhi Jain

Appeals dismissed.